

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY SMITH,

Plaintiff-Appellant,

v

WALTER L. EVERETT, M.D., and RIVERVIEW
HOSPITAL,

Defendants-Appellees.

UNPUBLISHED

March 1, 2002

No. 229068

Wayne Circuit Court

LC No. 99-929425-NH

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this medical malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On September 16, 1999, plaintiff filed a malpractice complaint alleging that defendants failed to timely diagnose and treat a post-operative hemorrhage. The alleged malpractice occurred on October 18, 1997. In their affirmative defenses, filed with their answer on October 28, 1999, defendants asserted that the action should be dismissed because plaintiff failed to attach an affidavit of merit to the complaint. Defendants moved for summary disposition, asserting that the action was barred by the two-year statute of limitations. When plaintiff could not produce evidence that the affidavit was included in another court file, the court granted the motion.

Where a medical malpractice plaintiff wholly omits to file an affidavit of merit, the filing of the complaint is ineffective and does not toll the statute of limitations. *Scarsella v Pollak*, 461 Mich 547, 549; 607 NW2d 711(2000). Plaintiff asserts that defendants waived a challenge to the missing affidavit of merit by not raising the issue in a timely manner, relying exclusively on this Court's decisions in *Greathouse v Rhodes*, 242 Mich App 221; 618 NW2d 106 (2000), and *Wilhelm v Mustafa*, 243 Mich App 478; 624 NW2d 435 (2000). However, in a peremptory order the Supreme Court reversed the decision in *Greathouse*, finding that there is no statutory or case law basis for ruling that a medical malpractice expert must be challenged within a reasonable time. *Greathouse v Rhodes*, 465 Mich 885; ___ NW2d ___ (2001).

Similarly, there is no statutory or case law basis for ruling that a challenge to an absent affidavit of merit must be raised within a reasonable time. Even if there were, defendants raised the issue in their answer, and there was no unreasonable delay.

Affirmed.

/s/ Richard A. Bandstra

/s/ Christopher M. Murray