

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA WILSON,

Plaintiff-Appellant,

v

MERCY HOSPITAL and MERCY HEALTH SERVICES, d/b/a TRINITY HEALTH – MICHIGAN, MERCY WOMEN’S CENTER, and MERCY FAMILY CARE CLINIC, P.C., CECIL R. JONAS, M.D., THEODORE GRAHAM, M.D., and HENRY FORD HEALTH SYSTEMS,

Defendants-Appellees.

UNPUBLISHED

February 4, 2003

No. 234562

Wayne Circuit Court

LC No. 00-039948-NH

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court’s grant of summary disposition to defendants in this case involving a claim of “wrongful birth.” We affirm.

Plaintiff filed a complaint in which she alleged that she had a family history of hemophilia and that defendants negligently¹ failed to determine that her child would be born with this disease. Plaintiff alleged that if she had known the fetus was afflicted, she would have terminated her pregnancy to avoid the numerous financial and emotional costs associated with hemophilia.

Defendants moved for summary disposition under MCR 2.116(C)(8), noting that the tort cause of action for wrongful birth had been abolished by this Court in *Taylor v Kurapati*, 236 Mich App 315; 600 NW2d 670 (1999). In response, plaintiff argued that the *Taylor* Court’s purported abolition of the wrongful birth cause of action was merely obiter dictum and that such a cause of action remained available in Michigan. Plaintiff further argued that *Taylor* should not be considered binding precedent because the *Taylor* Court raised the issue of the viability of the wrongful birth cause of action sua sponte, without the benefit of briefing or arguments by the parties. Finally, plaintiff cited MCL 600.2971, in which the Legislature codified the abolition of

¹ Plaintiff also asserted gross negligence.

the wrongful birth cause of action with regard to ordinary negligence but indicated that a cause of action based on gross negligence was permissible. Plaintiff stated that defendants in the instant case had indeed committed gross negligence and that her claim should be deemed viable because the Legislature, in MCL 600.2971, expressed its intention that gross negligence in a wrongful birth situation be actionable.²

The court, in a perfunctory opinion, stated that it was granting defendant's motion because it was "obligated to under the *Taylor* case."

This Court reviews a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Moreover, this appeal concerns a question of law, which we similarly review de novo. See *Oakland County Prosecutor v Beckwith*, 242 Mich App 579, 581; 619 NW2d 172 (2000).

In *Taylor*, the Court, in a two-to-one decision, rejected earlier cases allowing a cause of action for wrongful birth and abolished such a cause of action. See *Taylor, supra* at 344-356. The Court limited its decision to the case it was considering and to any cases filed after the release of the opinion. *Id.* at 356. The Court then went on to address the statute of limitations issue argued by the parties and unanimously concluded that the plaintiffs had not filed their case within the applicable period of limitation. *Id.* at 358.

Plaintiffs contend that the holding in *Taylor* regarding the viability of a wrongful birth cause of action was merely dictum because the decision primarily rested on the statute of limitations issue. We disagree. Indeed, in responding to this very allegation by the *Taylor* dissent, the *Taylor* majority explicitly stated that its holding with regard to wrongful birth claims was *not* in fact dictum because it represented a holding as "equally decisive" as the statute of limitations holding. *Id.* at 356-357 n 58. As noted in *Woods v Interstate Realty Co*, 337 US 535, 537; 69 S Ct 1235; 93 L Ed 2d 1524 (1949), a case cited by *Taylor*, "where a decision rests on two or more grounds, none can be relegated to the category of obiter dictum." Moreover, as noted in *Breckon v Franklin Fuel Co*, 383 Mich 251, 269; 174 NW2d 836 (1970), overruled on other grounds in *Smith v City of Detroit*, 388 Mich 637 (1972), dictum is generally a statement by a court used as an analogy or suggestion. The *Taylor's* Court's decision with regard to the wrongful birth issue went far beyond a mere analogy or suggestion; instead, it represented a central holding in the case, and the analysis was lengthy and penetrating.

Plaintiff also alleges that we should reject *Taylor's* decision with regard to the wrongful birth issue because that issue was not raised or briefed by the parties. However, as noted in *Frericks v Highland Twp*, 228 Mich App 575, 586; 579 NW2d 441 (1998), this Court may address issues not raised by the parties to an appeal. We acknowledge that briefing by the parties is a valuable resource, and we note that this Court should exercise caution in resolving cases based on issues not raised or briefed on appeal. The fact nevertheless remains, however, that the *Taylor* Court had the authority to address the wrongful birth issue. *Id.* It chose to do so, and its decision is binding on us under MCR 7.215(I)(1), which states that

² As noted *infra*, MCL 600.2971 does not directly apply to plaintiff's case because the statute was enacted after her purported cause of action arose.

[a] panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals

We decline to call for a conflict panel to dispute the *Taylor* opinion. See MCR 7.215(I)(2) and (3).

The trial court correctly held that under *Taylor*, plaintiff's case was not actionable. Moreover, MCL 600.2971, which allows a wrongful birth cause of action for cases involving gross negligence, did not apply to plaintiff's case because 2000 PA 423 states that MCL 600.2971 "applies only to a cause of action arising on or after the effective date of this amendatory act." Plaintiff's purported cause of action accrued before this date.

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter