

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA JEAN STEELE,

Plaintiff-Appellant,

v

ST. LAWRENCE HOSPITAL AND
HEALTHCARE SERVICES,
SPARROW HEALTH SYSTEMS, and
RALPH MICHAEL KELLY, M.D.,

Defendants-Appellees.

UNPUBLISHED

April 16, 2009

No. 283899

Ingham Circuit Court

LC No. 07-000066-NZ

Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

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

I concur in affirming the trial court's order granting defendants' motion for summary disposition for the reasons provided by the trial court and the conclusions reached in the majority opinion.

I write separately to add that I would confine the ruling to the facts in this case. I can conceive of situations where a physician's egregious conduct performed under the guise of an examination would be so patently inappropriate that medical judgment beyond the realm of common knowledge and experience would be wholly unnecessary to pursue and establish a tort cause of action. Additionally, if such were the case inapplicable statutory mandates governing medical malpractice cases would not apply. This case does not fall into that category: The particular claims plaintiff made here clearly require medical expertise and judgment to resolve. As extreme examples to the contrary, if, during a routine examination, a doctor punched a patient in the face or attempted sexual penetration, the patient most certainly could commence an intentional tort action against the doctor without providing a notice of intent or procuring an affidavit of merit opining that the doctor violated the standard of care. I realize that in some instances it may be difficult to draw the line between those cases requiring medical judgment and expertise and those that do not. This determination must be made on a case-by-case basis. Moreover, if a patient consents to a standard medical examination or procedure, a doctor cannot claim the defense of consent to an intentional tort claim if his conduct impermissibly exceeds the scope of the patient's consent.

/s/ William B. Murphy