

STATE OF MICHIGAN
COURT OF APPEALS

KARI SMITH, as Next Friend of ALISHA SMITH-
MOORE, a Minor,

UNPUBLISHED
May 8, 1998

Plaintiff-Appellant,

v

No. 199081
Kent Circuit Court
LC No. 96-003704 NH

BUTTERWORTH HOSPITAL,

Defendant-Appellee.

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, 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.2912(2)(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*, 226 Mich App 701, 715; ___ NW2d ___ (1997); *Morrison v Dickinson*, 217 Mich App 308, 319; 551 NW2d 449 (1996). Additionally, plaintiff's equal protection, US Const, Am XIV, § 1, Const 1963, art 1, § 2, due process, US Const, Am XIV, § 1, Const 1963, art 1, § 17, 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* at 716-723.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka

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