STATE OF MICHIGAN

COURT OF APPEALS

GLORIA LABARGE, Next Friend of BRADLEY LABARGE, Minor,

Plaintiff-Appellant,

V

DR. LUIS MARMANILLO, DR. KANAMARLAPUDI RAO and DR. NARASINGRAO PAMPATI,

Defendants-Appellees,

and

DR. ANTHONY ATALLA and CYNTHIA HOGAN, R.N.,

Defendants.

UNPUBLISHED
December 28, 2001

No. 224352
Oakland Circuit Court
LC No. 92-436713-NH

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The circuit court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). In deciding a motion brought under MCR 2.116(C)(7) asserting immunity granted by law, this Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. Such a motion should be granted only if no factual development could provide a basis for recovery. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Because plaintiff's claim accrued before the 1986 amendment of MCL 691.1407, individual immunity is decided under *Ross v Consumers Power Co (On Rehearing)*, 420 Mich

* Circuit judge, sitting on the Court of Appeals by assignment.

567; 363 NW2d 641 (1984). Individual employees are immune from tort liability when they are acting in the course of their employment and scope of authority, are acting in good faith, and are performing discretionary, as opposed to ministerial, acts. *Id*. at 633-634. The only issue here is whether defendants were performing ministerial or discretionary acts.

Discretionary-decisional acts are those which involve significant decision-making and require personal deliberation, decision, and judgment. *Id*. at 364-365. Ministerial-operational acts are those which involve the execution of a decision or performance of a duty in which the individual has little or no choice. *Id*. In medical cases, acts relating "directly to the diagnosis, care, and treatment of" a patient generally involve "decision making rather than the mere following of a prescribed line of conduct" and thus are discretionary-decisional in nature. *Canon v Thumudo,* 430 Mich 326, 338; 422 NW2d 688 (1988). Generally, medical decisions are discretionary in nature, but their execution can be ministerial even though it may require minor decision-making and some personal deliberation and judgment. *Green v Berrien Gen'l Hosp,* 437 Mich 1, 13-14; 464 NW2d 703 (1990); *Tobias v Phelps,* 144 Mich App 272, 281; 375 NW2d 365 (1985). The mere fact that a doctor's action was "negligently performed—i.e., in violation of the requisite standard of care" does not make it ministerial in nature. *Canon, supra* at 335. The relevant inquiry is whether the specific act complained of was discretionary-decisional in nature, not whether it was negligently performed. *Id*. at 350. "Whether an activity is discretionary or ministerial is a question of law." *Abraham v Jackson,* 189 Mich App 367, 371; 473 NW2d 699 (1991).

The circuit court correctly ruled that the actions of defendant Pampati or Rao, the neonatologist attending the birth, was discretionary in nature. When Bradley was born and was not breathing on his own, the staff undertook resuscitative efforts. The various measures included tactile stimulation, administering oxygen, intubating and suctioning the respiratory passage, and "bagging." In addition, albumin and bicarbonate were administered. Such activity was more than mere obedience to established procedure or minor decision-making. The staff had to assess the baby's condition, determine what procedures would bring about the desired results with the least adverse effects, whether drugs should be administered, and if so, the appropriate dosages. Such activity involved significant medical judgment and thus was discretionary. *Abraham, supra* at 371; *DeRocco v Harper Grace Hosp,* 182 Mich App 188, 192; 451 NW2d 549 (1989). The fact that the staff was negligent in not trying other means or administering an improper dosage of medication does not mean that the activity was ministerial. *Canon, supra* at 335. Therefore, the circuit court did not err in granting that aspect of defendants' motion.

The circuit court erred in ruling that defendant Marmanillo's actions were discretionary. The evidence, when taken in a light most favorable to the plaintiff, showed that the fetal heart monitor readings were plainly abnormal and those abnormal readings were noted in the nursing chart. The evidence also showed that established rules or protocols required residents to report abnormal readings, whether detected by themselves or the nurses, to the attending physician. Because no discretion was involved in deciding whether the readings were abnormal or whether to inform the attending physician, the act was ministerial. However, the circuit court's error does not necessitate reversal because defendants' negligence was not a proximate cause of Bradley's injuries.

The issue of proximate cause is generally a question of fact. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000). If, however, "the facts bearing upon proximate cause are not in dispute and reasonable persons could not differ about the application of the legal concept of proximate cause to those facts," the issue is a question of law for the court. *Paddock v Tuscola & SB R Co, Inc*, 225 Mich App 526, 537; 571 NW2d 564 (1997).

The evidence shows that the attending physician was at the hospital by 8:00 a.m. and took charge of the case, at which time plaintiff's expert admitted that defendants' responsibility ended. Despite the abnormal fetal heart monitor readings recorded prior thereto, plaintiff's expert stated that the baby was still neurologically intact and remained so until 9:30 a.m. The attending physician stated in his affidavit that he would have reviewed the nursing chart and monitor readings upon arrival at the hospital, and that he would have formed his own interpretation of the monitor strips. The attending physician was apparently satisfied that the monitor readings and baby's condition did not warrant immediate delivery by Caesarian section because he allowed labor to continue until the baby's condition deteriorated sharply after 9:00 a.m. Because Bradley remained neurologically intact while under Marmanillo's care, and Marmanillo's negligence in not informing the attending physician that the strips were abnormal did not affect the attending physician's decision whether an immediate C-section was needed, because the attending made his own assessment, Marmanillo's negligence was not a proximate cause of Bradley's injuries. This Court will not reverse where the circuit court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post