STATE OF MICHIGAN

COURT OF APPEALS

ROSALYN TANSIL, Personal Representative of the Estate of LORENA MERRIWEATHER, Deceased,

Plaintiff-Appellant,

v

SHIRLEY SHERROD, M.D., and STRAITH HOSPITAL FOR SPECIAL SURGERY,

Defendants-Appellees.

UNPUBLISHED
November 26, 2002

No. 237002
Oakland Circuit Court
LC No. 00-025667-NM

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by right a verdict of no cause of action and the trial court's order granting the motion for partial summary disposition filed by defendant Straith Hospital for Special Surgery. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent entered Straith Hospital for outpatient cataract surgery. Decedent had had cataract surgery at Straith on a previous occasion and chose to return for the second procedure. Straith's rules required that under certain circumstances a patient's physician must obtain a consultation before rendering treatment. Decedent was eighty-three years old and had a history of heart problems and seizures. As a result, decedent's ophthalmologist, defendant Shirley Sherrod, M.D., requested a pre-operative consultation. John Dunn, M.D., examined decedent before surgery. Decedent suffered a massive stroke following surgery and died three days later.

Plaintiff brought suit alleging that Dr. Sherrod, Straith, and Dr. Dunn were negligent in their care of decedent. Plaintiff did not name Dr. Dunn as a party defendant; however, she alleged that Dr. Dunn was Straith's actual or ostensible agent. Straith moved for partial summary disposition pursuant to MCR 2.116(C)(10), seeking dismissal of plaintiff's actual and ostensible agency claims regarding Dr. Dunn. Straith argued that Dr. Dunn was not its employee but rather was an independent contractor, and plaintiff could not establish that decedent had a reasonable belief Dr. Dunn was its employee. The trial court granted Straith's motion, finding the evidence did not create a genuine issue of material fact regarding whether any belief held by decedent to the effect that Dr. Dunn was Straith's employee was objectively reasonable. The

case proceeded to trial on the remaining claims. The jury returned a verdict of no cause of action.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Generally, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely used the hospital's facilities to render treatment. However, if the patient looked to the hospital for treatment, and the hospital represented that the treatment would be afforded by a physician in its employ, ostensible agency can be found. *Grewe v Mt Clemens General Hosp*, 404 Mich 240, 251-252; 273 NW2d 429 (1978). A showing that the patient looked to the hospital for treatment is not sufficient. To establish the existence of an ostensible agency, it must be shown that: (1) the person dealing with the agent did so with a reasonable belief in the agent's authority; (2) the belief must be generated by some act or omission on the part of the principal sought to be held liable; and (3) the person relying on the agent's authority must not be guilty of negligence. *Chapa v St Mary's Hosp*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

Plaintiff argues the trial court erred by granting Straith's motion for partial summary disposition. We disagree and affirm. Initially, we conclude the trial court did not err by applying an objective reasonableness standard. In order to establish the existence of ostensible agency, it must be shown that the person who dealt with the purported agent did so with a reasonable belief in the agent's authority. *Id.*; see also SJI2d 30.30(d). It was undisputed that decedent looked to Straith to provide her with treatment. It was also undisputed that Dr. Dunn was an independent contractor with Straith. The consent form signed by decedent clearly stated that physicians who rendered treatment at Straith were independent contractors and not hospital employees. The fact that decedent did not read the form or have a reliable person read it to her is of no moment. A party who executes a document is charged with knowledge of its contents. *Dombrowski v Omer*, 199 Mich App 705, 710; 502 NW2d 707 (1993).

Dr. Sherrod, not Straith, arranged for Dr. Dunn to conduct a pre-operative examination of decedent. Dr. Dunn did not represent himself as an employee of Straith. No evidence showed that Straith, as the putative principal, did anything that created in decedent's mind a reasonable belief that Dr. Dunn was its employee, or that Straith was aware of any such assumption by decedent and failed to take reasonable steps to correct it. *Chapa*, *supra*; see also *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986). The trial court correctly granted Straith's motion for partial summary disposition on the ground that plaintiff failed to demonstrate that a genuine issue of material fact existed regarding whether decedent's belief in Dr. Dunn's ostensible agency was reasonable and generated by some act or omission on Straith's part. *Chapa*, *supra*.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski