

STATE OF MICHIGAN
COURT OF APPEALS

DONALD L. WYANT, Personal Representative of
the ESTATE of DEBORAH LYNN MEADE a/k/a
DEBORAH LYNN WYANT,

UNPUBLISHED
September 11, 2001

Plaintiff-Appellant/Cross-Appellee,

V

No. 223201
Muskegon Circuit Court
LC No. 98-038788-NH

NORTON SHORES MEDI-CENTER and DR. V.
SCOTT,

Defendants-Appellees,

and

DR. WILLIAM KIRCHAIINE and HACKLEY
COMMUNITY CARE CENTER,

Defendants-Appellees/Cross-
Appellants.

Before: Collins, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

In this medical malpractice case, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants on the basis that the statute of limitations barred plaintiff's claim. Defendants Kirchaine and Hackley Community Care Center cross-appeal, asserting an alternative ground for affirming the trial court's grant of summary disposition. We reverse and remand.

In his complaint, plaintiff essentially alleges that both defendant Scott, while employed by defendant Norton Shores Medi-Center, and defendant Kirchaine, while employed by defendant Hackley Community Care Center, failed to properly diagnose and treat plaintiff's decedent and that their negligence caused decedent's death. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), alleging that plaintiff's complaint is time-barred pursuant to MCL 600.5852 and MCL 600.2912b and, alternatively, that plaintiff's affidavit of merit was defective because it did not comply with MCL 600.2169, as required by MCL

600.2912d. Relying on *Omelenchuk v City of Warren*, unpublished opinion per curiam of the Court of Appeals, issued April 6, 1999 (Docket No. 204098), the trial court granted summary disposition in favor of defendants. Because the trial court found that summary disposition in favor of defendants was appropriate on the statute of limitations issue and was dispositive, it rendered no opinion on defendants' alternative ground regarding plaintiff's affidavit of merit. Plaintiff then commenced this appeal, and defendants Kirchaine and Hackley Community Care Center cross-appealed.

Since the trial court's grant of summary disposition in this case, our Supreme Court has reversed this Court's unpublished decision in *Omelenchuk, supra*. In *Omelenchuk v City of Warren*, 461 Mich 567, 573, 576-577; 609 NW2d 177 (2000), our Supreme Court held that the limitation period is tolled for the full 182-day notice period provided in MCL 600.2912b. Accordingly, defendants concede on appeal that the trial court's grant of summary disposition on that basis was error.

With regard to defendants' cross-appeal, we recognize that arguably we could address the claim regarding plaintiff's affidavit of merit because it involves a question of law and was raised, although not decided, in the trial court. *Peterman v Department of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). Nevertheless, we believe that further development of the facts and this issue, as well as a decision in the trial court would facilitate appellate review, and thus we presently decline to address this issue. *Id.*; Cf. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

Reversed and remanded for further action consistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage