

STATE OF MICHIGAN  
COURT OF APPEALS

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MARGARET JENKINS, Personal Representative  
of the Estate of MATTIE HOWARD, Deceased,

Plaintiff-Appellee,

v

JAYESH KUMAR PATEL and  
COMPREHENSIVE HEALTH SERVICES, d/b/a  
THE WELLNESS PLAN,

Defendants-Appellants.

FOR PUBLICATION  
September 7, 2004  
9:00 a.m.

No. 233116  
Wayne Circuit Court  
LC No. 98-808834-NH

ON REMAND

Official Reported Version

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Before: Cooper, P.J., and Murphy and Kelly, JJ.

MURPHY, J.

This appeal, involving the medical-malpractice cap on noneconomic damages found in MCL 600.1483 (damages cap), is before us on remand from the Michigan Supreme Court "for consideration of the constitutional issues raised by plaintiff, which were not resolved by the Court of Appeals in light of its analysis of the statutory issue." *Jenkins v Patel*, 471 Mich 158, 174; 684 NW2d 346 (2004). The Supreme Court reversed our earlier opinion, holding, contrary to our conclusion, that the damages cap does apply to wrongful death actions where the underlying claim is medical malpractice. Defendants' arguments regarding the alleged excessiveness of the \$ 10 million verdict are no longer pertinent in light of the Supreme Court's ruling applying the damages cap. *Id.* at 174. Therefore, the only issues to resolve concern plaintiff's arguments that MCL 600.1483 is unconstitutional because it violates the right to a jury trial, Const 1963, art 1, § 14; the separation of powers doctrine, Const 1963, art 3, § 2; and equal protection guarantees, US Const, Am XIV and Const 1963, art 1, § 2.

Pursuant to the majority opinion in *Zdrojewski v Murphy*, 254 Mich App 50; 657 NW2d 721 (2002), and the reasoning of a majority of our current Supreme Court in *Phillips v Mirac, Inc*, 470 Mich 415; 685 NW2d 174 (2004), we are compelled to conclude that all of plaintiff's

constitutional arguments fail.<sup>1</sup> Accordingly, we remand to the trial court for entry of judgment consistent with the Supreme Court's holding and our holding today.

Reversed and remanded. We do not retain jurisdiction.

Cooper, P.J., concurred.

/s/ William B. Murphy

/s/ Jessica R. Cooper

Kelly, J., I concur in the result only.

/s/ Kirsten Frank Kelly

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<sup>1</sup> We note that a separate panel of this Court in *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488; 668 NW2d 402 (2003), indicated its belief that MCL 600.1483 unconstitutionally infringed on the right to jury trial; however, it concluded that *Zdrojewski* required it to find the damages cap constitutional. Having created a conflict under MCR 7.215(J), the bench was polled and a special panel to resolve the conflict was declined. 257 Mich App 801 (2003). The Michigan Supreme Court thereafter denied leave to appeal. 469 Mich 1012 (2004). Further examination of the issues by this Court is therefore not warranted.