STATE OF MICHIGAN

COURT OF APPEALS

VICKI L. ZUNICH, Individually, as Next Friend for CHARLES ZUNICH, a Minor, as Next Friend for MATTHEW ZUNICH, a Minor, and as Personal Representative of the Estate of STEVEN J. ZUNICH, Deceased,

Plaintiff-Appellant,

v

FAMILY MEDICINE ASSOCIATES OF MIDLAND, P.C., JERRY L. FERRELL, M.D., and ROBERTA L. CORBAT,

Defendants-Appellees.

UNPUBLISHED
May 15, 2007

No. 265027
Midland Circuit Court
LC No. 03-005843-NH

VICKI L. ZUNICH, Individually, as Next Friend for CHARLES ZUNICH, a Minor, as Next Friend for MATTHEW ZUNICH, a Minor, and as Personal Representative of the Estate of STEVEN ZUNICH, Deceased,

Plaintiff-Appellant,

v

MIDMICHIGAN MEDICAL CENTER-MIDLAND, JEFFREY S. NEWMAN, M.D., FAMILY MEDICINE ASSOCIATES OF MIDLAND, P.C., a/k/a FAMILY PRACTICE ASSOCIATES OF MIDLAND, P.C., KENNETH M. MACKINNON, M.D., JAMES H. FRYE, M.D., MIDMICHIGAN HEALTH, and FAITH D. FUENTES, M.D.,

Defendants-Appellees.

No. 265028
Midland Circuit Court
LC No. 02-005382-NH

Before: Markey, P.J., and Sawyer and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the decision of the circuit court to grant defendants' motions for summary disposition. The court held that plaintiff could not proceed with her medical malpractice suit because the notices of intent (NOIs) she sent to defendants prior to filing suit, pursuant to MCL 600.2912b, were insufficient to provide notice within the meaning of the statute as interpreted by our Supreme Court in *Roberts v Mecosta Co Gen Hosp*, 470 Mich 679; 684 NW2d 711 (2004). We affirm.

On appeal, plaintiff argues that the trial court erred by dismissing her case because her notice of intent (NOI) was sufficient to put defendants on notice of the charges against them. Plaintiff's husband suffered a series of seizures, the last of which was a grand mal that caused him to lose consciousness. After undergoing emergency brain surgery, plaintiff's husband died from a brain hemorrhage, which was the cause of the seizures. Plaintiff filed the instant case after sending defendants an original and amended NOI.

MCL 600.2912b requires a potential plaintiff who is alleging medical malpractice to provide notice to the prospective defendant or defendants before filing suit. The statute provides, in pertinent part:

> The notice given to a health professional or health facility under this section shall contain a statement of at least all of the following:
>
> (a) The factual basis for the claim.
>
> (b) The applicable standard of practice or care alleged by the claimant.
>
> (c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.
>
> (d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice or care.
>
> (e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice.
>
> (f) The names of all health professionals and health facilities the claimant is notifying under this section in relation to the claim. [MCL 600.2912b(4)].

Defendants allege that plaintiff's first and amended NOIs were insufficient as to § 2912b(4)(b), (c), and (d). In support of their argument, defendants cite our Supreme Court's decision in *Roberts*, claiming that the circumstances of that case are substantially similar to the instant one.

In *Roberts*, our Supreme Court concluded that the plaintiff had not complied with § 2912b because although her NOI met some of the statutory requirements, it did not meet all of them. *Roberts, supra* at 690. Specifically, the Court found that the plaintiff's NOI essentially claimed that the " '[d]efendants breached the standard of care by breaching the standard of

care[,]" which was a "circular and unresponsive assertion [that] is not minimally compliant with the statutory mandate." *Id.* at 696. The Court further held that the plaintiff's NOI failed to "aver the specific standard of care that she is claiming to be applicable to each particular professional or facility that is named in the notice." *Id.* at 692 (emphasis omitted).

In the instant case, plaintiff's first NOI lists eight alleged breaches of the standard of care by defendants, but does not state which defendant was responsible for which alleged breach. Plaintiff's amended NOI sets forth sixteen alleged breaches, but still does not identify which defendant was allegedly responsible for each breach. Although defendants argue that simply alleging a breach of the standard of care without identifying a corresponding defendant does not satisfy the notice requirements of the statute, *Roberts* suggests that if the Court is able to "discern" the manner in which the standards of care were breached from other parts of the NOI, a plaintiff may have satisfied the statute. See *Roberts, supra* at 697 (stating that the Court was "unable to discern . . . any statement of the manner in which the standards of care were breached" from the plaintiff's statement of the facts). However, the Court also states that an " 'inference' is not sufficient to meet the statutory requirement that plaintiff provide a statement of the manner in which each defendant breached the applicable standard of care." *Id.* (emphasis omitted).

Plaintiff argues that this case differs from *Roberts* in that the plaintiff's notice in that case failed to specify *any* applicable standard of care to which the defendants could be held accountable, and plaintiff in the instant case stated several standards of care that defendants allegedly breached. While plaintiff in the instant case did allege certain standards of care with some specificity, she failed to pair each alleged breach with a particular defendant. We find that under *Roberts*, this was insufficient to provide notice to defendants under § 2912b.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Richard A. Bandstra