

STATE OF MICHIGAN  
COURT OF APPEALS

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SHIRLEY PAYNE,

Plaintiff-Appellant,

v

JOHN STRUTHERS, D.O., JOHN STRUTHERS,  
D.O., P.C., DETROIT OSTEOPATHIC HOSPITAL  
CORPORATION, d/b/a RIVERSIDE  
OSTEOPATHIC HOSPITAL,

Defendants-Appellees.

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UNPUBLISHED

May 5, 1998

No. 198376

Wayne Circuit Court

LC No. 96-616893 NH

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka\*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition, without prejudice, in this medical malpractice action based on commencement of suit prior to expiration of the statutory notice period prescribed by MCL 600.2912b(1); MSA 27A.2912(2)(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Dismissal without prejudice, whatever the motives underlying plaintiff's failure to comply with the statutory pre-suit notice requirement, is the appropriate action by the circuit court. *Neal v Oakwood Hospital Corp*, 226 Mich App 701, 715; \_\_\_ NW2d \_\_\_ (1997); *Morrison v Dickinson*, 217 Mich App 308, 319; 551 NW2d 449 (1996). Additionally, plaintiff's equal protection, US Const, Am XIV, § 1, Const 1963, art 1, § 2, due process, US Const, Am XIV, § 1, Const 1963, art 1, § 17, and separation of powers, Const 1963, art 3, § 2, challenges to the constitutionality of the statute are without merit for the reasons adduced in *Neal, supra* at 716-723.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

We affirm.

/s/ Richard A. Bandstra  
/s/ Barbara B. MacKenzie  
/s/ Nick O. Holowka