

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

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SUES FLEMING, Personal Representative of the  
Estate of Anna M. Wagoner, Deceased,

UNPUBLISHED  
April 11, 1997

Plaintiff-Appellant,

v

No. 184680  
Branch Circuit Court  
LC No. 93-010612-NH

DR. JOHN SENNISH and DR. JOUDAT DAOUD,

Defendants-Appellees,

and

COMMUNITY HEALTH CENTER OF BRANCH  
COUNTY, DR. ROBIN I. GOODFELLOW, and  
DR. J. AMPARO,

Defendants.

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Before: Murphy, P.J., and Markey and A.A. Monton\*, JJ.

MURPHY, P.J. (dissenting).

I respectfully dissent.

In my opinion, the trial court's order striking plaintiff's expert witness as a sanction for failing to comply with discovery was an abuse of discretion. Because of the importance of expert testimony in medical malpractice actions, the effect of the trial court's order was to put an end to this lawsuit. While striking witnesses is an appropriate sanction in some cases, it must be remembered that the policy of this state favors the meritorious determinations of issues. *Tisbury v Armstrong*, 194 Mich App 19, 21; 486 NW2d 51 (1992). After reviewing the record, I do not consider plaintiff's counsel's conduct so egregious or defendants' prejudice so substantial that imposing, what is in essence, the most serious sanction available is justified. See *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990) (discussing the factors to be considered when determining the appropriate sanction).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ William B. Murphy