

# Court of Appeals, State of Michigan

## ORDER

Debra Perry v Bon Secours Cottage Health Services

Docket No. 276737

LC No. 05-535173-NM

Christopher M. Murray  
Presiding Judge

Helene N. White

Kurtis T. Wilder  
Judges

---

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the February 20, 2007, order of the Wayne County Circuit Court is REVERSED IN PART to the extent that plaintiff's medical malpractice claim was dismissed with prejudice. The remedy for filing a nonconforming affidavit of merit is dismissal without prejudice. *Kirkaldy v Rim*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 129128, rel'd July 11, 2007), slip opinion. Accordingly, the matter is REMANDED to the trial court for further proceedings consistent with *Kirkaldy*.

Because plaintiff failed to provide the summary disposition pleadings filed by both parties, this Court cannot fully engage in a de novo review and provide any further relief. However, it is clear from the transcript of the February 9, 2007, hearing that the trial court did not analyze on the record the issue of whether plaintiff's counsel had a reasonable belief that Dr. Paul Collier was qualified under MCL 600.2169 to sign an affidavit of merit with respect to defendant Don Michael Schroder, M.D. See *Grossman v Brown*, 470 Mich 593, 599-600; 685 NW2d 198 (2004). Contrary to defendants' argument, the fact that the Supreme Court subsequently released *Woodard v Custer*, 476 Mich 545, 561; 719 NW2d 842 (2006), is not necessarily dispositive of this issue. Instead, whether such a belief is reasonable is determined by the circumstances, including the information available to, and the investigation conducted by, the plaintiff's attorney, at the time the affidavit of merit is signed and filed with the complaint. *Grossman, supra*. Accordingly, the trial court should reconsider this issue on remand as well.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

AUG 16 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk