

STATE OF MICHIGAN
COURT OF APPEALS

KEITH W. MAYBERRY and JOANNA
MAYBERRY,

UNPUBLISHED
February 17, 2004

Plaintiffs-Appellants,

v

GENERAL ORTHOPEDICS, P.C., and
WILLIAM KOHEN, M.D.,

No. 244162
Oakland Circuit Court
LC No. 02-039236-NH

Defendants-Appellees.

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendants' motion for summary disposition of this medical malpractice action on statute of limitations grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' malpractice claim accrued on November 22, 1999, when Dr. Kohen performed surgery on Keith Mayberry's wrist. On June 21, 2000, plaintiffs filed a notice of intent to sue Dr. Kohen only. On October 11, 2001, plaintiffs filed a second notice of intent to sue both Dr. Kohen and General Orthopedics. Plaintiffs filed their complaint on March 19, 2002, before the second notice period expired. The trial court granted defendants' motion for summary disposition, finding that the second notice did not toll the period of limitations.

"In deciding a motion made under MCR 2.116(C)(7), a court should consider all affidavits, pleadings, and other documentary evidence submitted by the parties." *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 706; 620 NW2d 319 (2000). If the evidence or pleadings "reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is statutorily barred." *Id.* This Court will review the decision de novo. *Id.*

Generally, a plaintiff must bring a medical malpractice claim within either two years of the accrual of the claim or six months of the date the malpractice was discovered or should have been discovered. MCL 600.5805(6); MCL 600.5838a(2). Here, plaintiff's claim accrued on November 22, 1999, and the period of limitations expired two years later. However, MCL 600.2912b(1) prevents a plaintiff from bringing a medical malpractice action until 182 days have passed from the time a notice of intent was filed. If the limitations period would expire during

the notice period, the period is tolled for the number of days in the interval in which suit cannot be brought. MCL 600.5856(d); *Omelenchuk v Warren*, 461 Mich 567, 574-575; 609 NW2d 177 (2000).

Plaintiffs claim that their original notice was defective, would not toll the period of limitations, and thus should not be considered when reviewing the effect of the second notice. However, MCL 600.2912b(6) states:

After the initial notice is given to a health professional or health facility under this section, the tacking or addition of successive 182-day periods is not allowed, irrespective of how many additional notices are subsequently filed for that claim and irrespective of the number of health professionals or health facilities notified.

This statute clearly precludes a plaintiff from obtaining the benefit of another 182-day tolling period based on the filing of multiple notices of intent. See also, generally, *Ashby v Byrnes*, 251 Mich App 537, 544-545; 651 NW2d 922 (2002). The trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens