

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA J. LODER, Personal Representative of the
Estate of WILLIAM A. LODER, Deceased,

UNPUBLISHED
December 30, 1997

Plaintiff-Appellant,

v

No. 197286
Wayne Circuit Court
LC No. 95-532648 NH

JACK CLARK, M.D.,

Defendant-Appellee.

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in this medical malpractice action in favor of defendant, predicated on the statute of limitations. This case is being decided without oral argument pursuant to MCR 7.214(E).

After plaintiff's right to sue for malpractice had accrued, the Legislature amended the Revised Judicature Act to impose a 182-day notice provision in medical malpractice cases, applicable to medical malpractice actions as to which the period of limitations had not yet run, even though arising before the amendment. 1993 PA 78, adding RJA §2912b. Plaintiff, within the original two year period of limitation for medical malpractice actions, RJA §5805(4) and §5838(1), duly gave defendant the statutorily requisite notice. One-hundred eighty two days later, plaintiff filed suit; by this time, the original period of limitations had expired. Nonetheless, in *Morrison v Dickinson*, 217 Mich App 308, 316-319; 551 NW2d 449 (1996), this Court extended the tolling provision of RJA §5856(d) to persons in plaintiff's position, on constitutional grounds. Plaintiff's suit was therefore timely and summary disposition was improperly granted.

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

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

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber