

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE ABBY,

Plaintiff-Appellant,

v

W. A. FOOTE MEMORIAL HOSPITAL,

Defendant-Appellee.

UNPUBLISHED

March 26, 1999

No. 206420

Jackson Circuit Court

LC No. 96-077777 NO

Before: Markman, P.J., and Hoekstra and Zahra, JJ.

PER CURIAM.

In this negligence action plaintiff appeals as of right from an order granting summary disposition to defendant. We affirm.

Plaintiff, a mortician, filed a claim against defendant for alleged negligence in failing to notify plaintiff of the presence of an infectious agent in the body of a deceased patient. The patient had been tested for tuberculosis with negative results. Within weeks of the tests, the patient died. Plaintiff performed embalming services on the deceased without preventative measures being taken. Approximately ten days after the patient died, however, the Michigan Department of Public Health notified defendant that it had positively diagnosed tuberculosis in the now-deceased patient. Plaintiff claimed that, in the meantime, he contracted tuberculosis from the deceased man, and brought this negligence action against defendant.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). We note that the circuit court did not specify which subrule provided the ground for its grant of summary disposition to defendant. However, because the parties submitted documentary evidence with their motions and relied on matters outside the pleadings in their arguments, we assume that summary disposition was granted pursuant to MCR 2.116(C)(10). See *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 524; 542 NW2d 912 (1995). This Court reviews a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek, supra* at 337. The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other

documentary evidence, set forth specific facts showing there is a genuine issue of material fact for trial. MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

The first issue here is whether defendant had a duty to warn under MCL 333.2843b(1); MSA 14.15(2843b(1)). This statute requires physicians with actual knowledge of the presence of an infectious agent in the body of a deceased patient to notify the funeral director or his authorized agent of the appropriate infection so that precautions can be taken. MCL 333.2843b; MSA 14.15(2843b). Plaintiff argues that the term “physician,” as used in the statute, should be interpreted to include the hospitals at which the physicians practice. We disagree. When statutory language is clear and unambiguous, the intent of the Legislature must be effectuated according to the statute’s plain meaning. *Dean v Dep’t of Corrections*, 453 Mich 448, 454; 556 NW2d 458 (1996). Additionally, in applying statutes, courts are to interpret statutory words according to their ordinary and generally accepted meaning. *Piper v Pettibone Corp*, 450 Mich 565, 572; 542 NW2d 269 (1995). This statute is clear and unambiguous, and giving the term “physician” its ordinary and generally accepted meaning, we decline to interpret this statute to include hospitals.

Given this interpretation of the statute, it is unnecessary to determine whether a genuine issue of material fact exists regarding whether defendant, in fact, had actual knowledge of the infectious agent in the decedent at the time that the body was passed on to plaintiff. In this regard, however, we note that the only evidence submitted was the affidavit of an expert who opined in a conclusory fashion that the hospital had actual knowledge of an infectious agent in the decedent. Such conclusory assertions do not satisfy the requirements of MCR 2.116(C)(10) because disputed fact must be established by admissible evidence. *Marsh v Dep’t of Civil Service (After Rem)*, 173 Mich App 72, 77-8; 433 NW2d 820 (1988).

Next, plaintiff argues that the hospital’s own internal policy statements impose a duty upon the hospital to notify the funeral director or his agent of the presence of infectious agents in the deceased. We disagree. The proposition that an institution’s internal rules and regulations do not add to its legal obligations to the public, or establish a new standard of care, is longstanding. *Gallagher v Detroit-Macomb Hospital*, 171 Mich App 761, 765; 431 NW2d 90 (1988), citing *McKernan v Detroit CSR Co*, 138 Mich 519, 524; 101 NW 812 (1904). The law does not permit corporations to legislate away their responsibilities through the use of internal rules and, concomitantly, it does not permit liabilities to be imposed upon them in this manner. *McKernan*, *supra* at 532 (J. Hooker, concurring).

Next, plaintiff argues that there was a common-law duty to warn of the presence of an infectious agent. We again disagree. Generally, there is no duty that obligates one person to protect another absent a special relationship between them. *Murdock v Higgins*, 454 Mich 46, 48; 559 NW2d 639 (1997). To determine whether a special relationship exists which imposes a duty upon another involves, in part, a determination whether the plaintiff entrusted himself to the protection and control of the defendant with the consequent loss of control to protect himself. *Murdock v Higgins*, 208 Mich App 210, 215; 527 NW2d 1 (1994), *aff’d* 454 Mich 46 (1997), citing *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992). Plaintiff cites no case law which has found a duty based on a special relationship between a hospital and a mortician to warn of an infectious agent. Nor has plaintiff offered any proof that he entrusted himself to the protection and control of

defendant and suffered the consequent loss of ability to protect himself. In this regard, we note that the consent for body release form between the hospital and the mortician states the following in capital letters “the Center for Disease Control recommends the use of blood and body fluid precautions for *all* patients.” Further, we note that defendant had no control over plaintiff’s work procedures and could not enact or enforce policies setting forth precautions to be taken in the course of embalming services.

Affirmed.

/s/ Stephen J. Markman

/s/ Joel P. Hoekstra

/s/ Brian K. Zahra