STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL COLTON, Personal Representative of the Estate of ALEXIS HALL,

Plaintiff-Appellee,

v

DEVKUMAR S. NANDAMUDI, MD, a/k/a DEVELOPMENT S. NANDAMUDI, ME, CHILDREN'S HEALTH CARE OF PORT HURON, and PHYSICIANS HEALTHCARE NETWORK, PC,

Defendants,

and

PORT HURON HOSPITAL,

Defendant-Appellant.

UNPUBLISHED
April 10, 2008

No. 272294
St. Clair Circuit Court
LC No. 05-001942-NH

MICHAEL COLTON, Personal Representative of the Estate of ALEXIS HALL,

Plaintiff-Appellee,

v

DEVKUMAR S. NANDAMUDI, MD, a/k/a DEVELOPMENT S. NANDAMUDI, and CHILDREN'S HEALTHCARE OF PORT HURON,

Defendants-Appellants,

and

PHYSICIANS HEALTHCARE NETWORK, PC and PORT HURON HOSPITAL,

Defendants.

No. 272299
St. Clair Circuit Court
LC No. 05-001942-NH

Before: Murray, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

In this consolidated appeal, defendants Port Huron Hospital, Devkumar Nandamudi, M.D., and Children's Healthcare of Port Huron appeal by leave granted from the order denying their motion for summary disposition in this wrongful death medical malpractice action. We affirm.

The decedent died on February 24, 2001, of pneumonia due to respiratory tract infection shortly after being discharged from Port Huron Hospital by Dr. Nandamudi, her treating pediatrician. On February 14, 2003, Mary Farquhar, the decedent's mother, was appointed personal representative of the estate and obtained letters of authority from the probate court. On February 10, 2005, she served a notice of intent to file a medical malpractice complaint against the defendants involved in the decedent's treatment. On March 23, 2005, Farquhar petitioned the probate court to be removed as personal representative and have plaintiff appointed her successor, and plaintiff was appointed as successor personal representative on May 31, 2005. This action was filed on August 15, 2005, and plaintiff did not file a new notice of intent before filing the action.

Defendants initially moved for summary disposition under MCR 2.116(C)(7), asserting that the complaint was time barred by operation of MCL 600.5852 because plaintiff failed to commence the action within two years after letters of authority were issued to the predecessor personal representative. After the trial court denied the motion, defendants filed applications for leave to appeal with this Court, which were denied. *Colton v Nandamudi*, unpublished order of the Court of Appeals, entered April 28, 2006 (Docket Nos. 268524 and 268533). Defendants then filed applications for leave to appeal with our Supreme Court, which held in abeyance pending the decision in *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412; 733 NW2d 755 (2007). *Colton v Nandamudi*, 721 NW2d 193 (2006); *Colton v Nandamudi*, 721 NW2d 200 (2006). Following the release of *Washington*, our Supreme Court ordered the applications to again be held in abeyance. *Colton v Nandamudi*, 739 NW2d 337 (2007); *Colton v Nandamudi*, 739 NW2d 624 (2007).

In the meantime, Dr. Nandamudi and Children's Health Care moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff failed to file a proper notice of intent as required by MCL 600.2912b(1). Specifically, those defendants argued that the language of § 2912b(1) required that the same person who filed the action serve the notice of intent at least 182 days before the action is commenced, relying on *Halton v Fawcett*, 259 Mich App 699; 675 NW2d 880 (2003), and *Verbrugghe v Select Specialty Hosp*, 270 Mich App 383; 715 NW2d 72 (2006). The trial court denied the motion, and these appeals followed.

Defendants argue that the trial court erred in denying their motions, maintaining that plaintiff, as successor personal representative, was required to serve another notice of intent to initiate this action. However, since the application for leave to appeal was granted, this Court issued *Braverman v Garden City Hosp*, 275 Mich App 705; 740 NW2d 744 (2007) (*Braverman II*), which is dispositive for purposes of the issues raised in defendants' statements of questions presented. In *Braverman II*, the Court concluded that a predecessor and successor personal representative were not different persons under § 2912b(1) when acting in his or her personal

representative capacity, therefore allowing the successor personal representative to rely on the notice of intent served by the predecessor personal representative. *Id.* at 716.[1] Thus, none of defendants' assertions of error have merit.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] Defendants' attempts to distinguish *Braverman II* from the instant action cannot be reviewed because those arguments are not based on § 2912b(1) but involve additional theories not raised in their statements of questions presented. A party may not raise new or additional arguments in a reply brief. MCR 7.212(G); *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003).