

STATE OF MICHIGAN
COURT OF APPEALS

NANCY GILLESPIE and GARY GILLESPIE,

Plaintiffs-Appellees,

v

LANSING OB-GYN ASSOCIATES,

Defendant-Appellant.

UNPUBLISHED
February 26, 2004

No. 244194
Ingham Circuit Court
LC No. 01-093592-NH

Before: Schuette, P.J., Whitbeck, C.J., and Owens, J.

WHITBECK, C.J., (*concurring*).

Although I concur in the majority's opinion, I write separately to note that I do so only because precedent requires it. As I explained in my dissent in *Nippa v Botsford Gen Hosp (On Remand)*, 257 Mich App 387, 397-411; 668 NW2d 628 (2003) (Whitbeck, C.J., dissenting), it is my view that MCL 600.2912d(1) does not require a plaintiff to file an affidavit of merit signed by a board-certified specialist if that plaintiff has sued only the hospital for medical malpractice under a vicarious liability theory. I hold this view because MCL 600.2169(1) requires that an expert testifying in a medical malpractice case have the same credentials as "the *party* against whom or on whose behalf the testimony is offered" (emphasis added). In this case, the "party" is a hospital, not a specialist, and the word "party" — which is a term of art meaning "those by or against whom a legal suit is brought" or "the party plaintiff or defendant" — should not be construed to extend to agents of a party. *Nippa, supra* at 402 (internal quotations omitted). However, because we are bound by MCR 7.215(J)(1) to follow the published opinion in *Nippa*, I agree that we must reverse and remand.

/s/ William C. Whitbeck