

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN KUKOLA,

Plaintiff-Appellant,

v

AIRPORT MEDICAL INDUSTRIAL CLINIC,
INC., and RAJESH BHAGAT, M.D.,

Defendants-Appellees.

UNPUBLISHED

April 8, 1997

No. 189088

Wayne Circuit Court

LC No. 95-514777

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition without prejudice in favor of defendants pursuant to MCR 2.116(C)(2) and (C)(3). We affirm.

Plaintiff injured his right hand on May 24, 1993 and was immediately taken to defendant clinic for medical attention. The clinic referred plaintiff to defendant physician, who performed surgery on May 24, 1993 and June 7, 1993. Plaintiff filed this medical malpractice action on May 24, 1995. The trial court dismissed the case on the ground plaintiff failed to provide defendants with the 182-day notice of his intent to commence the action required by MCL 600.2912b(1); MSA 27A.2912(2)(1).

Plaintiff argues that the trial court erred in summarily dismissing his claim where it was impossible for him to comply with the 182-day notice provision of MCL 600.2912b(1); MSA 27A.2912(2)(1) without violating the statute of limitations for his claim. We disagree.

The 182-day notice requirement applies to cases filed on or after October 1, 1993 and therefore applies in this case. MCL 600.5856(d); MSA 27A.5856(d) tolls the statute of limitations during the 182-day notice period, but only if the plaintiff's cause of action arose after October 1, 1993. Plaintiff therefore may not take advantage of the tolling provision. In *Morrison v Dickinson*, 217 Mich App 308; 551 NW2d 449 (1996), this Court addressed the apparent inequity left by the Legislature in failing to apply the tolling statute to causes in situations such as this, where the plaintiff could not give the requisite notice (and hence delay filing suit) without violating the statute of limitations. After reconciling

the statutes and the legislative intent behind them, this Court held that if plaintiffs similarly situated to plaintiff in the instant case were not afforded the benefit of the 182-day tolling provision, their claims would be unconstitutionally abrogated. *Id.* at 315-318. Therefore, this Court held that, “all plaintiffs finding themselves in the present plaintiffs’ situation will be free to timely refile their suits following the dismissal of the actions.” *Id.* at 319.

This Court must apply the holding of *Morrison* to this factually identical case pursuant to Administrative Order 1996-4. Under *Morrison, supra*, the trial court properly dismissed plaintiff’s claim without prejudice for failing to comply with the 182-day notice provision. Plaintiff, however, may refile his claim immediately since the 182-day notice period has expired. *Id.*

Affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Barbara B. MacKenzie

/s/ Myron H. Wahls

/s/ Jane E. Markey