

STATE OF MICHIGAN
COURT OF APPEALS

NADINE DANIELS, Personal Representative of the
Estate of ROBERT DANIELS, Deceased,

UNPUBLISHED
October 31, 2000

Plaintiff-Appellant,

v

No. 215592
Wayne Circuit Court
LC No. 97-737340-NH

SINAI HOSPITAL,

Defendant-Appellee,

and

JOHN DOE, D.O., and JANE DOE, R.N.,

Defendants-Not Participating.

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court's order granting defendant's motion to quash service of process, and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 19, 1997, plaintiff filed a complaint alleging medical malpractice and naming as defendants Sinai Hospital, John Doe, D.O., and Jane Doe, R.N. A separate summons was issued for each defendant. On or about February 17, 1998, copies of the complaint and the summons directed to Sinai Hospital were delivered to the registered agent for Sinai Hospital Medical Staff Education Corporation, an entity separate from Sinai Hospital. On the same date copies of the complaint and the summons directed to Jane Doe, R.N. were delivered to the registered agent for Sinai Hospital. On February 19, 1998, Sinai Hospital received a copy of the complaint and the summons directed to it.

Sinai Hospital moved to quash service on the ground that it was never served with process as provided by the court rules. The trial court granted the motion on the ground that Sinai Hospital was not served with the correct summons prior to the expiration of the summons.

We review a trial court's decision to grant a motion to quash for an abuse of discretion. See *Bush v Beemer*, 224 Mich App 457, 466; 569 NW2d 636 (1997).

Plaintiff argues that the trial court abused its discretion by granting Sinai Hospital's motion to quash, and dismissing the case. We disagree and affirm. Although the hospital was served with a copy of the complaint during the life of the summons, it did not receive the summons directed to it. The summons informs the defendant that an action has been commenced, and advises the defendant of his rights and duties. MCR 2.102(B). Although MCR 2.105(J)(3) provides that "[a]n action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service," that rule assumes that the correct summons will be served with the complaint. See *Holliday v Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991). Because the wrong summons was provided, Sinai Hospital did not receive the requisite notice that it was being sued prior to the expiration of the summons. MCR 2.105(J)(3) does not excuse a failure of service.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage