

STATE OF MICHIGAN
COURT OF APPEALS

ARIEL PEREZ SR., PERSONAL
REPRESENTATIVE OF THE ESTATE OF
ARIEL E. PEREZ JR.,

UNPUBLISHED
December 9, 2008

Plaintiff-Appellant,

v

No. 278129
Oakland Circuit Court
LC No. 2005-065925-NM

OAKLAND COUNTY and ROBERTA RICE,

Defendants-Appellees,

and

DR. SARATH HEMACHANDRA,

Defendant.

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting Oakland County and Roberta Rice's ("defendants"), motion for summary disposition in this wrongful death case. Because MCL 691.1407(4), the "medical care and treatment" exception to governmental immunity is inapplicable to the instant matter, we affirm.

Decedent committed suicide while an inmate at the Oakland County Jail. Plaintiff thereafter initiated this wrongful death/negligence action against defendant county and Rice (a law enforcement employee involved in Perez's confinement) asserting, among other things, that both defendants provided medical care or treatment to decedent and were thus not, pursuant to MCL 691.1407(4), entitled to governmental immunity.

On plaintiff's motion to strike defendants' affirmative defense of governmental immunity, the trial court determined that Rice was not providing medical care as contemplated by MCL 691.1407(4), nor as defined by MCL 333.17001(b). The trial court, however, denied defendants' later motion for summary disposition brought pursuant to MCL 691.1407(2)(c) finding that questions of fact existed as to whether Rice (and, by extension, Oakland County) was grossly negligent and whether these defendants' actions were the proximate cause of

decedent's death. Defendants appealed the summary disposition ruling to this Court, and we determined that defendants were entitled to summary disposition on the basis of governmental immunity, given that "Rice's conduct cannot be deemed 'the' proximate cause of plaintiff's decedent's death when, even if foreseeable, it was not the 'most immediate, efficient, and direct cause preceding' the injury." *Perez v Oakland County*, unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 271406). Consistent with this Court's opinion, the trial court thereafter issued an order granting summary disposition in defendant's favor. Plaintiff now appeals from the summary disposition order, contending that MCL 691.1407(4), the "medical care or treatment" exception to governmental immunity is applicable to this matter and that defendants were thus not entitled to summary disposition.

This Court reviews de novo a trial court's decision on a motion for summary disposition, *Washington v Sinai Hosp*, 478 Mich 412, 417; 733 NW2d 755 (2007). The applicability of governmental immunity is a question of law, which we also review de novo. *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2005). And, statutory construction is a question of law that this Court reviews de novo. *General Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002).

The primary objective in construing a statute is to ascertain and give effect to the Legislature's intent. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). Where the language of the statute is clear and unambiguous, the Court must follow it, and further judicial construction is neither permitted nor required. *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

MCL 691.1407 provides, in relevant part:

(1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

Our Court recently had cause to analyze MCL 691.1407(4) and its application to medical treatment rendered to jail inmates. In *Briggs v Oakland County*, 276 Mich App 369, 370; 742 NW2d 136 (2007), plaintiff's decedent was detained at the Oakland County jail and was injured when he fell from an upper bunk. Some time later, allegedly as a result of that injury, plaintiff's decedent died in the jail clinic. Plaintiff sued Oakland County and various county jail deputies and county jail clinic nurses, claiming that their negligence caused decedent's death. Defendants

moved for summary disposition, claiming, among other things, that MCL 691.1407(4) was inapplicable and that they were therefore entitled to governmental immunity. The trial court agreed.

On appeal, this Court acknowledged that “to allow liability for medical care and treatment provided in a wide variety of venues, including jail clinics as in this case, had nothing to do with th[e] purpose and intent [of the statute],” but that we must give nevertheless effect to the plain language of the statute. And, the language being unambiguous, this Court could not look beyond the words of the statute itself in determining its meaning. The *Briggs* court thus held:

this case clearly falls within the exception. Defendants raise no challenge to the facts that they are “employee[s] or agent[s] of a governmental agency” or that they were “providing medical care or treatment to” the decedent, as a “patient,” before his death. Accordingly, the statute simply “does not grant immunity” to defendants under the facts of this case and, if plaintiff succeeds on the merits, liability may be imposed.

Briggs, supra, at 372.

According to the binding authority of *Briggs*, then, the exception to governmental immunity set forth in MCL 691.1407(4) may be applicable to a governmental agency or employee of a governmental agency with respect to providing medical care or treatment to a patient in a county jail. *Briggs*, is not, however, conclusive on the precise matter before this Court.

As pointed out by defendants, the facts of the present matter are distinguishable from those in *Briggs*. In *Briggs*, defendants did not challenge that they were providing medical care or treatment to the decedent, as a patient, before his death. Here, however, defendants do make such a challenge. Also, in *Briggs*, this Court, in reaching its decision, assumed that all defendants were engaged in the provision of medical care or treatment to decedent. This Court additionally noted that, “individual defendants. . . who are not medical professionals, may well argue on remand that this assumption is without factual support with respect to them. The trial court was not presented with this question, but, instead, decided broadly and incorrectly that the ‘medical care’ exception was inapplicable to all defendants.” *Briggs, supra*, at 372 FN3. We can make no such assumptions here, as the trial court undisputedly decided that Rice was not providing medical care to decedent. The question before this Court, then, is whether the defendants in the instant matter provided medical care and treatment to decedent such that the exception to governmental immunity set forth in MCL 691.1407(4) applies. We find that they did not.

The terms “medical care” and “treatment” are not defined in MCL 691.1407(4). To determine the meaning of terms undefined in a statute, this Court should look to the fair and natural import of the terms employed, in view of the subject matter of the law. *People v Rutledge*, 250 Mich App 1, 5-6; 645 NW2d 333 (2002). This Court may also examine dictionary definitions if the statute does not expressly define its terms. *Id.*

While both parties encourage us to rely on various other statutes for assistance in defining the terms at issue, the statutes relied upon by the parties define terms only similar to, but not exactly the same as, “medical care” and “treatment.” Moreover, each party has naturally encouraged the use of a statute that best serves his/her interests. We find it more prudent to

focus on the more basic dictionary, and more specialized medical dictionary, definitions for clarification of the relevant terms.

The 7th edition of Black's Law Dictionary contains no definition of "medical care" or "treatment." "Medical" is defined in the American Heritage Dictionary (4th ed.) as "of or relating to the study or practice of medicine" and "requiring treatment by medicine." "Care" is defined in a variety of ways in this publication, including, "attentive assistance or treatment to those in need." "Treatment" is defined as the "administration or application of remedies to a patient for a disease or injury."

Most instructive are the definitions found in Stedman's Medical Dictionary (26th ed.). There, "medical" is defined as "relating to medicine or the practice of medicine" and "practice means "the exercise of the profession of medicine or one of the allied health professions." Stedman's Medical Dictionary defines "care" as "in medicine and public health, a general term for the application of knowledge to the benefit of a community or individual" and "treatment" is defined as the "medical or surgical management of a patient." Reading the above definitions together, we find that "medical care" and "treatment" mean to administer or apply remedies of or relating to the practice of medicine, by a medical professional, to a patient for a disease or injury. Keeping in mind the principle that the immunity conferred on governmental agencies is broad and the statutory exceptions are to be narrowly construed (See, e.g., *Bachman v Wroten*, 196 Mich App 258; 492 NW2d 792 (1992)), and employing the above-stated practical and workable definitions of "medical care" and "treatment", it cannot be said that Rice provided medical care or treatment to decedent.

As admitted by plaintiff, Rice is an inmate caseworker with no license in any medical field. According to Ann Russell, an Oakland County Jail administrator, an inmate caseworker is responsible for doing mental health assessments¹ and screenings on inmates and, based on that assessment, determines if any follow up treatment or intervention is necessary. That is precisely what Rice did with respect to decedent. Rice assessed decedent, as she did with other inmates, based on a recommendation concerning his mental health. It appears that she spoke to decedent, made notes of what he told her, and, when he reported feeling suicidal, placed him on suicide watch, and referred him for mental health treatment with a psychiatrist. There is no indication that Rice advised or counseled decedent on how to address his thoughts or feelings on a professional level, or that she diagnosed decedent as having a mental disorder or disease. Upon referral from Rice, a licensed psychiatrist diagnosed decedent as having schizoaffective disorder, met with him on at least two occasions, and prescribed medication to him, thereby "treating" decedent for his mental condition.

Rice's role was more or less to perform an initial assessment, refer decedent for medical care or treatment, if necessary, then act as an intermediary between decedent and mental health

¹ "Assess" means "to ascertain" (Black's Law Dictionary, Abridged 6th Ed.).

professionals. Given Rice's articulated job responsibilities, her lack of any professional medical license, and her specific actions concerning decedent, we find that Rice did not provide medical care or treatment to decedent as contemplated by MCL 691.1407(4) and is thus entitled to governmental immunity.

MCL 691.1407(4) is similarly inapplicable to defendant Oakland County. According to plaintiff, Oakland County had a statutory responsibility to provide such care and treatment to decedent and did so, rendering the statute applicable. Plaintiff provides no citation to any authority, however, to establish a statutory duty. Instead, plaintiff relies on an information sheet purportedly issued by the Oakland County Sheriff's department wherein it indicates it is "bound by statute for the responsibility of operating the OCJ [Oakland County Jail] which entails the care and custody of inmates including. . .providing inmate food and medical services." A document such as the one above, the origins of which cannot be ascertained, hardly stands as authority for finding that Oakland County was statutorily responsible for providing medical care and treatment (and did so) with respect to decedent.

Also, as with Rice, for MCL 691.1407(4) to be applicable, Oakland County must have actually provided medical care or treatment to decedent. It did not do so through Rice, as discussed above, and defendant Hemachandra testified that he was employed by Easter Seals (not Oakland County), and, through that employment, was at the Oakland County jail 2 ½ days per week. There being no support for plaintiff's assertion that Oakland County provided medical care or treatment to decedent, MCL 691.1407(4) is inapplicable and Oakland County is entitled to summary disposition on the basis of governmental immunity.

We decline to address plaintiff's remaining arguments on appeal, as the resolution of the governmental immunity issue is dispositive.

Affirmed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood