STATE OF MICHIGAN

COURT OF APPEALS

MELISSA LUTZ,

Plaintiff-Appellee,

v

MERCY MT. CLEMENS CORPORATION, d/b/a/ST. JOSEPH'S MERCY OF MACOMB-ROMEO HEALTH CENTER, RAAD AUSI, M.D., and LYDIA C. ROZOF, M.D.,

Defendants-Appellants,

and

SUDARSHAN R. REDDY, M.D.,

Defendant.

UNPUBLISHED
December 20, 2005

No. 261465
Macomb Circuit Court
LC No. 04-003382-NH

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

In this medical malpractice case, defendants appeal by leave granted from the circuit court's order denying their motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought treatment for a lacerated finger from St. Joseph's Mercy of Macomb, an urgent care facility run by defendant Mercy Mt. Clemens Corporation. Defendant Dr. Raad Ausi stitched the finger, but allegedly failed to diagnose a tendon injury. Plaintiff returned to the urgent care facility, where defendant Dr. Lydia Rozof removed the sutures, and also allegedly failed to diagnose the tendon injury.

Dr. Ausi was board-certified in internal medicine. Near the time of the incident, the St. Joseph's Mercy of Macomb website indicated that specialty for Dr. Ausi, and that he was board "eligible." Dr. Rozof was board certified in family practice. However, the St. Joseph's website indicated that she was board-certified and that her specialty was "urgent care." Plaintiff filed suit and filed with the complaint an affidavit of merit from Dr. Derek S. Bohm, who is board-certified in emergency medicine.

Defendant moved for summary disposition on the ground that Dr. Bohm's practice and certification did not match those of Dr. Ausi and Dr. Rozof. The trial court denied the motion, apparently satisfied that plaintiff's attorney acted reasonably in supposing, solely on the basis of the information gleaned from St. Joseph's website, that there was in fact sufficient professional identity between his expert and those defendants.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Statutory interpretation also presents a question of law calling for de novo review. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004).

MCL 600.2912d(1) provides that:

> the plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney *reasonably believes* meets the requirements for an expert witness . . . . The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff's attorney concerning the allegations contained in the notice . . . . [Emphasis added.]

MCL 600.2169(1)(a) requires that if the defendant is a specialist, the expert must specialize in the same specialty, and if the defendant is a board-certified specialist, the expert must be board-certified in the same specialty. A shared subspecialty between a defendant and the expert providing the affidavit of merit is not sufficient identity for these purposes, where the defendant and the expert had different board certifications. *Halloran v Bhan*, 470 Mich 572, 575, 578; 683 NW2d 129 (2004).

A defective affidavit cannot support a medical malpractice complaint for purposes of tolling the statute of limitations. *Geralds v Munson Healthcare*, 259 Mich App 225, 240; 673 NW2d 792 (2003). There is no dispute in this case it is too late for plaintiff to cure any such defects.

When filing suit, a medical malpractice plaintiff may rely on "available publicly accessible resources" to establish reasonable belief whether an expert satisfies the statutory requirements for an affidavit of merit. *Grossman*, *supra* at 599. Accordingly, we regard plaintiff's attorney's recourse to the website of the hospital who is party to this dispute as itself reasonable. The question then becomes, was the information gleaned therefrom sufficient to establish a reasonable belief that defendants shared plaintiff's expert's board-certification in emergency medicine? We hold that it was not.

Plainly, a reasonable attorney could not reasonably conclude from the hospital's website's description of Dr. Ausi as a specialist in internal medicine, who is "board-eligible," that Dr. Ausi shared plaintiff's expert's specialization and certification in emergency medicine. Therefore, the trial court erred in denying the motion for summary disposition in connection with Dr. Ausi.

Dr. Rozof poses a closer question. And, although the website says that Dr. Rozof was board-certified, with a specialty in urgent care, the website does not say that Dr. Rozof was board certified in urgent care, nor does it say that Dr. Rozof was board certified in emergency medicine. Moreover, clearly it is unreasonable to equate urgent care with emergency medicine. Despite the obvious overlaps in everyday meaning between the words "urgent" and "emergency," we conclude that the highly formalized nature of medical licenses, specialties, and board certifications put plaintiff's attorney on inquiry notice concerning the possibility that "urgent care" does not mean "emergency care."

Plaintiff's attorney was free to consult such accessible resources as the website of the American Medical Association, or *The Official American Board of Medical Specialties Directory of Board Certified Medical Specialists*, to resolve any ambiguities, but instead carelessly, simply assumed too much from St. Joseph's website's vague indications. For these reasons, the trial court erred in denying summary disposition in connection with Dr. Rozof.

Accordingly, we reverse the judgment below, and remand this case to the trial court with instructions to grant summary disposition to all remaining defendants.

Reversed. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood