

STATE OF MICHIGAN
COURT OF APPEALS

STACY R. BURDICK,

Plaintiff-Appellant,

v

INGHAM REGIONAL MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED

August 2, 2002

No. 231757

Ingham Circuit Court

LC No. 00-092090-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On July 12, 2000, plaintiff filed suit alleging on July 21, 1997, she received treatment at defendant's facility for an injured left foot, and that she sustained a laceration to her leg when a hospital employee inserted a metal rod between the cast on her leg and her leg in an attempt to relieve the discomfort of which she had complained. Plaintiff alleged that defendant breached its duty to properly train its employees and to provide appropriate medical care and treatment.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(4), (7), (8), and (10), arguing plaintiff's claim sounded in medical malpractice and was barred by the applicable two-year statute of limitations, MCL 600.5805(5), and was subject to dismissal because it was not accompanied by an affidavit of merit as required by MCL 600.2912d. In response, plaintiff argued the claim sounded in ordinary negligence rather than medical malpractice.

The trial court granted defendant's motion pursuant to MCR 2.116(C)(4)¹ and (C)(7), finding that because plaintiff's suit raised issues related to what reasonable and appropriate

¹ The basis of the trial court's determination that it lacked subject matter jurisdiction is not clear. The issue of subject matter jurisdiction concerns a court's power to try a case of the kind or character of the one pending, and is not dependent on the facts of a particular case. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 204; 631 NW2d 733 (2001). If the trial court found that plaintiff's failure to file a notice of intent and affidavit of merit divested it of subject matter jurisdiction, it erred in so concluding. A circuit court has jurisdiction over a claim of negligence constituting medical malpractice. The failure of a party to comply with a statutory requirement

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medical care should have been rendered, the claim sounded in medical malpractice. The court concluded that because plaintiff did not file notice of intent to sue and an affidavit of merit, her claim was subject to dismissal, and because the claim was not filed within two years of the time it accrued, it was barred by the statute of limitations.

A trial court's decision on a motion for summary disposition granted pursuant to MCR 2.116(C)(4) and/or (C)(7) is subject to de novo review. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001); *DiPonio Construction Co v Rosati Masonry Co*, 246 Mich App 43, 46-47; 631 NW2d 59 (2001).

The statute of limitations for a medical malpractice action is two years. MCL 600.5805(5). A medical malpractice claim accrues at the time of the act or omission that serves as the basis for the claim. MCL 600.5838a(1). Whether a medical malpractice limitations period applies depends on the nature of the allegations. The key to whether a claim sounds in malpractice is whether it is alleged that the negligence occurred within the course of a professional relationship in which medical care and treatment was rendered. *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46-47; 594 NW2d 455 (1999); *Regalski v Cardiology Associates, PC*, 459 Mich 891; 587 NW2d 502 (1998).

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff's complaint alleged that defendant's employee lacerated her leg while attempting to relieve discomfort she felt from the cast on her lower leg. In *Regalski, supra*, the complaint alleged the plaintiff was injured because the defendant's technician was negligent in assisting her out of a wheelchair and onto an examination table where a test was to be performed. Our Supreme Court concluded that the complaint sounded in malpractice because the act that formed the basis of the suit constituted the rendering of medical care and treatment.

Here, the act that formed the basis of plaintiff's complaint occurred in the context of plaintiff's professional relationship with defendant and involved the rendering of treatment intended to relieve discomfort resulting from a medical procedure. The trial court correctly determined that plaintiff's claim sounded in medical malpractice rather than in ordinary negligence. *Dorris, supra; Regalski, supra*. The complaint was not filed within the applicable two-year limitations period. MCL 600.5805(5). Summary disposition was proper. MCR 2.116(C)(7).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra

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does not divest the court of that jurisdiction. See *Wilhelm v Mustafa*, 243 Mich App 478, 482-483; 624 NW2d 435 (2000) (failure of the defendant to timely file an affidavit of meritorious defense as required by MCL 600.2912e(1) did not divest the court of subject matter jurisdiction). Nevertheless, we affirm the trial court's decision because it correctly granted summary disposition pursuant to MCR 2.116(C)(7).