

STATE OF MICHIGAN
COURT OF APPEALS

VALERIE J. ROHDE, Personal Representative for
the Estate of HENRY C. ROHDE,

UNPUBLISHED
February 19, 2013

Plaintiff-Appellant,

v

No. 308773
Arenac Circuit Court
LC No. 11-011675-NH

GOPI NALLANI, M.D., ADVANCED
DIAGNOSTIC IMAGING, P.C., BRENT J.
RAAP, D.O., BRENT J. RAAP, D.O., P.C.,
STANDISH COMMUNITY HOSPITAL, INC.,
d/b/a ST. MARY'S OF MICHIGAN STANDISH
HOSPITAL,

Defendants-Appellees,

and

NORTHERN BAY HEALTH CARE, L.L.C., and
DORAISAMY VENKITAPATHY, M.D.,

Defendants.

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

SAWYER, P.J. (*dissenting*).

I respectfully dissent. The majority concludes that there was a question of fact as to whether Mr. Rohde knew or should have known about his cause of action and that a jury could find that his complaint was timely filed within the six-month period provided under MCL 600.5838a(2). I disagree.

The facts are clear and straightforward. Mr. Rohde was first told by Dr. Venkitapathy on October 15, 2008, that there was something on his right lung and that he needed to follow up with his primary care physician, Dr. Raap.

On December 24, 2008, he was given a full physical examination by Dr. Raap. He was told that he had a lung mass. Mr. Rohde testified he recalled having a discussion with Dr. Raap about his medical condition and the results of the October 15, 2008, x-ray, but just did not recall the specific details. Dr. Raap testified that he advised Mr. Rohde that a CT scan with contrast had been scheduled for January 15, 2009, and that there was a possibility of cancer because the

lung mass was suspicious. Mr. Rohde never showed up for the CT scan and on January 27, 2009, contacted Dr. Raap's office by telephone, complaining of his bill and firing him. While Mr. Rohde did testify that he did not recall the details of the conversation, plaintiff has produced no evidence that contradicts defendant's version of events.

Therefore, I believe the trial court did not err in granting summary disposition in favor of all defendants because he should have been aware of his potential claim at the latest in 2008. If he had exercised any diligence, he would have discovered the cancer.

I therefore would affirm.

/s/ David H. Sawyer