

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS MCGARVEY,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL,

Defendant-Appellee.

UNPUBLISHED

June 22, 2004

No. 246289

Wayne Circuit Court

LC No. 02-217316-CZ

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

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

Plaintiff, a former patient of defendant, alleged that during his hospital stay, defendant's staff used restraints on him and withheld food and water in a deliberate attempt to kill him. He sought damages for attempted murder. Defendant contended that plaintiff's action was a mislabeled claim for malpractice and the complaint had to be dismissed because plaintiff had failed to provide notice of his intent to sue. The court ruled that a corporate entity such as a hospital could not form the specific intent to kill and plaintiff's only remedy was to sue for malpractice. 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 corporation cannot per se commit an intentional tort. It can, however, be held liable for intentional torts committed by its agents or employees if it authorized, directed, or ratified the acts. 19 CJS, Corporations, §§ 699-700, pp 352-354. Recognized intentional torts include assault and battery, conspiracy, conversion, false imprisonment fraud, intentional infliction of emotional distress, tortious interference with business relations, trespass and the like. *Id.*, §§ 703-705, pp 355-357.

Here, plaintiff sought to hold defendant liable for attempted murder, MCL 750.91. While attempted murder is a specific intent crime that requires proof "that the defendant intended to bring about a death" to sustain a criminal conviction, *People v Long*, 246 Mich App 582, 589; 633 NW2d 843 (2001), that does not transform the act into an intentional tort for which the defendant may be held civilly liable for damages. Rather, violation of a penal statute that does not provide for civil liability creates a prima facie case of negligence from which the jury may

infer negligence. *Gould v Atwell*, 205 Mich App 154, 158; 517 NW2d 283 (1994). Negligence is conduct involving an unreasonable risk of harm that arises from the breach of a legal duty owed by the defendant which is a proximate cause of the plaintiff's injuries. *Clark v Dalman*, 379 Mich 251, 260-261; 150 NW2d 755 (1967); *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). The breach of a duty owed by a health care provider to a patient constitutes malpractice. *Cudnik v William Beaumont Hosp*, 207 Mich App 378, 381-382; 525 NW2d 891 (1994). The trial court properly dismissed plaintiff's intentional tort/attempted murder claim, which was asserted against a corporate entity.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray