

# MACOMB DAILY

## Case of late Macomb woman's estate against St. John Hospital eases filing burden

Lawsuit remanded back to Macomb County Circuit Court



The Michigan Supreme Court is comprised of Justice Stephen J. Markman, front row from left, Chief Justice Bridget Mary McCormack and Justice Brian K. Zahra, and, back row from left, justices Elizabeth T. Clement, David F. Viviano, Richard Bernstein and Megan K. Cavanagh. MICHIGAN SUPREME COURT PHOTO

By JAMESON COOK  
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A Michigan Supreme Court ruling in a Macomb County medical malpractice case will ease the burden of the patient to recognize potential wrongdoing by a doctor to comply with the statute of limitations.

The high court in a 5-2 vote reversed the Court of Appeals and agreed with a Macomb Circuit Court judge by reinstating the lawsuit filed by estate of Kelly Bowman and Vernon Bowman, her husband, against St. John Hospital and Medical Center in Detroit and three other defendants on the claim a doctor misread a mammogram.

The court ruled Bowman didn't file the lawsuit notice in time, within six months of May 2015 when she was diagnosed with breast cancer and learned the disease had spread to her lymph node. However, a majority of the Supreme Court justices say the clock didn't start on the six-month statute of limitations until August 2016 when Bowman learned from a specialist the mammogram may have been misread. She had learned in July 2016 the cancer had spread to her bone marrow.

"This ruling absolutely makes sure you can't impose a responsibility on the patient when a doctor said the patient didn't have cancer," said Bowman's attorney, Brian McKeen. "People have the right to rely on the opinion of a medical professional.

"This is a victory not just for this family but for all victims of medical malpractice in Michigan."

The majority opinion, written by Justice Elizabeth Clement, says: "Ms. Bowman seems to have done just what the medical community asked of her. She examined herself and found a lump. But according to her complaint, when she passed the baton to the professionals, they dropped it.

"Given the evidence that Ms. Bowman engaged in behavior that could be characterized as diligent, we cannot resolve this case summarily. For these reasons, we hold that the defendants were not entitled to summary disposition."

The case is now remanded for further proceedings in Macomb Circuit Court, where a status conference is scheduled for Sept. 14 in front of Judge Julie Gatti, according to court records.

Judge Richard Caretti in December 2017 denied most of the dismissal request by the defendants but was reversed by the court of appeals. The case was transferred to Gatti in March 2019.

Kelly Bowman's estate alleges in the lawsuit Dr. Tushar Parikh of Romeo Plank Diagnostic Center in Macomb Township misread a mammogram in 2013 by saying a lump in her breast was benign. In May 2015, after Mrs. Bowman noticed the lump was growing, she was diagnosed with breast cancer and had a double mastectomy.

But she wasn't made aware of the potential malpractice until August 2016 and filed notice in December 2016, within the six-month period.

"This was a completely preventable death," McKeen said. "The opportunity passed to save her life."

The majority opinion supported by five of the seven justices. Justice David Viviano supported the outcome but dissented on the reasoning.

Justice Brian Zahra, the lone dissenter on the outcome, said: “Bowman should have called that diagnosis into question after the biopsy performed on April 29, 2015, revealed (about two weeks later) that the mass was cancerous.”

That would have meant she would have had to file notice by November 2015.