

STATE OF MICHIGAN
COURT OF APPEALS

TARA L. MILLER, as Personal Representative of the
Estate of NIKO ANTONIO AQUINAGA, Deceased,

UNPUBLISHED
December 12, 1997

Plaintiff-Appellant,

v

No. 197237
Oakland Circuit Court
LC No. 96-519265-NH

MERCY HEALTH SERVICES, d/b/a ST. JOSEPH
MERCY HOSPITAL, PONTIAC, and RALPH E.
DAVIES, M.D.,

Defendants-Appellees,

and

MICHIGAN STATE MEDICAL SOCIETY,

Amicus Curiae.

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Plaintiff Tara L. Miller, as personal representative for the estate of her son, Niko Antonio Aquinaga, deceased, appeals as of right an order (1) granting summary disposition in favor of defendant Mercy Health Services, doing business as St. Joseph Mercy Hospital, Pontiac, and defendant Ralph E. Davies, M.D., and (2) dismissing plaintiff's medical malpractice action without prejudice. We affirm.

In this case, plaintiff's decedent died in September, 1995, allegedly as a result of defendants' medical malpractice. On March 22, 1996, plaintiff mailed defendants written notice of plaintiff's intent to commence a medical malpractice action as required by MCL 600.2912b(1); MSA 27A.2912(2)(1). However, only four days later (March 26, 1996), before the 182-day notice period or any of the shorter notice periods specified in § 2912b had expired, plaintiff filed a wrongful death action alleging medical malpractice against defendants. During the proceedings below, plaintiff explained that she had not complied with § 2912b(1) before commencing suit because she wanted to avoid changes in the law

wrought by the enactment of certain tort reform legislation that became effective upon and applied to cases filed on or after March 28, 1996. See 1995 PA 161 and 1995 PA 249. The trial court dismissed plaintiff's medical malpractice complaint without prejudice because plaintiff failed to comply with § 2912b.

On appeal, plaintiff contends that her failure to comply with § 2912b did not warrant dismissal in this case. Plaintiff also contends that § 2912b is unconstitutional because it (1) violates equal protection and due process protections; (2) constitutes an improper delegation of legislative power; (3) is vague, and; (4) conflicts with our Supreme Court's rule-making authority. However, arguments almost identical to plaintiff's arguments were recently considered and rejected by this Court in *Neal v Oakwood Hospital Corporation*, ___ Mich App ___, ___ NW2d ___ (Docket No. 196964). We refer plaintiff to this opinion.

We reject plaintiff's further contention that § 2912b conflicts with Const 1963, art 4, § 27. Section § 2912b requires a plaintiff to give notice before filing a medical malpractice action. The constitutional provision determines the date upon which a newly enacted law takes effect. There is simply no conflict. As for plaintiff's claim that one of the purposes underlying the constitutional provision would be frustrated here, in light of the fact that she could not possibly have given notice and filed suit between the time the 1995 legislation was signed into law and took effect, we submit that a sufficient answer is given by defendant Mercy's observation that a number of policies are embodied in Const 1963, art 4, § 27. Moreover, the constitution itself recognizes that citizens have no absolute right to at least 90 days notice before a law takes effect where Const 1963, art 4, § 27 also provides that laws may be given immediate effect if both houses of the Legislature agree in sufficient numbers.

Affirmed. Plaintiff is free to refile her cause of action immediately, the 182-day notice period have long since expired. *Morrison v Dickinson*, 217 Mich App 308, 319; 551 NW2d 449 (1996).

/s/ Helene N. White

/s/ Richard A. Bandstra

/s/ Michael R. Smolenski