

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JONATHON SWINTON,

Plaintiff-Appellant,

v

ST LUKE'S HEALTHCARE ASSOCIATION, n/k/a  
COVENANT HEALTHCARE SYSTEM,

Defendant-Appellee.

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UNPUBLISHED

June 13, 2000

No. 217172

Saginaw Circuit Court

LC No. 98-025074-CZ

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was shot by police officers while he was holding several people hostage. Plaintiff was then taken to defendant hospital, where he alleges that he was treated without authorization. He brought this action alleging common law trespass to the person. When defendant sought discovery of plaintiff's medical history, plaintiff objected based on privilege. Defendant then moved for summary disposition, asserting that plaintiff could not prove the element of damages without evidence of his physical and mental condition.

Plaintiff argues that because the information sought was not relevant to his lawsuit, the trial court erred in granting defendant's summary disposition motion. We disagree. MCR 2.314(B)(2) provides:

Unless the court orders otherwise, if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information otherwise discoverable under MCR 2.302(B), the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or mental or physical condition.

The trial court did not enter an order changing the effect of privilege under MCR 2.314, and plaintiff was barred from presenting evidence related to his medical history or physical or mental condition. Damages are a central element of plaintiff's tort action. Where he is barred from presenting evidence of damages, there is no basis for holding a trial, and the court properly granted summary disposition to defendant. See *Hyde v University of Michigan Bd of Regents*, 226 Mich App 511, 527; 575 NW2d 36 (1997).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra