STATE OF MICHIGAN

COURT OF APPEALS

JEAN MARIE PROVOST,

        Plaintiff-Appellant,

v

JAMES ROGER BLACK,

        Defendant-Appellee.

UNPUBLISHED
May 30, 1997

No. 197771
Houghton Circuit Court
LC No. 95-009328-NH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on her claim of medical malpractice. We affirm.

Plaintiff first claims that the trial court erred in finding that an actual physician-patient relationship between plaintiff and defendant was lacking. She maintains that a genuine issue of material fact existed on this point so as to preclude summary disposition under MCR 2.116(C)(10). It is well established that the duty in a medical malpractice case arises from the physician-patient relationship. *Hill v Kokosky*, 186 Mich App 300, 302; 463 NW2d 265 (1990). To avoid summary disposition in a medical malpractice action, the plaintiff has the burden of coming forward with documentary evidence showing that a physician-patient relationship existed. *Id*. at 303, quoting *Rogers v Horvath*, 65 Mich App 644, 646; 237 NW2d 595 (1975). The foundation upon which a physician-patient relationship is based is contractual. *Id*.

The record is replete with testimony that a personal relationship between these parties predated any medical treatment.[1] Plaintiff claims defendant wrote her medical prescriptions, and in so doing, established an ongoing physician-patient relationship with her. Her proofs consisted of receipts from various pharmacies, indicating that defendant had written her prescriptions. The only receipts relevant to her claims were those written in February of 1993. Defendant wrote plaintiff a prescription for Ibuprofen on February 6, 1993, and for Ceclor on February 19, 1993. Plaintiff claims that the pregnancy occurred in February 1994. The writing of two prescriptions was insufficient to create an ongoing physician-patient relationship and an ongoing duty. Any physician-patient relationship resulting

from the writing of these prescriptions ended when plaintiff used the medications and experienced no subsequent problems.

Additionally, plaintiff maintains that defendant counseled her during a suicide attempt in August of 1993, and that he monitored her mental health until the point when she became pregnant. Yet plaintiff admitted repeatedly that she had no documentation to support these claims. She offered no proof of professional correspondence, billing statements, appointment cards, or insurance forms. Other than plaintiff's allegations, there was no evidence of an ongoing physician-patient relationship. As we have pointed out previously, the absence of a legal duty means the absence of liability for negligence. *Hill, supra* at 302, quoting *Duvall v Golden*, 139 Mich App 342, 347; 362 NW2d 275 (1984). Therefore, the trial court did not err in dismissing plaintiff's claims because no physician-patient relationship existed.

Plaintiff next argues that the trial court erred in finding that there was an insufficient causal relationship between the medical treatment allegedly administered and the asserted injury. We disagree. The only authority which plaintiff provides to establish a causal connection between the writing of the prescriptions in February of 1993 and the pregnancy in February of 1994 is MCL 333.17708(2); MSA 14.15(17708)(2). This statute merely sets out a definitional section for the Pharmacy and Drug Control Act, MCL 333.17703 *et seq.*; MSA 14.15(17703) *et seq.* Moreover, even if plaintiff were able to establish a physician-patient relationship based on the prescriptions for Ibuprofen and Ceclor, this could not have been the cause of plaintiff's pregnancy and resultant emotional upset. Therefore, the lower court's grant of summary disposition on the basis of lack of causation was also proper.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman

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[1] In fact, defendant not was plaintiff's physician, but her children's pediatrician.