

STATE OF MICHIGAN
COURT OF APPEALS

DONNA B. DECOSTA,

Plaintiff-Appellant,

v

DAVID D. GOSSAGE, D.O. and GOSSAGE EYE
CENTER,

Defendants-Appellees.

UNPUBLISHED
September 2, 2008

No. 278665
Hillsdale Circuit Court
LC No. 06-000747-NM

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition to defendants, apparently¹ under MCR 2.116(C)(7). The court held that the statute of limitations barred plaintiff's action for malpractice. We agree and affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed her complaint on November 20, 2006, seeking damages for Dr. Gossage's alleged malpractice. Dr. Gossage performed allegedly unnecessary cataract surgery on plaintiff's left eye on June 3, 2004. After the surgery, plaintiff had vision loss and other complications leading to another surgery (a vitrectomy, anterior chamber tap, and vitreous injections for endophthalmitis) in Toledo. Plaintiff continued suffering from vision problems and headaches, although her vision in the left eye apparently improved to 20/70 by October 2004.

Defendants denied the malpractice and claimed that plaintiff's vision returned to 20/50 by May 2006. Defendants also stated that plaintiff's notice of intent to sue was improper. In malpractice actions, MCL 600.2912b(2) requires that a notice of intent be sent to the defendant's last known address. If properly sent within two years of the alleged malpractice, the notice of intent tolls the two-year statute of limitations for 182 days. MCL 600.5856(d).

¹ The court did not state a specific subsection, but the court's comments indicate reliance on the statute of limitations, which falls under MCR 2.116(C)(7).

In granting summary disposition, the trial court found that plaintiff did not mail her notice of intent to defendants' "last known professional . . . or residential address" as required by MCL 600.2912(b)(2):

The notice of intent to file a claim required under subsection (1) shall be mailed to the last known professional business address or residential address of the health professional or health facility who is the subject of the claim. Proof of the mailing constitutes prima facie evidence of compliance with this section. If no last known professional business or residential address can reasonably be ascertained, notice may be mailed to the health facility where the care that is the basis for the claim was rendered.

Plaintiff sent her notice on June 3, 2006, to 56 S. Howell Rd., Hillsdale. However, defendant had stopped practicing at this location in February 2004 and moved his office to 50 W. Carleton Rd., Hillsdale. Plaintiff knew of the move because she was treated at the W. Carleton Rd. location on at least seven occasions between June and October 2004. Failing to comply with the mandatory provisions of MCL 600.2912(b)(2), plaintiff's notice was ineffective to toll the statute of limitations. *Roberts v Mecosta Co Hosp (After Remand)*, 470 Mich 679, 681-682, 686; 684 NW2d 711 (2004).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly