

STATE OF MICHIGAN
COURT OF APPEALS

CRAIG S. BUSH,

Plaintiff-Appellant,

v

ZAFAR IQBAL, M.D., and ZAFAR IQBAL,
M.D., P.C.,

Defendants-Appellees.

UNPUBLISHED

April 3, 2001

No. 220186

Ionia Circuit Court

LC No. 98-019400-NH

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting the motion for summary disposition filed by defendants (hereinafter referred to by the singular "defendant"). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On October 28, 1998 plaintiff filed suit alleging that on October 28, 1996 defendant committed malpractice in the treatment of his carpal tunnel syndrome. The complaint was accompanied by an affidavit of merit signed by Dr. Olson, a board certified orthopedic surgeon. Defendant, a board certified general surgeon, moved for summary disposition pursuant to MCL 2.116(C)(8) and (C)(10), arguing that the affidavit did not meet the requirements of MCL 600.2912d(1); MSA 27A.2912(4)(1) and MCL 600.2169(1)(a); MSA 27A.2169(1)(a) because Dr. Olson was not a board certified general surgeon. Plaintiff responded that at the time the complaint was filed, he reasonably believed that defendant was a board certified orthopedic surgeon. At a hearing on the motion, plaintiff's counsel acknowledged that defendant's status as a board certified general surgeon was known at the time the complaint was filed. The trial court granted the motion, finding that because the affidavit from Dr. Olson did not meet the requirements of MCL 600.2169(1)(a); MSA 27A.2169(1)(a), the filing of the complaint and affidavit did not toll the statute of limitations.

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).

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

Pursuant to MCL 600.2912d(1); MSA 27A.2912(4)(1), a complaint alleging medical malpractice must be accompanied by an affidavit of merit signed by a health care professional who the plaintiff or the plaintiff's attorney reasonably believes meets the requirements for an expert witness in MCL 600.2169; MSA 27A.2169. Under MCL 600.2169(1)(a); MSA 27A.2169(1)(a), if the party against whom testimony is offered is a board certified specialist, the expert witness must be board certified in the same specialty.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff's complaint, filed on the last day of the limitations period, was accompanied by an affidavit of merit signed by Dr. Olson, a board certified orthopedic surgeon. Dr. Olson could not testify as an expert witness against defendant, a board certified general surgeon. MCL 600.2169(1)(a); MSA 27A.2169(1)(a). Defendant's status as a board certified general surgeon was known at the time the complaint and the affidavit from Dr. Olson were filed; therefore, plaintiff's counsel could not reasonably have believed that Dr. Olson qualified as an expert witness under MCL 600.2169(1)(a); MSA 27A.2169(1)(a). Plaintiff filed an affidavit of merit that met the requirements of MCL 600.2912d(1); MSA 27A.2912(4)(1) only after the limitations period expired. The filing of plaintiff's complaint was ineffective, and the statute of limitations was not tolled. Dismissal with prejudice was proper. *Scarsella v Pollak*, 461 Mich 547, 549-550, 553; 607 NW2d 711 (2000).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard