STATE OF MICHIGAN

COURT OF APPEALS

PAUL G. GREEN, II as Personal Representative of the Estate of PAUL GERALD GREEN, Deceased,

Plaintiff-Appellant,

v

CHARLES PIERSON, M.D., BARBARA CARLSON, M.D., SOUTHWESTERN MEDICAL CLINIC, P.C., RICHARD KAMMENZIND, M.D., HEALTHCARE MIDWEST INTERNAL MEDICINE, THOMAS POW, M.D., GREAT LAKES HEART & VASCULAR INSTITUTE, P.C., and LAKELAND MEDICAL CENTER ST. JOSEPH,

Defendants-Appellees.

UNPUBLISHED
February 9, 2010

No. 289588
Berrien Circuit Court
LC No. 2004-003044-NH

Before: Talbot, P.J., and Whitbeck and Owens, JJ.

PER CURIAM.

In this medical malpractice/wrongful death action, plaintiff Paul Green, II, personal representative of the Estate of Paul Gerald Green, deceased, appeals by right the trial court's order granting defendants Charles Pierson, M.D.; Barbara Carlson, M.D.; Southwestern Medical Clinic, P.C.; Richard Kammenzind, M.D.; Thomas Pow, M.D.; Great Lakes Heart & Vascular Institute, P.C.; and Lakeland Medical Center, St. Joseph, summary disposition under MCR 2.116(C)(7) and dismissing Green's action as time-barred.[1] We affirm.

I. Basic Facts And Procedural History

On October 2, 2000, the 62-year-old decedent visited the Southwestern Medical Clinic's walk-in clinic, complaining of shortness of breath, weakness, and generally not feeling well. Dr. Pierson, decedent's family physician, examined decedent and noted that his blood urea nitrogen level was 110. Dr. Pierson increased the decedent's diuretic and instructed him to have blood

[1] On stipulation of the parties, in September 2008, defendant Healthcare Midwest Internal Medicine was dismissed from the cause of action with prejudice based on its affidavit of non-involvement under MCL 600.2912c.

work done. The decedent had a history of coronary artery disease, hypertension, chronic renal insufficiency, and insulin dependant diabetes.

The decedent's laboratory results came back on the evening of October 4, 2000. His blood urea nitrogen level had increased to 114, which was a sign that the decedent was dehydrated and that his kidneys were not working properly. After learning that the decedent was still not feeling well, Dr. Pierson instructed him to go the emergency room.

On October 4, 2000, the decedent was admitted to Lakeland Medical Center, St. Joseph, for complaints of shortness of breath, weakness, and increased blood urea nitrogen level. The admitting diagnosis was dehydration and increased congestive heart failure. The treatment plan was cautious administration of intravenous fluids. Dr. Pierson examined decedent on the morning of October 5, 2000, and he noted that decedent's blood urea nitrogen level, although still elevated, had decreased. Dr. Pierson then obtained cardiology and nephrology consultations from Dr. Pow and Dr. Kammenzind, respectively, to evaluate and manage decedent's heart and renal conditions. The last time Dr. Pierson saw the decedent was the morning of October 5th; Dr. Carlson then took over to cover for Dr. Pierson.

Decedent's condition was stable between October 5th and October 7th. On October 6, 2000, the administration of fluids was discontinued. And on October 7, 2000, Dr. Pow ordered intravenous Dobutrex to optimize cardiac output and increase renal output. Shortly after receiving the Dobutrex, the decedent developed chest pain. An acute myocardial infarction was diagnosed, with ischemic pulmonary edema. The decedent was intubated, transferred to the intensive care unit, and eventually placed on an intraaortic balloon pump. The decedent subsequently developed pseudomonas septicemia and staphylococcal septicemia. The decedent also developed ischemia in his extremities and ischemic bowel. On November 4, 2000, the decedent was taken off life support and he died.

On July 31, 2001, letters of authority were issued, naming Green as personal representative of the decedent's estate. On July 31, 2003, the last day of the two-year wrongful death saving provision,[2] Green filed his statutorily required notice of intent.[3] Dr. Pierson, Dr.

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[2] MCL 600.5852 states:

> If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run.

[3] MCL 600.2912b(1) states:

> Except as otherwise provided in this section, a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced.

Carlson, and the Southwestern Medical Center filed their 154-day response to Green's notice of intent on December 22, 2003.[4] And on January 29, 2004, Green filed his medical malpractice/wrongful death complaint against defendants.[5]

In June and July 2004, defendants filed motions for summary disposition, all asserting that Green's complaint was untimely under the April 4, 2004 decision in *Waltz v Wyse*,[6] in which the Michigan Supreme Court held that a plaintiff's filing of the notice of intent did not toll the two-year wrongful death saving provision period. Green responded, arguing that his complaint was timely under the law existing at the time he filed his complaint.[7] Green also argued that *Waltz* should not be applied retroactively.

In August 2004, the trial court granted defendants' motions for summary disposition under MCR 2.116(C)(7). The trial court ruled that *Waltz* applied retroactively and ordered Green's cause of action dismissed with prejudice. Green filed a claim of appeal with this Court in September 2004. And, in November 2006, this Court issued its opinion, affirming the trial court.[8]

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[4] MCL 600.2912b(7) states:

> Within 154 days after receipt of notice under this section, the health professional or health facility against whom the claim is made shall furnish to the claimant or his or her authorized representative a written response that contains a statement of each of the following:
>
> (a) The factual basis for the defense to the claim.
>
> (b) The standard of practice or care that the health professional or health facility claims to be applicable to the action and that the health professional or health facility complied with that standard.
>
> (c) The manner in which it is claimed by the health professional or health facility that there was compliance with the applicable standard of practice or care.
>
> (d) The manner in which the health professional or health facility contends that the alleged negligence of the health professional or health facility was not the proximate cause of the claimant's alleged injury or alleged damage.

[5] There is no dispute that Green filed the complaint well within the three-year cap on the saving provision, which did not expire until November 4, 2005 (three years after the two-year medical malpractice period of limitations ran on November 4, 2002). See MCL 600.5805; MCL 600.5852.

[6] *Waltz v Wyse*, 469 Mich 642; 677 NW2d 813 (2004).

[7] See *Omelenchuk v City of Warren*, 461 Mich 567; 609 NW2d 177 (2000) (holding that a plaintiff's filing of the notice of intent *did* toll the two-year wrongful death saving provision period).

[8] *Green v Pierson*, unpublished opinion per curiam of the Court of Appeals, issued November 30, 2006 (Docket No. 257802).

Green then appealed to the Michigan Supreme Court. And, in December 2007, the Supreme Court issued its opinion,[9] citing *Mullins v St Joseph Mercy Hospital*.[10] In *Mullins*, the Supreme Court held that the *Waltz* decision did not apply to any cause of action that was filed after *Omelenchuk v City of Warren*[11] was decided in 2000 and in which the wrongful death saving period expired between the date that *Omelenchuk* was decided and within 182 days after *Waltz* was decided.[12] Here, Green's case was filed after *Omelenchuk* was decided and the wrongful death saving period expired on July 31, 2003, after *Omelenchuk* was decided and before *Waltz* was decided. Accordingly, the Supreme Court remanded this case to the trial court for entry of an order denying defendants' motions for summary disposition.[13]

In October 2008, defendants moved for summary disposition, asserting again that Green's complaint was untimely. More specifically, Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic argued that because the two-year wrongful death saving provision expired on July 31, 2003, the same day that Green filed his notice of intent, there was no time left to be tolled by the filing of his notice of intent, and when he filed his complaint 182 days later, on January 29, 2004, his complaint was untimely. They also argued that Green's complaint was prematurely filed under the 182-day notice period, which begins to run the day after the notice of intent is mailed.[14] Therefore, they argued, because the complaint was filed on the 182nd day following the filing of his notice of intent, it was filed before the full, requisite 182-day notice period had expired.[15] In other words, because Green filed his notice of intent on July 31, 2003, the 182-day period began to run on August 1, 2003, and it did not expire until January 30, 2004, one more day after Green filed his complaint.

In a separate motion, Dr. Kammenzind argued that Green's notice of intent was defective because the allegations in the notice of intent did not match the allegations in Green's complaint and, therefore, the notice was not sufficient to put them on notice of the claims against them. Accordingly, they argued that the defective notice was not operative to toll the statute of limitations and Green's complaint was untimely.[16] Dr. Pow, the Great Lakes Heart & Vascular Institute, and the Lakeland Medical Center, St. Joseph concurred with both Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic's and Dr. Kammenzind's motions.

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[9] *Green v Pierson*, 480 Mich 979; 741 NW2d 836 (2007).

[10] *Mullins v St Joseph Mercy Hospital*, 480 Mich 948; 741 NW2d 300 (2007).

[11] *Omelenchuk*, 461 Mich at 567.

[12] *Mullins*, 480 Mich at 948.

[13] *Green*, 480 Mich at 979.

[14] MCR 1.108(1).

[15] See MCL 600.2912b(1).

[16] See *Boodt v Borgess Medical Ctr*, 481 Mich 558, 561, 564; 751 NW2d 44 (2008) (holding that a defective notice of intent precludes the commencement of a cause of action); *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 64; 642 NW2d 663 (2002) (holding that a defective notice of intent did not toll the period of limitations).

Green responded, arguing that, because Dr. Pow, Dr. Kammenzind, the Great Lakes Heart & Vascular Institute, and the Lakeland Medical Center, St. Joseph failed to file responses to his notice of intent, he was free to file his complaint at any time after waiting only 154 days.[17] Thus, Green argued, his complaint regarding those non-responding defendants was filed while tolling was still in effect and was timely. With respect to Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic, who did file a response, Green responded that his complaint, filed exactly 182 days after he filed his notice of intent, was timely; indeed, Green apparently conceded that if he had waited one more day, then his complaint would have been untimely. Green also argued that his notice of intent, when read as a whole, properly complied with the notice of intent requirements and provided defendants with proper notice regarding the allegations of negligence against them. Green argued that there was no requirement that his complaint include every allegation from the notice of intent.

During oral arguments on the motion, Dr. Pow, Dr. Kammenzind, the Great Lakes Heart & Vascular Institute, and the Lakeland Medical Center, St. Joseph argued that the fact that Green was *entitled* to file his complaint after only 154 days had passed was irrelevant because he *chose to wait* until the last day of the 182-day notice period to file and was, thus, without any time remaining in the two-year wrongful death saving period. Green argued that laches should have precluded defendants from raising any of their new arguments because they should have raised them in their 2004 motions for summary disposition. Dr. Pow, Dr. Kammenzind, and the Great Lakes Heart & Vascular Institute, responded that their arguments should not be barred by laches because, even though the case had been pending for over four years, the parties had not yet closed discovery in the case. Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic stated their concurrence with the other defendants' motions.

After hearing oral arguments on the motions, the trial court ruled from the bench that Green's complaint was filed early—that is, he did not wait "no less than 182 days before the action [was] commenced"—and his complaint was, therefore, untimely filed with respect to Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic. But regarding the other defendants, the trial court ruled that Green's complaint was timely filed. The trial court went on to rule that Green's notice of intent when read as a whole sufficiently set forth the allegations of negligence against each of the defendants. However, the trial court ruled that Green's notice of intent did not sufficiently set forth proximate causation. With respect to causation, Green's notice of intent simply stated: "Timely and proper compliance with the standard of care would have prevented [the decedent], from untimely demise." The trial court ruled that this statement was not specific enough. Accordingly, on December 2, 2008, the trial court entered its order granting defendants' motions for summary disposition under MCR 2.116(C)(7). The trial court also ordered Green's cause of action dismissed with prejudice.

Green now appeals.

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[17] MCL 600.2912b(8) states:

> If the claimant does not receive the written response required under subsection (7) within the required 154-day time period, the claimant may commence an action alleging medical malpractice upon the expiration of the 154-day period.

II. Motion For Summary Disposition

A. Standard Of Review

Green argues that the trial court erred in granting defendants' motions for summary disposition under MCR 2.116(C)(7). Under MCR 2.116(C)(7), a party may move for summary disposition on the ground that a claim is barred by the statute of limitations. Neither party is required to file supportive material; any documentation that is provided to the court, however, must be admissible evidence.[18] The court must accept the plaintiff's well-pleaded factual allegations as true and must construe them in the plaintiff's favor, unless documentation that the movant submits contradicts the allegations.[19] Absent disputed issues of fact, we review de novo whether the cause of action is barred by a statute of limitations.[20] Further, whether a notice of intent complies with the requirements of MCL 600.2912b is a question of law that this Court reviews de novo.[21]

B. Waiver/Forfeiture Of Defense

Green argues that the trial court erred in allowing defendants to raise new issues regarding the statute of limitations where the defendants waived or forfeited those issues by failing to address or raise them in their 2004 motions for summary disposition.

To constitute waiver, there must be actual or constructive knowledge of a right, benefit, or advantage, and an intention to relinquish that right, benefit, or advantage or "such conduct as warrants an inference of relinquishment," such as doing something "inconsistent with the existence of the right in question" or inconsistent with one's "intention to rely upon that right."[22] On the other hand, forfeiture is simply the failure to assert a right in a timely fashion.[23]

Green argues that at the time his complaint was filed, defendants had actual or constructive knowledge of their right to have the lawsuit dismissed for either Green's alleged failure to comply with the statutory notice of intent requirements or his alleged failure to comply with the statutory requirements for the filing of his complaint. Defendants, however, did not assert either of these arguments in their 2004 motions; they merely asserted the applicability of *Waltz*. And, on remand, defendants proceeded towards litigation by filing witness lists and taking depositions. Therefore, Green argues, defendants' failure to move immediately for dismissal was a ratification of the statutory compliance of the notice of intent and the complaint.

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[18] *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

[19] MCR 2.116(G)(5); *Maiden*, 461 Mich at 119; *Gortney v Norfolk & W R Co*, 216 Mich App 535, 538-539; 549 NW2d 612 (1996).

[20] *Colbert v Conybeare Law Office*, 239 Mich App 608, 609 NW2d 208 (2000).

[21] *Jackson v Detroit Medical Ctr*, 278 Mich App 532, 545; 753 NW2d 635 (2008).

[22] *Fitzgerald v Hubert Herman, Inc*, 23 Mich App 716; 179 NW2d 252 (1970).

[23] See *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).

However, the Michigan Supreme Court has already considered and rejected a similar argument in *Burton v Reed City*.[24] In *Burton*, the Court held that the defendants did not waive their MCL 600.2912b-compliance defense just because they did not bring their motion for summary disposition until the period of limitations had run.[25] After noting that the burden of compliance with MCL 600.2912b is on the plaintiff,[26] the *Burton* Court went on to explain that defendants had clearly invoked and preserved the defense:

> Here, defendants specifically raised the statute of limitations and plaintiff's compliance with MCL 600.2912b in their answer and affirmative defenses. Such a direct assertion of these defenses by defendants can by no means be considered a waiver. To the contrary, it was a clear affirmation and invocation of such defenses. Defendants' pleadings were more than sufficient to comply with the requirements of MCR 2.116(D)(2) (requiring the statute of limitations to be raised in the first responsive pleading or in a motion filed before the responsive pleading).[27]

Thus, according to *Burton*, a defendant preserves a defense of failure to comply with MCL 600.2912b by raising such defense in his answer and affirmative defenses.

Here, in their answer to Green's complaint, Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic averred that Green's notice of intent and complaint were "improper in form and not in accordance with the rules set forth in the relevant statutes and Michigan Court Rules; . . . inadequate, insufficient and defective in that they pled only conclusions; . . . [and] they fail to contain the allegations necessary to meet statutory requirements pursuant to MCL 600.2912b and MCL 600.2912d[.]" Further, in their affirmative defenses, Dr. Pierson, Dr. Carlson, and the Southwestern Medical Clinic averred that Green "failed to comply with the provisions of MCL 600.2912b and MCL 600.2912d, et seq. and [Green's] Complaint must, therefore, be dismissed." Dr. Kammenzind, Dr. Pow, Great Lakes Heart & Vascular Institute, and Lakeland Medical Center, St. Joseph all stated similar affirmative defenses.

Therefore, we conclude that defendants' pleadings in their answers and affirmative defenses were "more than sufficient to comply with the requirements of MCR 2.116(D)(2)" and such "direct assertion[s] of these defenses by defendants can by no means be considered a waiver."[28]

C. Sufficiency Of Proximate Causation Statement

Green argues that the trial court erred in finding, sua sponte, that his notice of intent contained an insufficient statement regarding proximate cause where the defendants, by not

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[24] *Burton v Reed City*, 471 Mich 745; 691 NW2d 424 (2005).

[25] *Id*. at 754.

[26] *Id*.

[27] *Id*. at 755 (internal citation omitted).

[28] *Id*. at 755.

challenging the sufficiency of the proximate cause stated in the notice of intent, demonstrated that they understood the theory of causation in this matter. More specifically, according to Green, the relevant inquiry is whether the notice of intent was sufficient to allow the defendants to reasonably understand the claim; therefore, the trial court's understanding of the claim as stated in the notice of intent is irrelevant. Therefore, it is important, Green contends, that when defendants filed their motions for summary disposition, they did not challenge the sufficiency of Green's proximate cause statement. Rather, according to Green, defendants only challenged the standard of care and allegations of negligence. Green asserts that one can deduce from this lack of objection that defendants understood and deemed sufficient Green's proximate cause statement.

1. Sua Sponte Determination

We conclude that the trial court had authority pursuant to MCR 2.116(I) to decide sua sponte whether summary disposition was appropriate based on its determination that sufficient facts existed to render judgment.[29] Therefore, we reject Green's contention that the trial court erred in dismissing the case for deficiencies in his proximate causes statement just because the defendants did not specifically raise the issue.

2. Applicability Of *Bush v Shabahang*

Pursuant to supplemental briefing requested by this Court, Green argues that the Michigan Supreme Court's decision on *Bush v Shabahang*[30] applies to this case. However, we conclude that the *Bush* decision does not apply to the facts of this case. As defendants point out, the *Bush* decision was based on the Court's interpretation of MCL 600.5856, *as amended* by 2004 PA 87, effective April 1, 2004. And the enacting provision of 2004 PA 87 specifically states:

> (1) Except as provided in subsection (2), this amendatory act applies to civil actions filed on or after the effective date of this amendatory act.
>
> (2) This amendatory act does not apply to a cause of action if the statute of limitations or repose for that cause of action has expired before the effective date of this amendatory act.[31]

Here, Green's complaint was filed on January 29, 2004, several months *before* the April 1, 2004 effective date of the amendatory act. Thus, the *Bush* holding, applying the post-amendment language of MCL 600.5856 does not apply in this case.

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[29] See *Boulton v Fenton Twp*, 272 Mich App 456, 462-463; 726 NW2d 733 (2006).

[30] *Bush v Shabahang*, 484 Mich 156; 722 NW2d 272 (2009) (holding that a timely-filed, yet defective notice of intent tolls the period of limitations and that, upon a showing of good faith effort to comply with the MCL 600.2912b requirements, the plaintiff is entitled to amend to notice of intent).

[31] 2004 PA 87, enacting § 1.

Therefore, we consider the compliance of Green's notice of intent with the statutory requirements of MCL 600.2912b(4) under the law existing prior to the 2004 amendment of MCL 600.5856.

3. MCL 600.2912b(4) Compliance

MCL 600.2912b(4), which provides the statutory required contents of a notice of intent, states:

> The notice given to a health professional or health facility under this section shall contain a statement of at least all of the following:
>
> (a) The factual basis for the claim.
>
> (b) The applicable standard of practice or care alleged by the claimant.
>
> (c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.
>
> (d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice or care.
>
> (e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice.
>
> (f) The names of all health professionals and health facilities the claimant is notifying under this section in relation to the claim.

The purpose of MCL 600.2912b is to provide health care providers, who a claimant suing in a medical malpractice suit, with an opportunity to settle the claim out of court.[32] As stated previously, "[t]he plaintiff bears the burden of establishing compliance with MCL 600.2912b[,]"[33] and full compliance is mandated.[34] And, interpreting MCL 600.2912b(4), the Michigan Supreme Court has explained the level of specificity needed for a notice of intent to comply with the statutory requirements. In *Roberts v Atkins* (*After Remand*),[35] the Court stated that the notice of intent need not be in any particular format, but it "must identify, in a readily ascertainable manner, the specific information mandated by [MCL 600.2912b(4)]." A claimant must present this information "with that degree of specificity which will put the potential defendants on notice as to the nature of the claim against them."[36] More specifically, with respect to causation, it is not sufficient to merely state that a defendant's negligence caused the

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[32] *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 705; 515 NW2d 68 (1997).

[33] *Ligons v Crittenton Hosp*, 285 Mich App 337, 344; ___ NW2d ___ (2009), citing *Roberts v Atkins* (*After Remand*), 470 Mich 679, 691; 684 NW2d 711 (2004).

[34] *Roberts*, 470 Mich at 682; *Roberts*, 466 Mich at 66.

[35] *Roberts*, 470 Mich at 696.

[36] *Id.* at 701.

alleged harm.[37] Rather, the claimant must describe *the manner* in which the defendant's actions or lack thereof caused the complained of injury.[38]

Here, section V of Green's notice of intent—the section entitled "THE MANNER IN WHICH THE BREACH WAS THE CAUSE OF THE INJURY"—simply states: "Timely and proper compliance with the standard of care would have prevented [the decedent], from untimely demise." We conclude that this assertion alone was insufficient to comply with the statutory requirement that Green state with specificity the manner in which defendants' actions or lack thereof caused the complained of injury.[39] With that said, however, we are mindful that when considering the sufficiency of the notice of intent, "no portion . . . may be read in isolation; rather, the notice of intent must be read as a whole."[40] But even taking the notice of intent as a whole, we conclude that it does not sufficiently describe the manner in which defendants' alleged breach was the proximate cause of the injury.

When read as a whole, Green's factual basis for his claim states that his decedent was admitted to the hospital with "dehydration and increased congestive heart failure[,]" administration of "cautious intravenous fluids" was ordered, after a few days the "diuretics were held and Dobutrex therapy was initiated[,]" the decedent was then diagnosed with "acute myocardial infarction . . . with ischemic pulmonary edema[,]" he was intubated and transferred to the intensive care unit and "placed on an intraaortic balloon pump[,]" he then developed "Pseudomonas Septicemia[,] . . . Staphylococcal Septicemia[,] [and] . . . ischemia in his extremities and ischemic bowel," and then a month later he was taken off life support and died. Green then alleges that defendants failed to do various things that they presumably should have done to comply with the applicable standard of care, including, but not limited to, "[o]rder or perform a cardiac workup"; "[r]ecognize the difference between gastroesophageal reflux disease and cardiac symptoms"; "[r]ecognize the need for diuretic therapy"; "[r]efrain from administering excessive intravenous fluids as to avoid ischemic pulmonary edema"; "[c]onsult the appropriate specialist including, but not limited to, a pulmonologist"; "[p]rovide immediate diagnostic testing"; "[p]rovide adequate preoperative cardiac clearance"; "[d]iagnose existing cardiac disease"; and "[p]rovide proper medication[.]"

Despite all of these allegations, the notice does not describe the manner in which these actions or the lack thereof caused the decedent's death. Although the notice of intent may have arguably apprised defendants of the nature and gravamen of Green's allegations—that is, that defendants' alleged breaches caused the decedent to suffer a heart attack—MCL 600.2912b(4)(e) requires something more.[41] The statute requires a statement describing *the manner* in which the

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[37] *Boodt*, 481 Mich at 560; *Roberts*, 470 Mich at 699-700 n 16.

[38] MCL 600.2912b(4)(e); *Boodt*, 481 Mich at 560; *Roberts*, 470 Mich at 699-700 n 16.

[39] See *Boodt*, 481 Mich at 560 (holding as deficient the plaintiff's causation statement, which stated, "If the standard of care had been followed, [David] Waltz would not have died on October 11, 2001.").

[40] *Boodt v Borgess Medical Ctr*, 272 Mich App 621, 628, 630; 728 NW2d 471 (2006), rev'd in part on other grounds 481 Mich 558 (2008).

[41] See *Boodt*, 481 Mich at 560-561.

defendant's actions or lack thereof caused the complained of injury—that is, how defendants' alleged failures to do the various things that they presumably should have done listed above caused decedent's death in this case.[42] "Although the factual recitations in the notices indicate that [the decedent] suffered an adverse medical result, this result is not connected in any meaningful way with the conduct of any defendant."[43] The mere correlation between alleged malpractice and an injury is insufficient to show proximate cause.[44] Accordingly, we conclude that the trial court correctly held that Green failed to adequately allege proximate cause in his notice of intent. And in light of the defective nature of the notice of intent, Green was not entitled to commence his action, and defendants were entitled to summary disposition.[45]

Because our resolution of this issue is dispositive, we decline to address defendants' alternative arguments related to their motions for summary disposition.

We affirm. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Donald S. Owens

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[42] MCL 600.2912b(4)(e); *Boodt*, 481 Mich at 560; *Roberts*, 470 Mich at 699-700 n 16.

[43] *Roberts*, 470 Mich at 701.

[44] *Craig v Oakwood Hosp*, 471 Mich 67, 86-88; 684 NW2d 296 (2004).

[45] *Boodt*, 481 Mich at 562-563.