

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER SWANSON,

Plaintiff-Appellee,

v

PORT HURON HOSPITAL, a/k/a PORT HURON
HOSPITAL MEDICAL GROUP,

Defendant,

and

JEANNIE L. ROWE, D.O., and BLUEWATER
OBSTETRICS AND GYNECOLOGY, P.C.,

Defendants-Appellants.

UNPUBLISHED

June 2, 2009

No. 275404

St. Clair Circuit Court

LC No. 04-002438-NH

HEATHER SWANSON,

Plaintiff-Appellant,

v

PORT HURON HOSPITAL, a/k/a PORT HURON
HOSPITAL MEDICAL GROUP,

Defendant,

and

JEANNIE L. ROWE, D.O., and BLUEWATER
OBSTETRICS AND GYNECOLOGY, P.C.,

Defendants-Appellees.

No. 278491

St. Clair Circuit Court

LC No. 04-002438-NH

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

O'CONNELL, J. (*dissenting*).

For the same reasons stated in my dissent in *Miller v Malik*, 280 Mich App 687, 700-707; 760 NW2d 818 (2008), application for leave to appeal held in abeyance ___ Mich ___; 764 NW2d 231 (2009), I respectfully dissent as to the majority's conclusion that the notice of intent is defective in this case. Needless to say, I believe this Court wrongly decided *Miller*.

The majority opinion relies on *Bush v Shabahang*, 278 Mich App 703, 753 NW2d 271 (2008), lv gtd in part 482 Mich 1105 (2008), and *Miller, supra*, to conclude that the notice of intent in the present case is defective. The Supreme Court has granted leave in *Bush* and is holding *Miller* in abeyance until it decides *Bush*. It would seem to me that the Supreme Court's anticipated decisions in both *Miller* and *Bush* would be outcome-determinative in this case, and that the most prudent solution would be to hold this case in abeyance pending our Supreme Court's decisions in *Miller* and *Bush*. At this time I voice no opinion as to the balance of the trial court's decisions in this case. Should our Supreme Court reverse *Bush* or *Miller*, and should this case be remanded to this Court, I will address the balance of the issues raised on appeal at that time.

I would affirm only that part of the lower court decision that concluded the notice of intent was not defective.

/s/ Peter D. O'Connell