

STATE OF MICHIGAN
COURT OF APPEALS

HANDY OSLEY and MARY OSLEY,

Plaintiffs-Appellants,

v

STEVEN GLICKMAN and TROY PODIATRIST,
P.C.,

Defendants-Appellees.

UNPUBLISHED
February 23, 2001

No. 220041
Oakland Circuit Court
LC No. 98-007370-NH

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition and dismissing the case with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On July 7, 1998 plaintiffs filed suit alleging that defendants committed medical malpractice in their treatment of Handy Osley from June 5, 1993 through November 9, 1995. Plaintiffs did not submit an affidavit of merit, as required by MCL 600.2912d(1); MSA 27A.2912(4)(1), at the time the complaint was filed or at any time thereafter.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(1) and (7). They argued that plaintiffs' claims could not have accrued later than November 9, 1995, and that plaintiffs' claim, filed after the two-year limitations period, as extended by the filing of the notice of intent to sue, was untimely. MCL 600.5808(5); MSA 27A.5805(5). In addition, defendants contended that the filing of a medical malpractice claim unaccompanied by an affidavit of merit did not toll the statute of limitations, citing *Scarsella v Pollak*, 232 Mich App 61, 64; 591 NW2d 257 (1998), aff'd as modified by 461 Mich 547; 607 NW2d 711 (2000). The trial court granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Assuming arguendo that the trial court's conclusion that plaintiffs' complaint was timely filed is correct, our Supreme Court's decision in *Scarsella*,

supra, supports the trial court's grant of summary disposition. The *Scarsella* Court held that if a medical malpractice plaintiff fails to file an affidavit of merit as required by MCL 600.2912d(1); MSA 27A.2912(4)(1), the filing of a complaint is "ineffective" and does not toll the statute of limitations. Dismissal with prejudice is the proper remedy. *Scarsella, supra* at 549-550, 553.

Plaintiffs' reliance on cases such as *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 47-48; 594 NW2d 455 (1990), and *Vandenberg v Vandenberg*, 231 Mich App 497, 502; 586 NW2d 570 (1998), for the proposition that dismissal with prejudice was not an appropriate sanction is misplaced. As the *Scarsella* Court noted, those cases did not present a statute of limitations problem and thus are factually and legally distinguishable. *Scarsella, supra* at 550-551.

Finally, plaintiffs' argument that the application of MCL 600.2912d(1); MSA 27A.2912(4)(1) deprives them of due process and equal protection is not adequately explained by citation to appropriate authority. For that reason, we decline to consider it. *Morris v Allstate Ins Co*, 230 Mich App 361, 370; 584 NW2d 340 (1998).

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell