

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JON H. W. CLARK,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL and RHONNA  
SHATZ, D.O.,

Defendants-Appellees,

and

STANTON ELIAS, M.D., J. GORELL, M.D., and  
DR. SELBST, M.D.,

Defendants.

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UNPUBLISHED

April 23, 2002

No. 226630

Wayne Circuit Court

LC No. 98-817549-NH

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10) and the trial court's order denying his motion for reconsideration. We affirm.

As a preliminary matter, we note that plaintiff has improperly asserted facts and submitted documents that were not presented to the trial court. Our review is limited to the record developed by the trial court and a party is not permitted to enlarge the record on appeal by asserting facts or submitting documents which were not presented to the trial court. MCR 7.210(A); *Kent County Aeronautics Bd v Dept of State Police*, 239 Mich App 563, 579-580; 609 NW2d 593 (2000). Therefore, we will not consider those facts and exhibits that plaintiff presents for the first time on appeal.

Plaintiff argues that the trial court erred in limiting his claims to those alleged acts of negligence that occurred within two years of filing his notice of intent to sue. Plaintiff says that, pursuant to MCL 600.5851, he had one year after the lifting of his disability to bring suit. Although plaintiff failed to raise the applicability of MCL 600.5851 in his response to defendants' motion for summary disposition, plaintiff raised the argument in his motion for

reconsideration. Therefore, the issue is preserved, but only to the extent that plaintiff argues that the court abused its discretion by denying his motion for reconsideration.

The trial court did not abuse its discretion in denying plaintiff's motion for reconsideration. Plaintiff failed to show that he was insane within the meaning of MCL 600.5851(2). Although he relied on MCL 600.5851, plaintiff did not present any evidence to support a finding that this statute applies and plaintiff failed to demonstrate that the trial court palpably erred. MCR 2.119(F)(3).

The legal disability resulting from a declaration of *incompetence* does not alone satisfy the definition of *insane* in MCL 600.5851(2). Further, contrary to plaintiff's argument, *Casey v Henry Ford Health System*, 235 Mich App 449; 597 NW2d 840 (1999), has no bearing on the trial court's determination that plaintiff's claims were barred in part by the two-year limitations period for malpractice prescribed in MCL 600.5805. The court's error concerning the date that the conservatorship ended is immaterial to this determination. Moreover, plaintiff could have raised these arguments before the trial court granted defendants' motion for summary disposition, but plaintiff failed to do so. As this Court stated in *Charbeneau v Wayne County Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987), "[w]e find no abuse of discretion in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court's order."

Plaintiff raises several issues relating to alleged acts of negligence that were not barred by the statute of limitations. We agree with the trial court that plaintiff failed to show that the two evaluations performed by defendant Shatz caused damages with respect to the incompetency proceeding. Although on appeal plaintiff asserts new theories of damages based on an alleged delay in diagnosis, these theories and proffered evidence to support them were not presented below. Therefore, we are not persuaded that the trial court erred in granting defendants' motion for summary disposition. Accordingly, we need not decide if Shatz owed plaintiff a duty.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard Allen Griffin  
/s/ Henry William Saad