

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANTOINETTE GILLARY, Personal  
Representative of the Estate of JOHN F. STATES,  
Deceased,

UNPUBLISHED  
July 10, 2001

Plaintiff-Appellant,

v

No. 221665  
Wayne Circuit Court  
LC No. 98-814637-NH

SISTERS OF MERCY HEALTH  
CORPORATION, d/b/a MERCY HOSPITAL,

Defendant-Appellee,

and

MERCY HEALTH SERVICES, INC.,

Defendant.

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Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion decided under MCR 2.116(C)(7), this Court accepts as true the well-pleaded allegations in the plaintiff's complaint and construes them in the plaintiff's favor. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 340; 568 NW2d 847 (1997). The Court must consider the pleadings, affidavits, and other documentary evidence to determine whether a genuine issue of material fact exists. *Id.* "Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. Otherwise, where no material facts are in dispute, this Court may decide the question as a matter of law." *Id.*

Plaintiff's decedent died in February 1995. Plaintiff was appointed the personal representative of the decedent's estate on January 11, 1996 and thus had until January 11, 1998 to file suit. MCL 600.5852. Unlike other claims, a medical malpractice complaint cannot be filed at any time during the limitations period. Pursuant to statute, the plaintiff must first give defendant 182 days' notice of her intent to sue. MCL 600.2912b(1). Plaintiff served defendant with the requisite notice on October 23, 1997, 182 days from which was April 23, 1998. Because the limitations period would have expired in the interim, it was tolled. MCL 600.5856(d); *Omelenchuk v City of Warren*, 461 Mich 567, 574; 609 NW2d 177 (2000). At the time plaintiff served defendant with the requisite notice, 650 days of the limitations period had elapsed. Therefore, when the notice period expired in April 1998, plaintiff had eighty days left in the limitations period, and thus had to file suit by June 14, 1998. Because that was a Sunday, plaintiff had until June 15<sup>th</sup> to file suit. MCR 1.108.

Plaintiff filed her complaint on May 8, 1998, which was within the limitations period. However, because plaintiff omitted to file an affidavit of merit with her complaint, MCL 600.2912d(1), the filing of the complaint alone was insufficient to commence the lawsuit and the limitations period continued to run. *Scarsella v Pollak*, 232 Mich App 61, 64; 591 NW2d 257 (1998), aff'd 461 Mich 547, 553 (2000). The limitations period expired on June 15, 1998, before plaintiff filed an affidavit of merit, and thus the case was properly dismissed. *Scarsella, supra* at 550; *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 709; 620 NW2d 319 (2000).

Although plaintiff contends that the limitations period was tolled under MCL 600.5855, she failed to raise this issue below and thus has not preserved it for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). The fraudulent concealment issue as framed below related to the extension of time in which to file an affidavit when the defendant fails to provide access to medical records. MCL 600.2912d(3). Plaintiff has failed to brief the merits of this issue and thus it is deemed to have been abandoned. *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 717; 591 NW2d 676 (1998).

Finally, we find no merit to plaintiff's contention that defendant waived its defenses, which were asserted in a timely manner. MCR 2.111(F); MCR 2.116(D).

Affirmed.

/s/ Henry William Saad  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy