

STATE OF MICHIGAN
COURT OF APPEALS

SALLY GREATHOUSE, as Personal
Representative of the ESTATE of ROBERT
GREATHOUSE,

FOR PUBLICATION
December 14, 2001
9:10 a.m.

Plaintiff-Appellant/Cross-Appellee,

v

DR. CHARLES RHODES, M.D. and
SOUTHWESTERN MEDICAL CLINIC,

No. 214434
Berrien Circuit Court
LC No. 96-003566-NH

Defendants-Appellees/Cross-
Appellants,

ON REMAND

and

DR. JOHN DUGE, M.D. and UNIVERSITY
MEDICAL SPECIALISTS,

Updated Copy
March 1, 2002

Defendants-Appellees.

Before: Saad, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Our Supreme Court has reversed in part our prior judgment in this matter and remanded this case to our Court with instructions to determine whether MCL 600.2169(1) applies under the facts and, if so, to consider the effect of our Supreme Court's decision in *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999). 465 Mich 885 (2001). The facts and issues are set out in our previous decision, *Greathouse v Rhodes*, 242 Mich App 221; 618 NW2d 106 (2000).

In its order remanding this case, our Supreme Court reversed our holding that the trial court properly denied plaintiff's motion to strike Dr. Charles Rhodes' standard of care witnesses under MCL 600.2169(1)(a) because plaintiff failed to file her motion within a reasonable time after learning the identities of the experts. *Greathouse, supra*, 242 Mich App 231. Because plaintiff did not forfeit her right to challenge Dr. Rhodes' witnesses on the basis of the time of

her challenge, we now consider the trial court's ruling regarding the application of MCL 600.2169(1)(a).

We hold that this case implicates § 2169 because plaintiff challenges the qualifications of Dr. Rhodes' "*standard of care*" witnesses because they are not board certified in the same specialty. Though the trial court initially granted plaintiff's motion on the basis of § 2169, it ultimately denied plaintiff's motion to strike because "it was compelled to adhere to the *McDougall* [*v Eliuk*, 218 Mich App 501; 554 NW2d 56 (1996)] holding that § 2169 was unconstitutional" *Greathouse, supra*, 242 Mich App 226. As we observed in our prior opinion, "our Supreme Court reversed *McDougall* and concluded that § 2169 is 'an enactment of substantive law' and '[a]s such does not impermissibly infringe this Court's constitutional rule-making authority.'" *Greathouse, supra*, 242 Mich App 228, quoting *McDougall v Schanz, supra*, 461 Mich 37. Therefore, we ruled that the basis for the trial court's decision was erroneous. *Greathouse, supra*, 242 Mich App 228.

Accordingly, we reverse the trial court's order denying on the basis of the alleged unconstitutionality of § 2169 plaintiff's motion to strike, and we remand for consideration of plaintiff's motion under the statute. Specifically, the trial court should determine the merits of plaintiff's motion in which she argued that Dr. Rhodes' "standard of care" witnesses do not comply with § 2169 because Dr. Rhodes is a board-certified general surgeon and the proposed witnesses are not; one witness is an internal medicine specialist, and the other two are board-certified family practitioners. Further, the trial court should consider Dr. Rhodes' argument that § 2169 does not preclude his witnesses because he does not practice general surgery regularly and did not practice general surgery on the decedent, Robert Greathouse.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Michael J. Talbot