

STATE OF MICHIGAN
COURT OF APPEALS

DEBBIE FERGUSON, Personal Representative of the
Estate of TINA M. WILSON, Deceased,

UNPUBLISHED
May 15, 1998

Plaintiff-Appellant,

v

No. 197784
St. Clair Circuit Court
LC No. 96-001094 NH

PORT HURON HOSPITAL, ESTATE OF SUSAN
WINE and DR. S.A. MAKKI, M.D.,

Defendants-Appellees.

Before: Neff, P.J., and White and D. A. Teeple,* 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).

The circuit court properly dismissed plaintiff's action without prejudice for failure to comply with the statutory pre-suit notice requirement. *Neal v Oakwood Hospital Corp*, 226 Mich App 701; ___ NW2d ___ (1997); *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 were rejected by the *Neal* panel. If, as plaintiff contends, changes in the substantive law retroactively applied to this action would be unconstitutional, such issues should be raised as to specific statutory provisions when and if such matters arise in the course of a properly filed medical malpractice action. We reject the assertion that plaintiff's complaint alleges ordinary negligence and, to that extent, is not subject to MCL 600.2912b; MSA 27A.2912(2). Regardless of the form, the claim is one of malpractice.

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

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple