

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAREN GEARY,

Plaintiff-Appellant,

v

MICHAEL H. YFF, M.D.,

Defendant-Appellee.

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UNPUBLISHED  
December 2, 2003

No. 240954  
Emmet Circuit Court  
LC No. 01-006832-NH

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff suffers from Reynaud's Disease, which is a circulatory disorder affecting the fingers. On June 16, 1999 plaintiff began treating with defendant for the disorder. On August 24, 1999 defendant performed surgery and removed the fingernail from plaintiff's right middle finger. Plaintiff's finger developed a serious infection, which necessitated the amputation of the fingertip on May 5, 2000.

On February 22, 2001 plaintiff mailed a notice of intent to file a medical malpractice claim to defendant. MCL 600.2912b. Defendant received the notice on February 23, 2001. The notice contained allegations relating to the entire course of treatment rendered by defendant beginning on June 16, 1999. On November 21, 2001 plaintiff filed suit alleging that defendant committed malpractice when he performed surgery on her finger on August 24, 1999. Plaintiff did not allege that any actions taken by defendant prior to August 24, 1999 were negligent.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that plaintiff's claim was barred by the two-year statute of limitations applicable to medical malpractice claims. MCL 600.5805(5).<sup>1</sup> Defendant noted that the statute of limitations for a claim based on the surgery performed on August 24, 1999 expired on August 24, 2001. The 182-day waiting period triggered by the filing of plaintiff's notice of intent required plaintiff

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<sup>1</sup> This limitations period is now found in MCL 600.5805(6).

to wait until August 23, 2001 to file her complaint. Defendant contended that plaintiff could have filed her complaint in a timely manner on August 23 or 24, 2001, and asserted that the statute of limitations was not tolled by the filing of plaintiff's notice of intent because the limitations period did not expire during the 182-day waiting period. MCL 600.5856(d); *Omelenchuk v City of Warren*, 461 Mich 567, 574; 609 NW2d 177 (2000).

In response, plaintiff argued that the 182-day waiting period began on February 24, 2001, the day after defendant received the notice, and ended on August 24, 2001. Plaintiff contended that the statute of limitations applicable to the August 24, 1999 surgery date was tolled for 182 days and expired on February 22, 2002. Plaintiff observed that her notice of intent raised allegations regarding defendant's entire course of treatment, and asserted that because the limitations period for the claim as a whole was tolled, her complaint was timely for all purposes.

The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). The trial court found that the 182-day waiting period began on February 22, 2001, and that plaintiff could have filed her complaint in a timely manner on August 23 or 24, 2001. The trial court concluded that plaintiff's complaint, filed on November 21, 2001, was untimely. The trial court also rejected plaintiff's assertion that the statute of limitations for claims not contained in the complaint was also tolled.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The limitations period for a medical malpractice action is two years. MCL 600.5805(5). The limitations period may be tolled if, during the running of the 182-day waiting period triggered by the filing of the notice of intent required by MCL 600.2912b(1), the limitations period would expire and the claim would be barred. MCL 600.5856(d). If the 182-day period ends before the limitations period expires, no tolling of the limitations period occurs. *Omelenchuk, supra*.

The trial court did not err in concluding that plaintiff could not utilize the tolling provision within MCL 600.5856(d). Pursuant to that statute, the statute of limitations or repose are tolled if:

during the applicable notice period under section 2912b, a claim would be barred by the statute of limitations or repose, for not longer than a number of days equal to the number of days in the applicable notice period *after the date notice is given in compliance with section 2912b*. [Emphasis added.]

Notice is "given" under MCL 600.2912b(2) by mailing the notice to the last known business or residential address of the health care professional. Importantly, the statute indicates that "proof of mailing constitutes prima facie evidence of compliance with this section." *Id.* Under these terms, the notice is "given" by the mailing of the notice, as that is when "compliance" with the notice provision occurs, absent evidence refuting the prima facie evidence.

As a result of the foregoing, and as the trial court held, the 182-day period commenced on February 22, 2001. Plaintiff therefore could have timely filed her complaint after the 182-day

period ended and before the two-year statute of limitations expired on August 24, 2001. Hence, the tolling provision did not apply. *Omelenchuk, supra*.

Finally, plaintiff cites no authority to support her assertion that treatment referred to in the notice of intent but not alleged to constitute negligence in the complaint governs the running of the statute of limitations. A party cannot simply state a claim and then leave it to this Court to search for authority to support or reject the claim. *Leitch v Switchenko*, 169 Mich App 761, 764; 426 NW2d 804 (1988).

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly