

STATE OF MICHIGAN  
COURT OF APPEALS

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ANGELINA GUERRA, as Personal  
Representative of BRADLEY GUERRA,  
Deceased,

UNPUBLISHED  
June 11, 2002

Plaintiff-Appellant,

v

ROBERT H. MACKIE, M.D., RIVERSIDE  
MEDICAL ASSOCIATION, P.C., RAYMOND  
MAJKRZAK, M.D., and CHIPPEWA COUNTY  
WAR MEMORIAL HOSPITAL,

No. 236268  
Chippewa Circuit Court  
LC No. 98-003795-NH

Defendants-Appellees.

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Before: Griffin, P.J., and Hood and Sawyer, JJ.

GRIFFIN, P.J. (*concurring*).

I concur in the result to affirm. However, I do not join in the lead opinion's criticism of *Scarsella v Pollack*, 461 Mich 547; 607 NW2d 711 (2000). In my view, *Scarsella* was correctly decided. Furthermore, because "the mere tendering of a complaint without the required affidavit of merit is insufficient to commence the lawsuit," *id.* at 549, the present case was never commenced. The filing was a "nullity" and the complaint was "null and void." *Id.* Simply put, there can be no tolling of the statute of limitations if an action is never commenced. *Holmes v Michigan Capital Medical Center*, 242 Mich App 703; 620 NW2d 319 (2000). For this reason, the service of process of plaintiff's *invalid* complaint did not toll the statute of limitations and therefore the lower court correctly granted summary disposition in favor of defendants.

/s/ Richard Allen Griffin