

STATE OF MICHIGAN
COURT OF APPEALS

STACEY VAN BUREN,

Plaintiff-Appellant,

v

COVENANT HEALTHCARE SYSTEM,
CARLOTTA MARESCA, M.D., ADARSH
HIREMATH, M.D., KENNETH D. ROOT,
P.A.C., LYNN E. GAUTHIER, R.N., SUSAN
SCHMEIGE, R.N., RAY A. MULLINS, R.N.,
TERRY L. STARKE, R.N., REBECCA R.
KOEPF, C.R.N.A., and PERLITA P. ILEM, M.D.,

Defendants-Appellees.

UNPUBLISHED
January 5, 2012

No. 297019
Saginaw Circuit Court
LC No. 09-006787-NI

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

MARKEY, J. (concurring).

I concur with my colleagues in this case that granting summary disposition ostensibly pursuant to MCR 2.116(C)(7) under the particular facts of this case before the parties had undertaken any discovery whatsoever was premature.

It is generally a rare case where summary disposition is granted before discovery is complete. Indeed, MCR.2116(C)(7) requires the trial court to consider the pleadings, affidavits, *depositions, admissions, and other documentary evidence submitted in a light most favorable to the non-moving party.* (Emphasis added.) So, patently, the court rule itself assumes that the parties have engaged in some discovery before moving for summary disposition.

Here, the facts and plaintiff's damages are both unique and serious and further my conclusion that summary disposition was premature. Whether this case ultimately is deemed one for medical malpractice, at this juncture, the trial court was required to view the evidence in the light most favorable to the *plaintiff*. Here, the trial court instead viewed it in the light most favorable to defendants and dismissed it essentially on the pleadings. Allowing the matter to proceed with discovery is the course of greater prudence, particularly when the facts and legal issues are close and compelling. Moreover, it strikes me that the average person might well have

little difficulty with concluding that proceeding with a double mastectomy on a 34 year old woman without having the results of a crucial laboratory results is negligent.

Consequently, under these specific facts, I agree that summary disposition was premature.

/s/ Jane E. Markey