

STATE OF MICHIGAN
COURT OF APPEALS

VICKI L. ZUNICH, as Personal Representative for
the Estate of STEVEN ZUNICH, and as Next
Friend for CHARLES ZUNICH and MATTHEW
ZUNICH, Minors,

Plaintiff-Appellant,

v

MIDMICHIGAN MEDICAL CENTER-
MIDLAND, JEFFREY S. NEWMAN, M.D.,
FAMILY MEDICINE ASSOCIATES OF
MIDLAND, P.C. a/k/a FAMILY PRACTICE
ASSOCIATE OF MIDLAND, P.C., KENNETH
M. MACKINNON, M.D., JAMES H. FRYE,
M.D., MIDMICHIGAN HEALTH, and FAITH D.
FUENTES, M.D.,

Defendants-Appellees.

UNPUBLISHED
June 12, 2012

No. 297456
Midland Circuit Court
LC No. 02-005382-NH

VICKI L. ZUNICH, as Personal Representative for
the Estate of STEVEN ZUNICH, and as Next
Friend for CHARLES ZUNICH and MATTHEW
ZUNICH, Minors,

Plaintiff-Appellant,

v

FAMILY MEDICINE ASSOCIATES OF
MIDLAND, P.C.,

Defendant-Appellee,

and

JERRY L. FERRELL, M.D., and ROBERTA L.
CORBAT,

Defendants.

No. 297457
Midland Circuit Court
LC No. 03-005843-NH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

In this wrongful death medical malpractice action, Vicki L. Zunich appeals as of right from the circuit court's March 23, 2010 order, which denied Zunich's request to reinstate her case and proceed to a jury trial. We affirm.

Zunich's husband suffered a series of seizures, underwent emergency brain surgery, and eventually died from a brain hemorrhage, which was determined to be the cause of the seizures. Zunich filed suit after sending an original and amended notice of intent ("NOI") to MidMichigan Medical Center – Midland, Jeffrey S. Newman, M.D., Family Medicine Associates of Midland, P.C. a/k/a Family Practice Associates of Midland, P.C., Kenneth M. MacKinnon, M.D., James H. Frye, M.D., MidMichigan Health, and Faith D. Fuentes, M.D. ("Health Care Providers"). The Health Care Providers moved for summary disposition on the ground that the NOIs lacked the "specific averments as to each defendant" required by the statute in medical malpractice suits. The circuit court agreed and granted the Health Care Providers' motion. The court also dismissed the case with prejudice due to the running of the statute of limitations.

On appeal, this Court affirmed,¹ concluding that the NOIs were insufficient pursuant to *Roberts v Mecosta Co Gen Hosp.*² Zunich appealed to our Supreme Court, which in lieu of granting leave to appeal, vacated this Court's judgment and the circuit court's final order and remanded to the circuit court "for reconsideration in light of [*Bush v Shabahang*³] and *Potter v McLeary*.⁴]"⁵

On remand, the circuit court held that neither *Bush* nor *Potter* were applicable, and concluded that its "earlier order granting summary disposition to Defendants was and is correct and consistent with applicable law." It thus denied Zunich's request to reinstate her case. It is from this decision that Zunich now appeals. Whether *Bush* or *Potter* is applicable in the instant case is a question of law. Thus, this Court's review of the trial court's decision on that issue is de novo.⁶

¹ *Zunich v Family Med Assoc of Midland, PC*, unpublished opinion per curiam of the Court of Appeals, issued May 15, 2007 (Docket Nos. 265027, 265028).

² *Roberts v Mecosta Co Gen Hosp*, 470 Mich 679; 684 NW2d 711 (2004).

³ *Bush v Shabahang*, 484 Mich 156; 772 NW2d 272 (2009).

⁴ *Potter v McLeary*, 484 Mich 397; 774 NW2d 1 (2009).

⁵ *Zunich v Family Med Assoc of Midland, PC*, 485 Mich 940; 774 NW2d 325 (2009).

⁶ *Bush*, 484 Mich at 164.

On appeal, Zunich argues that the trial court erred when it determined that *Bush* did not apply under the facts of this case.⁷ We disagree. As the trial court noted, the *Bush* decision interpreted the amended version of MCL 600.5856, which became effective on April 22, 2004, and footnote 34 to the *Bush* opinion made it clear that the Court was not overruling the jurisprudence concerning the pre-amendment statute.⁸ Our Supreme Court reached this same conclusion in a case it decided during the pendency of this appeal.⁹ “An order that is a final Supreme Court disposition of an application and that contains a concise statement of the applicable facts and reasons for the decision is binding precedent.”¹⁰ Thus, we cannot turn a blind eye to the doctrine of stare decisis as “[t]his Court is bound by stare decisis to follow the decisions of our Supreme Court.”¹¹

Because Zunich filed her NOIs years before the effective date of the amendatory act, the pre-amendment version of the statute is applicable, and *Bush*, which addressed the post-amendment version, does not apply.

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O’Connell
/s/ Michael J. Talbot

⁷ Zunich does not raise any issue regarding the trial court’s conclusion that *Potter* had no application to the instant case. Zunich’s only issue is with *Bush*.

⁸ *Bush*, 484 Mich at 175-176 n 34.

⁹ *Johnson v Hurley Med Group*, 491 Mich 892; 810 NW2d 273 (2012).

¹⁰ *Dykes v William Beaumont Hosp*, 246 Mich App 471, 483; 633 NW2d 440 (2001).

¹¹ *Griswold Prop, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007).