

STATE OF MICHIGAN
COURT OF APPEALS

KARIN SCHERMERHORN, Personal
Representative of the Estate of MERRILY B.
SCHERMERHORN, Deceased,

UNPUBLISHED
February 23, 2001

Plaintiff-Appellant,

v

No. 220215
Oakland Circuit Court
LC No. 98-007576-NH

WILLIAM BEAUMONT HOSPITAL, JOHN P.
SPECK, M.D., KHALID ZAFAR, M.D.,
RENATO G. RAMOS, M.D., RAMOS &
ASSOCIATES, P.C., JEFFREY P. YANEZ, M.D.,
DR. IMAD MANSOOR, MERCY CARE
BIRMINGHAM, MERCY MEDICAL GROUP,
d/b/a MERCY HEALTH SERVICES, and ST.
JOSEPH MERCY PONTIAC,

Defendants-Appellees.

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent died in November 1995. Plaintiff was named personal representative of decedent's estate and letters of authority were issued on January 17, 1996. Plaintiff filed suit on July 15, 1998, alleging that defendants' medical malpractice resulted in the decedent's wrongful death. She took the position that the suit was timely filed by virtue of MCL 600.5852; MSA 27A.5852, which provides that a wrongful death action may be filed within two years of the issuance of letters of authority, and MCL 600.5856(d); MSA 27A.5856(d), which tolls the limitations period upon mailing of the notice of intent to sue. The complaint was not accompanied by an affidavit of merit, as required by MCL 600.2912d(1); MSA 27A.2912(4)(1). Plaintiff filed an affidavit on October 27, 1998, after the limitations period expired.

Defendants filed motions for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiff's suit should be dismissed because the filing of a medical malpractice complaint unaccompanied by an affidavit of merit did not toll the statute of limitations. *Scarsella v Pollak*, 232 Mich App 61, 64; 591 NW2d 257 (1998), aff'd as modified by 461 Mich 547; 607 NW2d 711 (2000). The trial court granted defendants' motions.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendants' motions for summary disposition. We disagree and affirm. Our Supreme Court's decision in *Scarsella, supra*, is controlling. The *Scarsella* Court held that if a medical malpractice plaintiff fails to file an affidavit of merit within the limitations period as required by MCL 600.2912d(1); MSA 27A.2912(4)(1), the filing of a complaint is "ineffective" and does not toll the statute of limitations. Dismissal with prejudice is the proper remedy. *Scarsella, supra* at 549-550, 553.

Plaintiff's reliance on cases such as *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 47-48; 594 NW2d 455 (1990), and *Vandenberg v Vandenberg*, 231 Mich App 497, 502; 586 NW2d 570 (1998), as support for her position that dismissal with prejudice was not an appropriate sanction is misplaced. As the *Scarsella* Court noted, those cases did not present a statute of limitations problem and thus are factually and legally distinguishable. *Scarsella, supra* at 550-551.

Given that *Scarsella, supra*, is dispositive of plaintiff's appeal, we need not consider defendants' alternative argument that plaintiff's complaint was not timely filed.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell