

STATE OF MICHIGAN
COURT OF APPEALS

GARDEN CITY HOSPITAL,

Plaintiff-Appellant,

v

P. LAMONT OKEY, M.D., and P. LAMONT
OKEY, M.D., P.C.,

Defendants-Appellees.

UNPUBLISHED

December 28, 2001

No. 225829

Wayne Circuit Court

LC No. 98-829968-NH

Before: Meter, P.J., and Jansen and R. D. Gotham*, 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)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was sued by a former patient, George Wright, who was treated at the hospital by doctors Armstrong and Goldfarb in June 1992. Wright treated with defendants Okey in 1993 and was diagnosed with Hodgkin's disease by another doctor in 1994. Wright and his wife sued Armstrong, Goldfarb, and the hospital for malpractice in 1995. Plaintiff ultimately settled with the Wrights pursuant to a written settlement and release and subsequently filed this action to obtain contribution from defendants pursuant to MCL 600.2925a. The trial court ruled that plaintiff was not entitled to contribution because the settlement agreement did not release defendants from liability for their alleged negligence as required by MCL 600.2925a(3)(a).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

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

The interpretation of a release is a question of law for the court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000). The general rule is as follows:

The scope of a release is governed by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. [*Id.* at 13-14 (citations omitted).]

The settlement agreement and release was between the Wrights (Claimant) and the hospital (Defendant). It provided in pertinent part:

1.1 In consideration of the payments set forth in Section 2, Claimant hereby completely releases and forever discharge[s] Defendant, . . . and P. Lamont Okey M.D., P.C./Per Lamont Okey M.D. (collectively called "Okey") from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Claimant now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the incident described in Recital A above, including, without limitation, any and all known, unknown or future claims of Claimant's representative or heirs, which have resulted or may result from the alleged acts or omissions of the Defendants or Okey.

* * *

1.5 The Claimant does hereby further covenant and agree that he will never institute in the future any complaint, suit, action or cause of action, in law or in equity, against the Defendant Okey . . . ; nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, cause of action, suit or complaint for or on account of any damage, loss, injury or expense in consequence of the occurrence, casualty or event herein before referred to, whether such injury, damage, loss of [sic] expense is known or unknown, past, present or future.

The "event herein before referred to" as stated in ¶ 1.5 is "the incident described in Recital A above" as stated in ¶ 1.1. Recital A of the document provides:

A. George Wright alleges that the claim arose out of certain alleged negligent acts or omissions of Defendant, Garden City Hospital occurring on or about June, 1992 and which is the subject matter of Wayne County Circuit Court Civil Action No. 95-510313-NM and has made a claim seeking monetary damages on account of those damages.

Given that defendants treated Wright in 1993, that Wright's suit involved a claim for damages for failure to diagnose his illness prior to 1994, and that defendants were included in the settlement agreement, it appears that the agreement was intended to release defendants from liability for any negligence arising out of the failure to diagnose Wright's illness in 1993. According to the plain language of the release, however, defendants were released from liability for any past, present, or future claims arising out of the incident described in Recital A, i.e., the negligence of the hospital as alleged in the 1995 lawsuit. The hospital's negligence, as alleged in that matter, consisted of the failure to supervise Armstrong when he treated Wright in June 1992 and vicarious liability for Goldfarb's failure to diagnose Wright's illness in June 1992. Defendants were not treating Wright at that time and were not in any way responsible for Armstrong's or Goldfarb's treatment of Wright. Because the hospital's settlement agreement with the Wrights did not release defendants from liability arising from their treatment of Wright in 1993, plaintiff was not entitled to contribution.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham