STATE OF MICHIGAN

COURT OF APPEALS

SUE H. APSEY and ROBERT APSEY, JR., Plaintiffs-Appellants, v MEMORIAL HOSPITAL, d/b/a MEMORIAL HEALTHCARE CENTER, RUSSELL H. TOBE, D.O., JAMES H. DEERING, D.O., and JAMES H. DEERING, D.O., P.C., d/b/a SHIAWASSEE RADIOLOGY CONSULTANTS, P.C., Defendants-Appellees.	FOR PUBLICATION June 9, 2005 9:05 a.m. No. 251110 Shiawassee Circuit Court LC No. 01-007289-NH ON RECONSIDERATION Official Reported Version

Before: Cavanagh, P.J., and Jansen and Gage, JJ.

CAVANAGH, P.J. (*dissenting*).

I respectfully dissent. After further review and consideration, I believe this case was wrongly decided and conclude that the affidavit of merit filed in this matter met the requirements of MCL 600.2912d(1).

MCL 600.2912d(1) requires the filing of an affidavit of merit with the complaint. To be valid, an affidavit must be confirmed by the oath or affirmation of the party making it, and it must be taken before a person having authority to administer the oath or affirmation. *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 711; 620 NW2d 319 (2000). Pursuant to the Uniform Recognition of Acknowledgments Act (URAA), MCL 565.261 *et seq.*, a notary public authorized under the laws by which he or she acts is authorized to administer the oath or affirmation in support of an affidavit filed in Michigan and, if properly executed, I believe such affidavit is sufficient and effective on its face. See MCL 565.262(a)(i), 565.263(1) and (4).

Here, the affidavit of merit filed in this matter was confirmed by oath or affirmation in Pennsylvania before an authorized notary public. Neither the sufficiency of the jurat nor the authority of the notary public was contested. Instead, defendants argued that, because the certification requirement of MCL 600.2102 was not complied with, the affidavit of merit was a nullity. In our original opinion, we agreed. After further review and consideration, I disagree and would correct this erroneous conclusion. Because my colleagues continue to hold that MCL 600.2102 applies to nullify affidavits that are notarized in other jurisdictions and not further certified as prescribed by MCL 600.2102, I dissent.

As was argued by plaintiffs in their motion for reconsideration, and by amici curiae in their briefs, MCL 600.2102 and the URAA, particularly MCL 565.263, are harmonious and should be read *in pari materia*. Both statutes relate to authentication and have the same general purpose—to verify the authenticity of notarial acts, including those involving affidavits. See *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998), quoting *Detroit v Michigan Bell Tel Co*, 374 Mich 543, 558; 132 NW2d 660 (1965).

The statute in dispute, MCL 600.2102, provides a method of authenticating notarial acts, i.e., of proving that a notary public actually notarized the document. MCL 600.2102(4) states that "[t]he signature of such notary public . . . and the fact that at the time of the taking of such affidavit the person before whom the same was taken was such notary public . . . shall be certified by the clerk of any court of record in the county where such affidavit shall be taken, under the seal of said court." MCL 600.2102 has been in its present form since 1879 and, until the URAA was enacted in 1969, appears to have been the only means of proving notarial acts.[1]

The URAA, however, explicitly states that it is "an additional method of proving notarial acts." MCL 565.268. And, MCL 565.263(4) provides that the signature and title of the notary public are prima facie evidence that he or she is a notary public and that his or her signature is genuine. That is, there is another method of proving that a notary public actually notarized the document that does not require a clerk of a court to perform the authenticating function. The majority's reliance on and interpretation of the sentence, "Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state," found in MCL 565.268 is misguided. The key phrase in that sentence is "the recognition accorded to notarial acts . . . ." Reasonably interpreted, the sentence does not eviscerate the effect of the URAA or buttress the applicability of MCL 600.2102. That is, rather than decreasing or limiting the recognition accorded notarial acts, the URAA broadens the recognition accorded to notarial acts. The majority's reasoning also creates a double standard with respect to affidavits that will be read in judicial proceedings versus those that will not. This seems to create logistical problems in that affidavits typically have the potential of ending up in a judicial proceeding, sometimes years after the notarial act was performed, although litigation was not anticipated at the time the affidavit was notarized.

Further, contrary to the majority's claim, my interpretation of the harmonious nature of the URAA and MCL 600.2102 does not "clearly diminish the requirements of MCL 600.2102." *Ante* at n 2. Although it is apparent that the simple method of authentication permitted by the URAA likely makes obsolete the certification method provided by MCL 600.2102, each is still an alternative method of verifying the authenticity of notarial acts. We may not question the wisdom of a statute or inquire about the methods of the Legislature. See *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 430; 617 NW2d 536 (2000); *McDonald Pontiac-Cadillac-*

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[1] I believe the majority's continued reliance on *In re Alston's Estate*, 229 Mich 478; 201 NW 460 (1924), for the proposition that affidavits received in judicial proceedings require the special certification set forth in MCL 600.2102 is misplaced because the holding predates the enactment of the URAA.

GMC, Inc v Saginaw Co Prosecutor, 150 Mich App 52, 55; 388 NW2d 301 (1986). It may well be that advances in technology, particularly communications and information technology, led to this development of law. In any event, our goal is simply to ascertain and give effect to the intent of the Legislature. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). Consistently with that directive, and cognizant of our duty to attempt to reconcile statutes to avoid conflict, I must conclude that the URAA, particularly MCL 565.263, and MCL 600.2102 are alternative and viable means of proving notarial acts. See *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998).

Accordingly, on reconsideration I conclude that the affidavit of merit filed in this matter was sufficient and effective on its face. Therefore, I would reverse the trial court's dismissal of this action on the ground that the affidavit of merit was a nullity and remand the matter to the trial court for continued proceedings.

/s/ Mark J. Cavanagh