

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE E. WHITE and JANET D. WHITE,
Plaintiffs-Appellants,

v

BARBARA ANN KARMANOS CANCER
INSTITUTE and DAVID S. EILENDER, M.D.,
Defendants-Appellees.

FOR PUBLICATION
July 3, 2007
9:20 a.m.

No. 270320
Wayne Circuit Court
LC No. 05-534994-NH

ON RECONSIDERATION

Official Reported Version

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial order's granting defendants' motions for summary disposition based on the expiration of the period of limitations. We reverse and remand.

The affidavit of merit in this case was notarized by an out-of-state notary, and it lacked the certification required by MCL 600.2102(4) at the time the relevant limitations period expired. However, the affidavit of merit otherwise satisfied the requirements of the alternative method of proving notarial acts set forth in Michigan's Uniform Recognition of Acknowledgments Act (URAA), MCL 565.261 *et seq.* In our prior opinion, *White v Barbara Ann Karmanos Cancer Institute*, 274 Mich App 801 (2007), we affirmed because we were obligated to do so by this Court's earlier decision in *Apsey v Mem Hosp (On Reconsideration)*, 266 Mich App 666; 702 NW2d 870 (2005). In *Apsey*, this Court held that the requirements in the URAA were unavailable for out-of-state affidavits of merit used in medical malpractice cases. A majority of this panel concluded that *Apsey* had been wrongly decided, and we declared a conflict pursuant to MCR 7.215(J)(2).

A special conflict panel was convened pursuant to MCR 7.215(J)(3). While the conflict panel was pending, our Supreme Court reversed this Court's decision in *Apsey* and held that the URAA and MCL 600.2102 provide alternative methods for using out-of-state affidavits. *Apsey v Mem Hosp*, 477 Mich 120; 730 NW2d 695 (2007). Because this resolved the conflict, the conflict panel, under MCR 7.215(J)(5), returned this case to us for further consideration in light of our Supreme Court's decision in *Apsey*.

On our own motion, we now grant reconsideration. For the reasons set forth in our prior opinion in this case and in our Supreme Court's recent decision in *Apsey*, we reverse and remand for further proceedings. The trial court granted summary disposition on the ground that the affidavit of merit was a nullity at the time the limitations period expired. Because the affidavit of merit satisfied the requirements of the URAA, it was not a nullity. The trial court's grant of summary disposition was therefore erroneous.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis