

STATE OF MICHIGAN  
COURT OF APPEALS

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JANICE PEET and GERALD G. PEET,

Plaintiffs-Appellees,

V

RICHARD PAUL BESHORE, D.O., and  
RICHARD PAUL BESHORE, D.O., P.C.,

Defendants-Appellees.

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UNPUBLISHED  
November 8, 2005

No. 255407  
Eaton Circuit Court  
LC No. 03-000884-NH

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

In this medical malpractice action, defendants appeal by leave granted the circuit court order denying their motion for summary disposition. We affirm.

When filing their complaint, plaintiffs included an affidavit of merit of a California physician and surgeon. MCL 600.2912d. The affidavit of merit was notarized by a California notary public. Defendants moved for summary disposition, arguing that the affidavit of merit was invalid because it did not contain a certification for the out-of-state notary, as required by MCL 600.2102, and that therefore the affidavit failed to vest the circuit court with jurisdiction. Plaintiffs responded, arguing that they had complied with the affidavit of merit requirements set forth in MCL 600.2912d and *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 711; 620 NW2d 319 (2000), and that under § 2 of the Uniform Recognition of Acknowledgments Act (URAA), MCL 565.261 *et seq.*, no certification was required. MCL 565.262.

In *Apsey v Memorial Hosp (On Reconsideration)*, 266 Mich App 666; 702 NW2d 870 (2005), a panel of this Court concluded that the more specific requirements of MCL 600.2102 control over the general requirements of MCL 565.262. *Id.* at 675-676. “In other words, MCL 565.262 governs notarial acts, including the execution of affidavits, in general, to which MCL 600.2102 adds a special certification requirement when the affidavit is to be read, meaning officially received and considered, by the judiciary.” *Id.* at 676.

However, “[i]n light of the apparent reliance on the URAA by the legal community,” *Apsey* concluded that “justice requires a prospective application” of its interpretation. *Id.* at 680. For the case before it, the *Apsey* Court observed that “[b]ut for the certification, plaintiffs’ complaint would not have been dismissed.” *Id.* at 682. “With regard to all medical malpractice cases pending where plaintiffs are not in compliance with MCL 600.2102(4),” *Apsey* continued,

“on the basis of justice and equity, plaintiffs can come into compliance by filing the proper certification.” *Id.*

Accordingly, because this case was pending when *Apsey* was decided, we remand so that plaintiffs here “can come into compliance by filing the proper certification.” *Id.*

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilderp