

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND SHERIDAN, Personal Representative
of the Estate of EVELYN BROWN SHERIDAN,
Deceased,

UNPUBLISHED
March 6, 2007

Plaintiff-Appellant,

v

WEST BLOOMFIELD NURSING &
CONVALESCENT CENTER, INC.,
BEAUMONT NURSING HOME SERVICES,
INC., WEST BLOOMFIELD NURSING &
CONVALESCENT CENTER JOINT VENTURE,
DOREEN DAVIS and YOLANDA MATHEWS,

No. 272205
Oakland Circuit Court
LC No. 2004-060587-NZ

Defendants-Appellees.

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

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

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). The dispositive issue in this case is whether plaintiff's claims are for ordinary negligence or medical malpractice. The determination "whether the nature of a claim is ordinary negligence or medical malpractice" is also reviewed de novo. *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

As noted by the Court in *Bryant, supra* at 422:

a court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or medical malpractice: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in

the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions.

The first question is not at issue here. It is undisputed that the conduct in question occurred within the course of a professional relationship. The answer to the second question “depends on whether the facts allegedly raise issues that are within the common knowledge and experience of the jury or, alternatively, raise questions involving medical judgment.” *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46; 594 NW2d 455 (1999).

If the reasonableness of the health care professionals’ action can be evaluated by lay jurors, on the basis of their common knowledge and experience, it is ordinary negligence. If, on the other hand, the reasonableness of the action can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts, a medical malpractice claim is involved. [*Bryant, supra* at 423.]

Injuries that occur while a patient is being moved

may or may not implicate professional judgment. The court must examine the particular factual setting of the plaintiff’s claim in order to determine whether the circumstances – for example, the medical condition of the plaintiff or the sophistication required to safely effect the move – implicate medical judgment as explained in *Dorris*. [*Id.* at 421 n 9.]

We conclude that the trial court erred in dismissing the claims alleged in plaintiff’s amended complaint. Those claims alleged that defendants were negligent when two nurse assistants dropped plaintiff’s decedent while moving her from her bed to a wheelchair using a “gait belt.” Plaintiff is not challenging the decision to move the decedent from her bed, the decision to use a gait belt, or the manner in which the gait belt was fastened to her body. The sole issue is whether, having decided to use and having secured the gait belt, defendants acted reasonably when they failed to maintain a secure grip on plaintiff’s decedent and dropped her or allowed her to fall on the floor. Resolution of this issue is within the common knowledge and experience of an ordinary juror and does not require expert testimony concerning the exercise of medical judgment. *Gold v Sinai Hosp of Detroit, Inc*, 5 Mich App 368; 146 NW2d 723 (1966); *Fogel v Sinai Hosp of Detroit*, 2 Mich App 99; 138 NW2d 503 (1965).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder