

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY HODGES and GAIL HODGES,

Plaintiffs-Appellants,

v

BRIAN RICHARD HALLSTROM, M.D., ST.
JOSEPH MERCY HOSPITAL-ANN ARBOR,
TRINITY HEALTH-MICHIGAN, ORTHOPEDIC
SURGERY ASSOCIATES, and ORTHOPEDIC
SURGERY ASSOCIATES, P.C.,

Defendants-Appellees.

UNPUBLISHED

October 26, 2006

No. 270165

Washtenaw Circuit Court

LC No. 06-000050-NH

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the trial court order granting summary disposition in favor of defendants under MCR 2.116(C)(8) and (10). Plaintiffs' medical malpractice action was dismissed because the supporting affidavit of merit, which was signed and notarized in Ohio, did not include the proper certification and, therefore, did not toll the statute of limitations. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This case is governed by *Apsey v Mem Hosp (On Reconsideration)*, 266 Mich App 666; 702 NW2d 870 (2005), which held that the special certification requirement of MCL 600.2102 must be met before an out-of-state affidavit may be received and considered by a court. There is no dispute that plaintiff failed to timely submit an affidavit of merit that contained the required certification. We are bound to follow *Apsey* and, therefore, affirm the trial court's dismissal of this action.

Plaintiffs raise several novel arguments concerning why they believe *Apsey* was wrongly decided. Plaintiffs did not raise these arguments below. An issue not raised before and considered by the trial court is generally not preserved for appellate review. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Although this Court may review an issue if the question is one of law and the facts necessary for its resolution have been

presented, *id.* at 98-99, because we are bound to follow the decision in *Apsey*, and because an application for leave to appeal is currently pending before the Supreme Court in *Apsey*,¹ we decline to consider plaintiffs' unpreserved issues.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens

¹ *Apsey v Mem Hosp*, order granting consideration of application for leave to appeal, entered May 5, 2006 (Docket No. 129134).