

STATE OF MICHIGAN
COURT OF APPEALS

ROBIN LILLY, Personal Representative of the Estate
of JONATHON ROY, Deceased,

UNPUBLISHED
May 27, 1997

Plaintiff-Appellant,

v

MIDMICHIGAN REGIONAL MEDICAL CENTER,

No. 191756
Midland Circuit Court
LC No. 93-2528 NH

Defendant-Appellee.

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Plaintiff appeals by right a directed verdict entered in favor of defendant hospital at the close of plaintiff's proofs in this medical malpractice action. This case is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue presented is whether plaintiff produced sufficient evidence to create a triable issue of fact regarding defendant's liability on an ostensible agency theory pursuant to *Grewe v Mt Clemens General Hospital*, 404 Mich 240, 250-251; 273 NW2d 429 (1978). The contention by defendant, accepted by the trial court, that because Dr. Khabir at the Central Michigan Community Hospital emergency room in Mt. Pleasant, without ever personally seeing or evaluating plaintiff's decedent's condition, directed the paramedics to transfer decedent to defendant hospital, where more appropriate facilities for the types of injuries described by the paramedics using telecommunications could be obtained, the staff physicians who treated decedent at defendant hospital should be regarded as having been chosen by Dr. Khabir, with whom decedent thus had some form of prior relationship. We disagree. Plaintiff had no actual physician-patient relationship with Dr. Khabir, and did not rely on him for selection of other specialists to treat his injuries. See *Johnson v University of Chicago Hospital*, 982 F2d 230, 233 (CA 7, 1992); *Miller v Medical Center of Southwest Louisiana*, 22 F3d 626, 630 (CA 5, 1994) (both addressing the issue under the anti-dumping statute, 42 USC §1395dd).

The critical factor in a *Grewe* analysis is whether the plaintiff reasonably looked to the hospital for treatment or merely viewed it as a situs for treatment by his personal physician. *Strach v St Johns*

Hospital, 160 Mich App 251, 266; 408 NW2d 441 (1987). Here, where plaintiff's decedent had no prior relationship with any of the physicians or nurses involved, and left it to defendant hospital to assign an emergency physician or surgeon from its staff for treatment of his vehicular injuries, at least a triable issue of fact exists on this record to establish defendant's liability on an ostensible agency theory.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald