

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

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RALPH SITZEMA and LAUREL SITZEMA,

Plaintiffs-Appellants,

v

OAKWOOD HEALTH CARE, INC., d/b/a  
OAKWOOD HEALTH CARE SYSTEM,  
SUBRAHMANYA YELLAYI, M. D., and  
TIMOTHY SELL, M. D.,

Defendants-Appellees.

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UNPUBLISHED

May 25, 2001

No. 220892

Wayne Circuit Court

LC No. 99-901735-NH

Before: Jansen, P.J., and Zahra and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order dismissing their medical malpractice case based on their failure to file an affidavit of merit signed by an appropriate expert. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Ralph Sitzema sustained an infection after undergoing open heart surgery. Defendant physician Yellayi is a board-certified cardiologist, and defendant physician Sell is a board-certified thoracic and cardiovascular surgeon. The affidavit of merit filed with plaintiffs' complaint was signed by a board-certified surgeon. The trial court granted defendants' motions for summary disposition, finding that the affidavit of merit did not meet the requirements of the statute.

MCL 691.2912(d); MSA 27A.2912(4) provides that a plaintiff in a medical malpractice action must file with the complaint an affidavit of merit signed by a health care professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under § 2169. MCL 691.2169; MSA 27A.2169 provides that in a medical malpractice action involving a board-certified specialist, a person shall not give expert testimony on the appropriate standard of care unless he is a specialist who is board-certified in the same specialty.

Plaintiffs do not contest that their expert is not board-certified in defendants' specialties, and does not meet the statutory requirements. Dismissal without prejudice is the appropriate sanction where an affidavit of merit is improperly filed. *Dorris v Detroit Osteopathic Hosp*, 460 Mich 26; 594 NW2d 455 (1999). The circuit court did not err in dismissing plaintiffs' case.

Affirmed.

/s/ Kathleen Jansen  
/s/ Brian K. Zahra  
/s/ Donald S. Owens