

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM SLOBIN, Personal Representative of  
the ESTATE OF MARTIN SLOBIN,

UNPUBLISHED  
July 9, 2002

Plaintiff-Appellant,

v

HENRY FORD HEALTH CARE,

No. 216196  
Wayne Circuit Court  
LC No. 97-720935-CP

Defendant-Appellee.

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Before: White, P.J., and Wilder and Zahra, JJ.

ZAHRA, J. (*concurring in part and dissenting in part*).

I concur in the reasoning and conclusion expressed in section III(C) of the lead opinion regarding the failure of plaintiff's breach of fiduciary duty claim. I further concur in the conclusion reached in section III(A) of the lead opinion regarding the failure of plaintiff's common law claim to obtain medical records at a reasonable fee.<sup>1</sup> However, I respectfully dissent from the majority's conclusion that the trial court erred in granting summary disposition in regard to plaintiff's MCPA and concert of action claims. I would affirm the trial court's dismissal of plaintiff's entire suit.

I conclude that plaintiff's MCPA claim fails as a matter of law because obtaining medical records for purposes of litigation is not "primarily for personal, family, or household use" and, therefore, does not fit the definition of "trade or commerce" under the MCPA, MCL 445.902(d). See *Zine v Chrysler Corp*, 236 Mich App 261, 270-275; 600 NW2d 384 (1999). If litigation support items were subject to the protection afforded under the MCPA, court reporters, expert witnesses and attorneys could be subject to suit for charging allegedly grossly excessive fees. These goods and services fall outside the scope of the protection provided by the plain meaning of the MCPA. Further, even if I were to assume that such a cause of action could be maintained as it relates to documents copied for purposes of litigation, plaintiff has failed as a matter of law to present evidence that the fees charged were grossly in excess of the price at which similar

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<sup>1</sup> Our Legislature has provided patients a statutory right, pursuant to the patients' bill of rights of the Public Health Code, to receive a copy of their medical records for a reasonable fee. MCL 333.20201(2)(b). I conclude that the Public Health Code provides the only remedy available to plaintiff in this case. At the time the Public Health Code was enacted, there was not a common law right to copy medical records at a reasonable cost and I see no basis for establishing one now.

services are sold. The reproduction of medical records is a labor-intensive service that requires well-trained personnel. An employee must identify and locate the relevant medical records and insure that the patient whose medical records are being reproduced has properly executed a release before any records may be released. Given the nature of this service, I conclude as a matter of law that a fee of \$44.26 for 22 pages of medical records is not grossly excessive, even if, as plaintiff claims, that fee is twice the amount some of defendant's competitors charge for similar records.

Finally, since I conclude plaintiff's predicate causes of action fail, plaintiff's concert of action claim must also fail as a matter of law. I would affirm in its entirety the judgment entered by the trial court.<sup>2</sup>

/s/ Brian K. Zahra

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<sup>2</sup> Given my conclusion that each of plaintiff's claims fail as a matter of law, I do not consider the merit of defendant's voluntary payment doctrine claim.