STATE OF MICHIGAN

COURT OF APPEALS

DONALD E. TATE,

Plaintiff-Appellant,

v

BOTSFORD GENERAL HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
April 29, 2004

No. 245081
Oakland Circuit Court
LC No. 01-035359-NO

Before: Cooper, P.J., and Griffin and Borrello, JJ.

PER CURIAM.

In this false imprisonment action, plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

Plaintiff, aged seventy, drove himself to defendant Botsford General Hospital because he was experiencing an upset stomach and became nauseous. Plaintiff's friend, Lillian Hoblak, accompanied him to the hospital. Plaintiff acknowledged that he signed an Authorization for Emergency Services form and consented to have his blood pressure taken. He also stated that an intravenous (IV) line was inserted in his arm. Plaintiff's complaint alleges that plaintiff did not believe that the emergency room physician knew what she was doing, "so he advised her that he was leaving as he wanted to go to Beaumont Hospital for treatment, but was told by the attending doctor that he was not well enough to leave." Plaintiff alleges that when he attempted to get up and leave, he was restrained with wrist restraints, placed on a ventilator tube, and treated. According to the affidavit of the emergency room physician, plaintiff was given Compazine for nausea and suffered a potentially life-threatening allergic reaction to the drug. The physician further averred that as a result of his reaction to Compazine, plaintiff needed emergency care and was not sufficiently alert or mentally competent to refuse treatment.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that the emergency room physician had a right and duty to provide care in an emergency situation. Following a hearing, the trial court found that plaintiff had been restrained, that he developed an emergency condition that was life threatening and mandated immediate care and treatment, and that his consent to treatment was presumed. It therefore granted defendant's motion for summary disposition.

This Court reviews a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Allstate Ins Co v Dep't of Management & Budget*, 259 Mich App 705, 710; 675 NW2d 857 (2003). "In cases involving questions of intent, credibility, or state of mind, summary disposition is hardly ever appropriate." *Michigan Nat'l Bank-Oakland v Wheeling*, 165 Mich App 738, 744-745; 419 NW2d 746 (1988).

As an initial matter, we note that while many of defendant's arguments are based on principles applicable to medical malpractice actions, this is not a medical malpractice case; it is an action for false imprisonment. The elements of false imprisonment are "'(1) an act committed with the intention of confining another, (2) the act directly or indirectly results in such confinement, and (3) the person confined is conscious of his confinement.'" *Moore v Detroit*, 252 Mich App 384, 387; 652 NW2d 688 (2002), quoting *Adams v Nat'l Bank of Detroit*, 444 Mich 329, 341 n 21; 508 NW2d 464 (1993). The essence of a claim of false imprisonment is that the imprisonment is false – done without right or authority. *Id.* at 388.

In granting summary disposition for defendant, the trial court relied on *Delahunt v Finton*, 244 Mich 226; 221 NW 168 (1928), which involved the presumptive consent of an unconscious patient in a medical emergency. In this case, however, there is no dispute that plaintiff was conscious at all pertinent times.

"[A] competent adult patient has the right to decline any and all forms of medical intervention, including lifesaving or life-prolonging treatment." *In re Rosebush*, 195 Mich App 675, 681; 491 NW2d 633 (1992); see also *In re Martin*, 450 Mich 204, 216-217; 538 NW2d 399 (1995) (a patient has the right to refuse life-sustaining treatment), and MCL 333.20201(2)(f).[1]

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[1] MCL 333.20201(2)(f) provides that a hospital's policy describing the rights and responsibilities of patients shall include, as a minimum:

> A patient or resident is entitled to refuse treatment to the extent provided by law and to be informed of the consequences of that refusal. When a refusal of treatment prevents a health facility or its staff from providing appropriate care according to ethical and professional standards, the relationship with the patient or resident may be terminated upon reasonable notice.

Although it is not settled whether the right to refuse medical treatment is constitutional, common law, or statutory, "the evidentiary and decision-making standard appropriate in a given case do not depend on the source of the right." *In re Martin*, 450 Mich 204, 215-216; 538 NW2d 399 (1955).

Where a competent patient makes and communicates the choice to refuse treatment, he does not lose the right to make a choice because of his later incompetency or inability to communicate. *In re Martin*, *supra* at 217-218.

In this case, there is no dispute that plaintiff was competent and alert when he arrived at the hospital. If competent, he had the right to refuse treatment, regardless whether the physician believed that he needed care. *Id.* There is little information in the record regarding whether plaintiff was informed of his condition or treatment choices, and there is conflicting evidence regarding his competence and ability to make medical care decisions while at the emergency room. In her affidavit, the treating physician stated that plaintiff "initially" wanted to leave the hospital. Plaintiff averred that it was "only after" he was "tied down and the IV tube reinserted and [had] drugs poured into" him that he suffered a "bad reaction." Plaintiff's friend, Ms. Hoblak, averred that she heard plaintiff say that he was leaving the hospital "and going to Beaumont," and that, even after plaintiff was restrained and an IV was inserted, he appeared "fully able, had he not been bound, to get up and leave and to drive over to Beaumont Hospital." Both plaintiff and Hoblak reported that plaintiff threatened to call the police and that the treating physician responded (apparently referring to a security guard) that "this was the police." Plaintiff left the hospital against medical advice at 6:46 a.m. the following morning. Because a question of fact exists regarding whether plaintiff was competent to refuse treatment, summary disposition was improper.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello