

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA E. RODRIQUEZ, Personal Representative of
the Estate of AMATTO J. RODRIQUEZ, Deceased

UNPUBLISHED
February 27, 1998

Plaintiff-Appellant,

v

No. 198217
Berrien Circuit Court
LC No. 96-001265 NH

JAMES A. RUTHERFORD, M.D., JOHN G.
CRABILL, SOUTHWESTERN MEDICAL CLINIC,
P.C., LAKELAND REGIONAL HEALTH
SYSTEM, PAWATING HOSPITAL,
and PAWATING HOSPITAL ASSOCIATION,

Defendants-Appellees.

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition, without prejudice, in this medical malpractice action based on commencement of suit prior to expiration of the statutory notice period prescribed by MCL 600.2912b(1); MSA 27A.2912b(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Dismissal without prejudice, whatever the motives underlying plaintiff's failure to comply with the statutory pre-suit notice requirement, is the appropriate action by the circuit court. *Neal v Oakwood Hospital Corp*, ___ Mich App ___; ___ NW2d ___ (Docket No. 196964, issued 12/12/97); *Morrison v Dickinson*, 217 Mich App 308, 319; 551 NW2d 449 (1996). Additionally, plaintiff's equal protection, U.S. Const, Amend XIV, § 1, Const 1963, art 1, §2, due process, *id.*, and separation of powers, Const 1963, art 3, § 2 challenges to the constitutionality of the statute are without merit for the reasons adduced in *Neal, supra*.

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

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison