

STATE OF MICHIGAN
COURT OF APPEALS

RONYA CARTER,

Plaintiff-Appellant,

v

GINA LYNEM-HAYDEN and HENRY FORD
MEDICAL CENTER,

Defendant-Appellees.

UNPUBLISHED

April 14, 1998

No. 201326

Wayne Circuit Court

LC No. 96-646252-NM

Before: Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this action for breach of physician-patient confidentiality, MCL 600.2157; MSA 27A.2157. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm and remand for sanctions pursuant to MCR 7.216(C).

Defendant Lynem-Hayden, plaintiff's treating psychiatrist, responded to a notice of deposition served in litigation plaintiff had initiated against her employer, Chrysler Corporation, in Wayne County Circuit Court action 95-517159-CZ, based on allegations of breach of contract and discrimination on the basis of race, gender, and religion. In the complaint against her employer, plaintiff sought damages, inter alia, for emotional distress and other forms of mental anguish. Although notified of and present, through counsel at least, at the deposition, plaintiff interposed no objection on grounds of privilege, as she was required to do under MCR 2.306(D)(4), or her privilege would be waived for that action. Of course, had plaintiff objected she would have been precluded from pursuing any form of mental anguish damages. *Hyde v University of Michigan Board of Regents*, 226 Mich App 511; ___ NW2d ___ (1997).

Given plaintiff's lack of timely objection to defendants' participation in the indicated deposition, defendants breached no confidentiality by answering questions at that deposition. *Domako v Rowe*, 438 Mich 347; 475 NW2d 30 (1991); *Landelius v Sackellares*, 453 Mich 470; 556 NW2d 472 (1996). Accordingly, summary disposition in favor of defendants was properly granted.

In light of plaintiff's failure to either cite or even attempt to distinguish MCR 2.306(D)(4), or *Domako v Rowe, supra*, this Court concludes that this appeal is wholly frivolous and vexatious, and that this cause should be remanded to the Wayne Circuit Court for a determination of defendants' actual reasonable costs and attorney fees in defending this appeal, which costs shall be assessed against plaintiff's counsel, whose professional obligation it was not to pursue such a frivolous appeal, based on a purely legal issue, whether or not the client desired such a course of action. MRPC 3.1; MCR 7.216(C)(2).

Summary disposition affirmed; remanded to the Wayne Circuit Court for further proceedings consistent with this opinion. We do not retain jurisdiction

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison