

FILED

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RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Davis, C.J., dissenting:

In this case, the plaintiff's complaint was dismissed solely upon the grounds that she did not serve a notice of claim on the defendant, thirty days before filing the action, as required by the Medical Professional Liability Act. On appeal to this Court, the plaintiff challenged the dismissal of her complaint on the grounds that the pre-suit requirements of the Act were unconstitutional. In resolving this case, the majority opinion decided not to address the constitutional issue raised by the plaintiff. Instead, the majority affirmed the dismissal on the basis that the plaintiff could refile her complaint after complying with the Act.

As I stated in *Hinchman*, the pre-suit requirements of the Act encroach upon this Court's constitutional authority to promulgate procedural rules for litigating in the courts of this State. Consequently, and for the reasons more fully set out in my concurring opinion in *Hinchman v. Gillette*, 217 W.Va. 378, 387, 618 S.E.2d 387, 396 (2005) (Davis, J., concurring), I respectfully dissent.