

SUPREME COURT OF MICHIGAN

Vanslebrouck v. Halperin

483 Mich. 965 (2009) · No. 135893 · Decided April 24, 2009

SUMMARY

The Michigan Supreme Court vacated its prior order granting leave to appeal and denied the application for leave to appeal the Court of Appeals judgment. In a dissent, Justice Corrigan argued that MCL 600.5851(7) is a saving provision rather than a statute of limitations and therefore is not tolled during the medical-malpractice presuit notice period under MCL 600.5856(c). The dissent concluded that the minor plaintiff's complaint was untimely and should have been dismissed with prejudice.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Corrigan, J.; Young, J.; Markman, J.
JURISDICTION	Michigan
DECIDED	April 24, 2009
DOCKET	135893
DISPOSITION	other
PROCEDURAL POSTURE	The Michigan Supreme Court had granted leave to appeal from the Court of Appeals' judgment, then vacated its prior order granting leave and denied the application for leave to appeal.
PRECEDENTIAL VALUE	Published Michigan Supreme Court order; no merits holding because leave to appeal was denied.
PARTIES	Andrew Jay Halperin, M.D., Michigan Institute of Gynecology & Obstetrics, P.C., William Beaumont Hospital v. Markell Vanslebrouck, a minor, by her next friend Kimberly A. Vanslebrouck, Kimberly A. Vanslebrouck, individually

TOPICS

- statute of limitations
- medical malpractice
- statutory interpretation
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether MCL 600.5851(7) is a statute of limitations or an alternative saving provision for a medical-malpractice claim accruing before a child's eighth birthday.
2. Whether the notice-of-intent tolling provision in MCL 600.5856(c) tolls the filing deadline established by MCL 600.5851(7).
3. Whether the complaint was untimely under the statutory scheme governing medical-malpractice claims by minors.

KEY QUOTATIONS

“The application for leave to appeal the January 15, 2008 judgment of the Court of Appeals is DENIED, because we are no longer persuaded that the question presented should be reviewed by this Court.” (at 919)

FACTUAL BACKGROUND

The minor plaintiff alleged that medical malpractice during her birth on December 1, 1995 caused hypoxic-ischemic encephalopathy and cerebral palsy. The conditions were diagnosed shortly after birth. Plaintiff mailed the medical-malpractice notice of intent on November 10, 2005, less than one month before her tenth birthday, and filed suit after the statutory presuit waiting period caused the filing to occur after that birthday.

PROCEDURAL HISTORY

The Court of Appeals issued a January 15, 2008 judgment concerning the timeliness of the minor plaintiff's medical-malpractice action. The Michigan Supreme Court had granted leave to appeal, but after considering the briefs and oral arguments, vacated its June 25, 2008 order and denied leave because it was no longer persuaded that review was warranted. Justice Corrigan dissented and would have reversed the Court of Appeals and ordered dismissal with prejudice.

DISPOSITION

other

CASES CITED

- Vanslebrouck v. Halperin, 277 Mich. App. 558, 569, 747 N.W.2d 311 (2008)
- Waltz v. Wyse, 469 Mich. 642, 650, 677 N.W.2d 813 (2004)
- Miller v. Mercy Memorial Hosp., 466 Mich. 196, 202, 644 N.W.2d 730 (2002)
- Vega v. Lakeland Hosps., 479 Mich. 243, 245, 250-251, 736 N.W.2d 561 (2007)
- Howard v. Gen. Motors Corp., 427 Mich. 358, 384, 399 N.W.2d 10 (1986)
- Lindsey v. Harper Hosp., 455 Mich. 56, 61, 65, 564 N.W.2d 861 (1997)
- Brackett v. Focus Hope, 482 Mich. 269, 276, 753 N.W.2d 207 (2008)

