

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY HODGES and GAYLE 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UNPUBLISHED

August 21, 2007

No. 270165

Washtenaw Circuit Court

LC No. 06-000050-NH

ON REMAND

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

PER CURIAM.

On October 26, 2006, this panel issued a memorandum opinion in this case, affirming the trial court's grant of summary disposition to defendants, based on plaintiffs' failure to comply with the certification requirements for out-of-state affidavits found in MCL 600.2102(4). There is no dispute that plaintiffs' did not timely submit an affidavit of merit in meeting these requirements before expiration of the limitations period. In *Apsey v Memorial Hosp (On Reconsideration)*, 266 Mich App 666; 702 NW2d 870 (2005), this Court held that affidavits that were not in compliance with this statute were a nullity. Subsequently, the Supreme Court reversed this Court's decision in *Apsey*. See *Apsey v Memorial Hosp*, 477 Mich 120; 730 NW2d 695 (2007). On June 26, 2007, the Supreme Court issued an order vacating the opinion in this case and remanding for reconsideration in light of its decision in *Apsey*.

In *Apsey*, the Supreme Court held that an affidavit that was signed in compliance with the Uniform Recognition of Acknowledgements Act (URAA), MCL 565.261 *et seq*, was valid, even if it was not in compliance with MCL 600.2102(4). The Court concluded there was no conflict between the two statutes, but rather "the Legislature intended the URAA to serve as an alternative to MCL 600.2102(4) for authenticating out-of-state affidavits." 477 Mich at 124.

MCL 565.268 provides: "This act provides an additional method of proving notarial acts...." MCL 565.262 provides:

(a) "Notarial acts" means acts that the laws of this state authorize notaries public of this state to perform, including the administering of oaths and

affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. *Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments* in addition to any other person authorized by the laws of this state:

(i) A notary public authorized to perform notarial acts in the place in which the act is performed. [Emphasis added.]

The affidavit of merit here was signed by an Ohio notary on February 1, 2006, before the statute of limitations expired on February 10, 2006.

The affidavit stated that it was “subscribed and sworn to before me [Barbara E. Kinsella] this 1st day of February 2006,” and had stamped information indicating that Kinsella was a notary public for the State of Ohio, with a commission expiring October 5, 2010. There is no suggestion that Kinsella was not “[a] notary public authorized to perform notarial acts in the place in which the act [was] performed.” Indeed, her authority is not disputed. Thus, under the URAA and *Apsey*, the affidavit was valid when it was initially filed.

The order granting summary disposition is reversed because the affidavit of merit was valid at the time it was initially filed. This case is remanded for further proceedings. We do not retain jurisdiction.

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