

STATE OF MICHIGAN
COURT OF APPEALS

BERNADINE TONOWSKI, as Next Friend of
BERNARD TONOWSKI,

UNPUBLISHED
March 10, 2005

Plaintiff-Appellee/Cross-Appellant,

v

No. 249972
Macomb Circuit Court
LC No. 2001-001350-NH

MOUHAMAD RIHAWI, M.D., and W.
AGNELLO-DIMITRIJEVIC, M.D.,

Defendants,

and

MERCY MOUNT CLEMENS CORPORATION,
d/b/a ST. JOSEPH MERCY HOSPITAL
MACOMB,

Defendant-Appellant/Cross-
Appellee.

Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

O'CONNELL, J. (*concurring*).

I concur with the majority opinion. I write separately to state that plaintiff is entitled only to those attendant care services that were necessitated by defendant's malpractice. While plaintiff testified that her brother now requires 24-hour care, she also explained that she took care of him before the injury without compensation. Plaintiff's calculations do not account for the several hours every day that she was already sacrificing for his care. This runs contrary to the rule that if an injury exacerbates a preexisting condition, it is only compensated to the extent of the exacerbation. See *Adams v Nat'l Bank of Detroit*, 444 Mich 329, 350 n 5; 508 NW2d 464 (1993) (Mallett, J.) and cases cited therein; MCL 600.6304(2). This rule prevents plaintiffs from receiving a double recovery for earlier injuries and places the appropriate degree of responsibility on the last tortfeasor. On remand, the trial court should limit plaintiff's recovery to those attendant care services solely attributable to defendant's malpractice.

/s/ Peter D. O'Connell