STATE OF MICHIGAN

COURT OF APPEALS

THERESA BAILEY, a/k/a THERESA LONG, Individually and as the Personal Representative of the Estate of CHRISTAL BAILEY, Plaintiff-Appellee,	UNPUBLISHED August 8, 2006
v	No. 267546 Wayne Circuit Court
SETHAVARANGURA PORNPICHIT, M.D., a/k/a PORNPICHIT SETHAVARANGURA, M.D., Defendant-Appellant.[1]	LC No. 04-411504-NH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

NEFF, P.J. *(dissenting).*

I respectfully dissent. Contrary to the conclusion reached by the majority, I find that plaintiff's affidavit of merit complies with MCL 600.2912d and would affirm the trial court's denial of summary disposition.

While I agree that *Roberts v Mecosta Co Gen Hosp (After Remand),* 470 Mich 679, 700-701; 684 NW2d 711 (2004) is instructive with respect to requirements for a statement of proximate cause in an affidavit of merit,[2] I find *Roberts* factually inapposite. In *Roberts*, the Court explained:

> Under MCL 600.2912b(4), a medical malpractice claimant is required to provide potential defendants with notice that includes a "statement" of each of the statutorily enumerated categories of information. Although it is reasonable to expect that some of the particulars of the information supplied by the claimant

[1] Defendant's name was incorrectly stated on plaintiff's complaint and therefore on subsequent pleadings in the trial court. His correct name is Pornpichit Sethavarangura.

[2] The notice of intent, considered in *Roberts*, and the affidavit of merit are governed by similar statutory purpose and language with respect to their requirements for statements of proximate cause.

> will evolve as discovery and litigation proceed, the claimant is required to make good-faith averments that provide details that are *responsive* to the information sought by the statute and that are as *particularized* as is consistent with the early notice stage of the proceedings. The information in the notice of intent must be set forth with that degree of specificity which will put the potential defendants on notice as to the nature of the claim against them. This is not an onerous task: all the claimant must do is specify what it is that she is *claiming* under each of the enumerated categories in § 2912b(4). Although there is no one method or format in which a claimant must set forth the required information, that information must, nevertheless, be specifically identified in an ascertainable manner within the notice. [*Roberts, supra* at 700-701.]

Roberts involved a medical malpractice action against "two different facilities, an obstetrician, an emergency room physician, and a physician's assistant, yet no attempt was made to identify a specific standard of practice or care applicable to any particular defendant." *Id*. at 701. Accordingly, the statement of proximate cause, which stated, "as a result of [defendants'] negligence . . ., [plaintiff] is now unable to have any children," failed to satisfy the statutory requirements. *Id*. at 699 n 16.

On the contrary, in this case, there is only one defendant and plaintiff particularized the allegations of negligence in her affidavit of merit, stating that defendant breached the standard of care by (1) failing to do glucose tolerance testing in a patient who is morbidly obese and carrying twins, (2) failing to routinely monitor fetal heart tones, (3) failing to do maternal fetal ultrasounds, (4) failing to monitor the pregnancy closely when plaintiff reached the 32nd or 33rd week to be certain that both babies were growing adequately, and (5) failing to listen and react to the concerns being voiced by plaintiff and defendant's nurse. With regard to proximate cause, the affidavit of merit stated, "That as a direct result of [defendant's] failure to comply with the applicable standard of care, as outlined above, [plaintiff's baby] was delivered stillborn."

Given the stark differences in the specificity in plaintiff's allegations and those in *Roberts*, and given that this case involves only a single defendant, *Roberts* does not reasonably control the outcome in this case, particularly in light of the above guidance from *Roberts*. The affidavit of merit satisfies the requirement of MCL 600.2912d(1)(d), that the affidavit contain a statement of "[t]he manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice." Plaintiff has shown far more than a mere correlation between the alleged malpractice and the injury. *Craig v Oakwood Hosp*, 471 Mich 67, 87-88; 684 NW2d 296 (2004) (see the majority, *ante* at 3). Accordingly, the trial court properly denied defendant's motion for summary disposition.

/s/ Janet T. Neff