

STATE OF MICHIGAN  
COURT OF APPEALS

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TALLY KACZYNSKI, Personal Representative of  
the Estate of MARILYN HOLTREY, Deceased,

Plaintiff-Appellant,

v

PEGGY ANDERSON, D.O.,

Defendant-Appellee.

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FOR PUBLICATION

July 26, 2007

9:15 a.m.

No. 268529

Grand Traverse Circuit Court

LC No. 05-024707-NH

ON RECONSIDERATION

Official Reported Version

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right the circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) on the ground that plaintiff's affidavit of merit was deficient for want of proper certification of the out-of-state notary public who notarized the instrument. We reverse and remand.

The affidavit of merit in this case was notarized by a Florida notary and was accompanied by a certificate from the Florida Secretary of State attesting the notary's status and good standing, but it lacked the certification required by MCL 600.2102(4). 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 Acknowledgements Act (URAA), MCL 565.261 *et seq.* In our previous opinion, *Kaczynski v Anderson*, 274 Mich App 49; 731 NW2d 442 (2007), we affirmed because we were required by MCR 7.215(J)(1) to follow this Court's decision in *Apsey v Mem Hosp (On Reconsideration)*, 266 Mich App 666; 702 NW2d 870 (2005). In *Apsey*, this Court had held that the requirements in the URAA were unavailable for out-of-state affidavits used in medical malpractice cases. This panel concluded that *Apsey* had been wrongly decided, and we declared a conflict pursuant to MCR 7.215(J)(2).

This Court ordered that a special conflict panel be convened pursuant to MCR 7.215(J)(3) and vacated those parts of our prior opinion that addressed the out-of-state requirements for an affidavit of merit. 474 Mich App 801 (2007). While the matter was pending before the conflict panel, our Supreme Court reversed this Court's decision in *Apsey* and held that the URAA and MCL 600.2102 provide alternative, coequal 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 MCL 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 deficient. Because the affidavit of merit satisfied the requirements of the URAA, it was not deficient. The trial court's grant of summary disposition was therefore erroneous.

Reversed and remanded. Jurisdiction is not retained.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot