

STATE OF MICHIGAN
COURT OF APPEALS

NORA KALLIEL,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN BOARD OF
REGENTS, d/b/a UNIVERSITY OF MICHIGAN
SCHOOL OF DENTISTRY,

Defendant-Appellee.

UNPUBLISHED

December 11, 2001

No. 223948

Washtenaw Circuit Court

LC No. 98-017139-CM

NORA KALLIEL,

Plaintiff-Appellant,

v

PETER YAMIN, DDS, and PAUL BYER, DDS,

Defendants-Appellees.

UNPUBLISHED

No. 223949

Washtenaw Circuit Court

LC No. 98-004934

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J., (*concurring in part and dissenting in part*).

I respectfully dissent from the conclusion of the majority that plaintiff met her burden of establishing that a genuine issue of material fact existed regarding whether defendants' conduct amounted to gross negligence, and consequently, I would affirm.

In response to defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on plaintiff's amended complaint that alleged gross negligence, plaintiff relied on the affidavit of merit of Peter Norris, M.D., to show that the treatment defendants afforded her was grossly negligent. Plaintiff filed this affidavit with her original complaint that alleged ordinary negligence by defendants. When plaintiff amended her complaint to allege gross negligence, she relied upon this very same affidavit of merit. In the affidavit, Dr. Norris stated that "it is my opinion that Drs. Byers, Yamin and Turner failed to exercise that degree of care and skill ordinarily required by the dental profession in general under like condition and similar

circumstances” Because plaintiff’s expert specifically confined his opinion to ordinary negligence, I believe that the affidavit, on its face, cannot support a claim for gross negligence.

Further, I question the majority’s apparent reliance on the allegations contained in the amended complaint. As noted in their opinion, MCR 2.116(G)(4) does not permit a party to merely rely on allegations made in their pleadings. See *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999).

In all other respects, I join with the majority opinion.

/s/ Joel P. Hoekstra