

STATE OF MICHIGAN
COURT OF APPEALS

VALERIE HOWARD,

Plaintiff-Appellant,

v

SPECTRUM HEALTH-BLODGETT CAMPUS,
SPECTRUM HEALTH-BUTTERWORTH
CAMPUS, DR. JANOS NEVAI, HENRIKAS
VAITKEVICIUS PA-C, DR. TRIEU PHAM,
EMERGENCY CARE SPECIALISTS, P.C., DR.
WILLIAM ROZELL, DR. BEN LEE,
ADVANCED RADIOLOGY SERVICES, and
SPECTRUM HEALTH MEDICAL GROUP,

Defendants-Appellees.

UNPUBLISHED
March 26, 2013

No. 310351
Kent Circuit Court
LC No. 12-001719-NH

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff Valerie Howard appeals as of right the May 4, 2012, order of the trial court dismissing her medical malpractice action with prejudice. We affirm.

I. BASIC FACTS

After receiving a head injury during an assault, plaintiff went to the Spectrum Health-Blodgett Campus emergency department on May 8, 2004. The results of a CT scan taken during her visit revealed that plaintiff had a “[e]xtraaxial 2.5 x 4.1 cm mass in the right parietal vertex which appears chronic and most likely represents a subdural hygroma or arachnoid cyst.” However, according to plaintiff, hospital staff told her that her CT scan was normal and discharged her.

According to her complaint, plaintiff returned to the emergency department between 2005 and 2009 because of headaches. Plaintiff also received treatment for headaches at defendant Spectrum Health Medical Group between 2008 and 2011. However, doctors failed to review her chart, inform her about the results of the original CT scan, or order another CT scan. On March 4, 2011, plaintiff received another CT scan that revealed that the mass first detected in the 2004 scan had grown into a “dural based mass” that was approximately seven centimeters in size and cancerous. Plaintiff received chemotherapy and radiotherapy as treatment.

Plaintiff mailed a Notice of Intent to File Claim (NOI) to defendants on August 30, 2011 and filed her complaint in propria persona on February 23, 2012. Defendants moved for summary disposition based on plaintiff's failure to file affidavits of merit and the subsequent expiration of the statute of limitations. The trial court held a motion hearing on May 4, 2012 and issued an order dismissing plaintiff's action stating:

In this action, [plaintiff's] Complaint merely consists of a copy of her Notice of Intent to File Claim. [Plaintiff] has filed this action against multiple medical professionals, including radiologists, emergency physicians, and a physicians [sic] assistant. Yet, she did not attach a single affidavit of merit . . .

As the Defendants have shown in their briefs, in detail, regardless of the statute of limitation, or extension of, utilized by [plaintiff], because she failed to file affidavits of merit with her Complaint, those periods were not tolled. Consequently, those periods have all now passed and the instant action is barred.

Plaintiff then filed this appeal.

II. ANALYSIS

Plaintiff first argues that she made contact with the Spectrum Health Risk Manager and Professional Claims Insurance Manager, who told her that the individuals involved in the claim "were notified." Plaintiff intended for this communication to serve as her affidavit of merit.

"This Court reviews de novo a trial court's grant or denial of a motion for summary disposition." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008) (citations omitted). "Whether a claim is barred by a statute of limitations is a question of law that this Court reviews de novo." *Scherer v Hellstrom*, 270 Mich App 458, 461; 716 NW2d 307 (2006) (citations omitted).

As a preliminary matter, we note that the trial court set forth the applicable standards for summary disposition under MCR 2.116(C)(7), (8), and (10) in its order, without specifying what court rule it was relying upon. Summary disposition is appropriate under MCR 2.116(C)(7) when the claim is time barred because of the statute of limitations. Accordingly, we will review the trial court's decision to grant summary disposition under MCR 2.116(C)(7).

A movant may support a motion under MCR 2.116(C)(7) with "affidavits, depositions, admissions, or other documentary evidence." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Additional material is not required; however, "[i]f such material is submitted, it must be considered." *Id.* See also MCR 2.116(G)(5). "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden*, 461 Mich at 119.

"To commence a medical malpractice action, a plaintiff must file a complaint and an affidavit of merit." *Vanslebrouck ex rel Vanslebrouck v Halperin*, 277 Mich App 558, 561; 747 NW2d 311 (2008) (citations omitted). "The purpose of the affidavits of merit is to deter frivolous medical malpractice claims by verifying through the opinion of a qualified health

professional that the claims are valid.” *Barnett v Hidalgo*, 478 Mich 151, 163-164; 732 NW2d 472 (2007) (citations omitted). An affidavit of merit

constitutes a sworn statement regarding the applicable standard of practice or care, the health professional’s opinion that the applicable standard of practice or care was breached by the defendant, the actions that should have been taken or omitted by the defendant in order to have complied with the applicable standard of practice or care, and the manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged. [*Id.* at 160-161. See also MCL 600.2912d.]

It is apparent from the record that plaintiff did not file any affidavits of merit with her complaint. Plaintiff contends that the correspondence between the risk manager and the insurance claims manager should satisfy this requirement, because this correspondence notified hospital staff about the claim. However, these documents do not satisfy the requirements of the statute. See MCL 600.2912d. Furthermore, the purpose of the affidavit of merit is not to notify defendants about a pending claim, but “to deter frivolous medical malpractice claims by verifying through the opinion of a qualified health professional that the claims are valid.” *Barnett*, 478 Mich at 164. “When a medical malpractice complaint is filed without an affidavit of merit, the complaint is ineffective and fails to toll the limitations period.” *Vanslebrouck*, 277 Mich App at 561 (citations omitted). “When the untolled period of limitations expires before the plaintiff files a complaint accompanied by an AOM [affidavit of merit], the case must be dismissed with prejudice on statute-of-limitations grounds.” *Ligons v Crittenton Hosp*, 490 Mich 61, 73; 803 NW2d 271 (2011) (citations omitted). Plaintiff does not argue that there is any time left in the statute of limitations and we reject her argument that she filed the necessary affidavits of merit. Accordingly, plaintiff’s claim was properly dismissed with prejudice by the trial court. MCL 600.5856(c); MCL 600.2912b.

Plaintiff’s second argument is abandoned because she has failed to cite supporting case law in her brief. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002). Moreover, this argument is based on the merits of her claim, which we do not reach because plaintiff’s claim is time barred.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause