

STATE OF MICHIGAN
COURT OF APPEALS

TRACEY SHERMAN, as Next Friend of
MAKAYLA RENE GLOVER, a minor,

UNPUBLISHED
September 25, 1998

Plaintiff-Appellant,

v

No. 202076
Oakland Circuit Court
LC No. 96-533442 NH

HARVEY RAIMI, D.O. and HARVEY RAIMI,
D.O., P.C.,

Defendants-Appellees.

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right the circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed her first medical malpractice action against Dr. Raimi on March 26, 1996. On September 24, 1996, the circuit court dismissed that action without prejudice for failure to comply with the 182-day notice provision required by MCL 600.2912b; MSA 27A.2912(2). Plaintiff filed a claim of appeal in this Court, which has subsequently affirmed the judgment of the trial court.

On November 6, 1996, after the 182-day notice period had run, plaintiff filed the instant action in Oakland Circuit Court. Defendants moved for summary disposition pursuant to MCR 2.116(C)(6), asserting that the same action involving the same claims was pending in this Court. The trial court granted defendants' motion in a February 28, 1997, order.

Under MCR 2.116(C)(6) a court may grant summary disposition when another action has been initiated between the same parties involving the same claim. The court rule is a codification of the former plea of abatement by prior action. *Darin v Haven*, 175 Mich App 144, 147; 437 NW2d 349 (1989). The purpose of the rule is to stop parties from endlessly litigating matters involving the same questions and claims as those presented in pending litigation. *Id.* at 148. For purposes of the court rule, a case remains pending while it is on appeal. *Id.* at 151.

Both cases filed by plaintiff involve the same parties and the same subject matter. The trial court properly granted summary disposition where plaintiff is barred from bringing a second action while her first appeal is still pending. The statute of limitations is tolled while plaintiff's appeal is pending. *Id.* at 152.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh