

STATE OF MICHIGAN
COURT OF APPEALS

HEALING PLACE, LTD., HEALING PLACE AT
NORTH OAKLAND MEDICAL CENTER,
ANOTHER STEP FORWARD, NEW START,
INC., and MITCHELL DITTMAN, Guardian of
LINDA WALLACE, a legally incapacitated
individual,

UNPUBLISHED
August 5, 2010

Plaintiffs-Appellants,

V

No. 286050
Oakland Circuit Court
LC No. 05-063954-NF

FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN, a Michigan
Insurance Corporation,

Defendant-Appellee.

Before: STEPHENS, P.J., AND JANSEN AND WILDER, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant Farm Bureau Mutual Insurance Company's motion for summary disposition. We affirm in part, reverse in part and remand for further proceeding consistent with this opinion.

I. Factual and Procedural History

This cause of action involves the Michigan No-Fault Insurance Act and arises from defendant's failure to pay various medical facilities for services that were provided to Linda Wallace after she was involved in a serious car accident. The facts of this case are essentially undisputed. On July 17, 1997, Wallace was involved in a car accident. Wallace was wearing her seat belt at the time of the accident and was a passenger in the backseat of the vehicle. Following the accident, Wallace was in a coma and suffered from posttraumatic amnesia. Additionally, the accident caused numerous physical injuries, including several lacerations and contusions as well as fractures to her hip and femur and a traumatic brain injury.

Following the accident, Wallace sought treatment with the various facilities that are plaintiffs in this cause of action. Dr Roman Frankel founded each of those facilities. Two of the facilities, Another Step Forward and The Healing Place, treat individuals who have substance

abuse problems coupled with traumatic brain injuries and psychological disorders. Another Step Forward is a day program that provides certain group therapy programs on weekdays. The Healing Place is a structured residential program that provides both group and individual treatments and has two operational centers. The first is the Healing Place at North Oakland Medical Center (NOMC).¹ The other is the Healing Place residential program, an apartment-based program for individuals who have advanced beyond the NOMC program. While it is not clear whether Another Step Forward has any type of license, The Healing Place is a licensed residential substance abuse facility. The third facility, New Start, is an outpatient facility that focuses on patients with a wide variety of disorders, from substance abuse to gambling addictions. New Start is licensed by the State of Michigan as a mental health/substance use disorder clinic.²

While Wallace was at Dr. Frankel's various facilities, she received treatment from Dr. Bruce Lessien. Dr. Lessien is certified in psychiatry and served as a consultant to the Healing Place. Wallace met with Dr. Lessien approximately once a month for several years, beginning in 2001. Each time that Dr. Lessien met with Wallace, he administered psychotherapy treatments. Dr. Lessien concluded that Wallace suffered from an organic mood disorder, bipolar disorder and dementia. He felt that these conditions apparently were exacerbated by the accident. Dr. Lessien is treating the conditions with multiple psychotropic medications.

On January 25, 2005, plaintiffs filed their complaint, in which it was alleged that defendant was properly billed for the medical services provided to Wallace and that it wrongfully failed to pay those bills despite the fact that it was obligated to do so pursuant to the Michigan No Fault Insurance Act. Plaintiffs sought over \$200,000 for the alleged personal injury protection benefits. On March 25, 2005, defendant filed its answer and affirmative defenses. Defendant denied that it was obligated to pay the bills in question. In support of its position, defendant cited several legal theories and expressly reserved the right to add additional further defenses as they became known.

In January 2008, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). Defendant argued that it was entitled to summary disposition because the Michigan No-Fault Act explicitly provides that an insurance company is only responsible for paying for medical services that were lawfully provided. Furthermore, pursuant to binding authority, a service is lawfully provided only if it is provided in accordance with Michigan's licensure requirements. According to defendant, the services at issue were not lawfully provided to Wallace because none of the providers were licensed as psychiatric hospitals or as adult foster care facilities. In making its arguments, defendant heavily relied on

¹ At some point, the NOMC program closed and reestablished itself in the Samaritan Center in Detroit. It is not clear from the record when the change in affiliation occurred.

² Wallace apparently selected the above-mentioned facilities because, prior to the accident, Wallace had been an abuser of both cocaine and alcohol. Further, it appears that before the accident Wallace possibly possessed some personality traits that are consistent with psychological disorder.

Healing Place at North Oakland Medical Center v Allstate Ins Co, 277 Mich App 51; 744 NW2d 174 (2007) (hereinafter *Naylor*).

Plaintiffs subsequently filed a response to defendant's motion for summary disposition and argued that they were not required to possess either a license to operate a psychiatric unit or to operate an adult foster care facility. Plaintiffs primarily asserted that whether they were in violation of the state's licensure requirements was a regulatory question. According to plaintiffs, unless the appropriate regulatory agency declared that plaintiffs were operating in contravention of state law, the services at issue were lawfully provided and defendant was required to make the requested payments. Additionally, plaintiffs argued that the courts did not have jurisdiction to decide this regulatory question. The trial court held that defendant was entitled to summary disposition because "the treatment rendered by the plaintiffs was outside the scope of their operative license." The trial court did not cite to the particular facts that led to its conclusion. Likewise, the court did not state whether its decision was pursuant to MCR 2.116(C)(8) or MCR 2.116(C)(10). However, it is apparent that the trial court considered facts outside of the pleadings in reaching its decision. Therefore, the grant of summary disposition was presumed to be pursuant to MCR 2.116(C)(10).

On appeal, plaintiffs argue that the trial court lacked jurisdiction over the licensure issue and that the defendant's failed to present documentary evidence in support of its legal arguments on licensure. We reject the jurisdictional argument. While we concur that the defendant failed to present documentary evidence in support of the motion below, we find that *Naylor* is dispositive of the argument regarding psychiatric services provided at NOMC and remand for reconsideration of any services that were rendered at the other facilities.

II. Standard of Review

This Court reviews a trial court's decision regarding summary disposition pursuant to MCR 2.116(C)(10) de novo.³ *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper pursuant to MCR 2.116(C)(10) when, upon examining the affidavits, depositions, pleadings, admissions and other documentary evidence, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The party who moves for summary disposition pursuant to MCR 2.116(C)(10) bears the initial burden of presenting admissible evidence to show that no genuine issue of material fact exists. *AFSCME v Detroit*, 267 Mich App 255, 261; 704 NW2d 712 (2005). The non-moving party must then present evidence to show that a genuine issue of material fact does exist. *Smith v Globe Life Ins Co*, 460 Mich. 446, 455, 597 N.W.2d 28 (1999).

³ As described above, defendant initially moved for summary disposition pursuant to MCR 2.116(C) (8) and MCR 2.116(C) (10). When the trial court granted the motion, it did not state which subrule rendered summary disposition appropriate. However, the court's decision was based on its conclusion that plaintiff facilities were operating beyond the scope of their licensure. Because such a conclusion could not have been reached simply by viewing the face of plaintiffs' pleadings, we conclude that summary disposition was granted pursuant to MCR 2.116(C)(10).

III. Jurisdiction of the Trial Court

The plaintiff on appeal attempts to relitigate *Naylor* and *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App. 316, 320, 489 NW2d 788 (1992) on several issues including whether the trial court or an administrative agency had the jurisdiction to determine licensure issue. We reject the plaintiffs' argument that the trial court lacked subject matter jurisdiction over the issue of applicable licensure.

In *Naylor*, the patient, Edgar Naylor, was hit by a car while riding his bicycle in 1995. Naylor apparently suffered a brain injury as a result of the accident. *Naylor, supra*, 277 Mich App 53. Additionally, Naylor had psychiatric disorders and a pre-existing substance abuse problem. *Id.* at 53-54. Sometime after the accident, Naylor was sent to prison for reasons that are not clear. *Id.* at 54. After being released from prison in 2004, Naylor admitted himself to New Start and The Healing Place, where he received treatment for his brain injury and his psychological and substance abuse problems. *Id.* Claims arising out of the treatment were subsequently submitted to and denied by Allstate and litigation resulted. *Id.* The trial court granted Allstate summary disposition and held that the treatment was not compensable. *Id.* at 54-55.

On appeal, this Court affirmed the lower court's grant of summary disposition. In affirming the lower court, the *Naylor* Court cited to *Cherry v State Farm Mut Automobile Ins Co*, 195 Mich App. 316, 320, 489 NW2d 788 (1992), in which this Court explained that "the Legislature intended that only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit." The *Naylor* Court then explained that the plaintiff failed to meet its burden to prove that the services were "lawfully rendered" because the Healing Place and New Start lacked the required licensure. *Naylor, supra*, 277 Mich App 58. The Court explained that "if both the individual and the institution were each required to be licensed and either was not, the 'lawfully render[ed]' requirement would be unsatisfied." *Id.* at 60-61. Based on the nature of the services provided to Naylor, this Court held that the facilities did not possess the requisite licensure and that summary disposition was proper in favor of the defendant. *Id.* at 61.

Naylor and *Cherry* each establish that this Court not only has the authority to determine whether a facility has met licensure requirements, but is actually required to make such determinations when analyzing whether a service was lawfully provided. After this Court's decision in *Naylor*, the plaintiffs filed a motion for reconsideration, which this Court denied. *Healing Place v Allstate Ins Co*, unpublished order of the Court of Appeals, entered December 12, 2007 (Docket No 272960). Subsequently, the plaintiffs filed an application for leave to appeal with the Supreme Court, which denied the application. *Healing Place at North Oakland Medical Center v Allstate Ins Co*, 482 Mich 880; 752 NW2d 463 (2008). The *Naylor* decision is final and binding precedent on this Court and it is improper for plaintiff to seek to treat this case as another opportunity to appeal *Naylor*.

IV. Psychiatric Facility Licensure

Plaintiffs next argue that the trial court erred in granting defendant's motion for summary disposition after concluding that the services in question were not lawfully rendered because the facilities were not licensed as psychiatric units. We agree to the extent that the psychiatric

services were rendered under the name of The Healing Place but not at the North Oakland Medical Center.

The trial court's grant of summary disposition was proper where the trial court correctly held that plaintiff facilities needed to be licensed as psychiatric units. The parties agree that none of Frankel's facilities held such a license. Pursuant to MCL 330.1137(1), "[a] person shall not construct, establish, or maintain a psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program or use the terms psychiatric hospital, psychiatric unit, or psychiatric partial hospitalization program, without first obtaining a license." In its motion for summary disposition, and in its brief on appeal, defendant asserted that Frankel's facilities were required to have such a license because they were properly classified as psychiatric units. A psychiatric unit is defined as, "a unit of a general hospital that provides inpatient services for individuals with serious mental illness or serious emotional disturbance. As used in this subsection, 'general hospital' means a hospital as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106."⁴ Defendant asserts that The Healing Place needed to be licensed as a psychiatric unit because it provided inpatient services for individuals with serious mental illness and because it was a unit of a general hospital.

The evidence demonstrates that plaintiff facilities provided inpatient services to people with serious mental illness. The record demonstrates that Wallace suffered from several serious psychological conditions and that the Healing Place treated Wallace through a combination of psychotherapy, counseling and psychotropic medications. As explained above, one portion of the Healing Place was originally affiliated with North Oakland Medical Facility and then moved to the Samaritan Center in Detroit. The factual record is unclear regarding the details of the affiliation between the Healing Place and NOMC. The statute clearly states that a psychiatric unit is "a unit *of* a general hospital that provides inpatient services for individuals with serious mental illness or serious emotional disturbance" (emphasis added). The term "of" indicates that the unit is one that is possessed by a general hospital. Based on the evidence presented by defendant, we cannot conclude that the Healing Place was a unit *of* NOMC, as opposed to an organization that was simply located *at* NOMC. Defendant's brief on appeal simply states that the Healing Place was "in" a general hospital. However, this Court's decision in *Naylor* precludes this Court from now holding that plaintiffs did not need to possess a psychiatric unit license to render psychiatric services while housed at North Oakland Hospital because of the implicit finding of *Naylor* that the psychiatric services rendered at NOMC were unlawful due to the need for licensure. "[U]nder the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *Brown v Manistee Co Rd Comm*, 452 Mich 354, 365; 550 NW2d 215 (1996) (quotation and citation omitted) overruled on other grounds *Rowland v Washtenaw Co Rd Comm*, 477 Mich

⁴ MCL 333.20106 defines hospital as "a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Hospital does not include a mental health hospital licensed or operated by the department of community health or a hospital operated by the department of corrections."

197, 200; 731 NW2d 41 (2007). Furthermore, “considerations [of stare decisis] impose a considerable burden upon those who would seek a different interpretation that would necessarily unsettle . . . Court precedents.” *CBOCS West, Inc v Humphries*, --- US ----, ----, 128 SCt 1951, 1958, 170 L Ed 2d 864 (2008). Therefore, to the extent that the psychiatric services provided to Wallace were provided at NOMC, summary disposition was proper. However, the record does not establish that summary disposition was proper for any psychiatric services that were provided elsewhere.

V. Adult Foster Care Facility Licensure

Plaintiffs next argue that the trial court erred in granting defendant's motion for summary disposition after concluding that the services in question could only be provided by an adult foster care facility. We agree.

The parties agree that none of the facilities where plaintiff received treatment were licensed as adult foster care facilities. The deposition testimony of Drs. Frankel and Lessien established the nature of the treatment provided by the facilities. Frankel and Lessien each clearly demonstrated that the facilities provided extensive psychological treatment to Wallace, including frequent psychotherapy sessions that resulted in the diagnosis and pharmacological treatment of psychological disorders.

Pursuant to MCL 400.713(1):

A person, partnership, corporation, association, or a department or agency of the state, county, city, or other political subdivision shall not establish or maintain an adult foster care facility unless licensed by the department.

The term “adult foster care facility” is defined by MCL 400.703(4) as a:

governmental or nongovernmental establishment that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include any of the following:

(h) An establishment commonly described as an alcohol or a substance abuse rehabilitation center, a residential facility for persons released from or assigned to adult correctional institutions, a maternity home, or a hotel or rooming house that does not provide or offer to provide foster care.

The evidence does not establish that plaintiff facilities provided services to Wallace that could only be provided by a licensed adult foster care facility. While Wallace could potentially be classified as mentally ill, which is one of the categories of persons that an adult foster care facility cares for, the record does not show that she “required supervision on an ongoing basis.” While the staff was available to Wallace at all times of the day, there is no indication that she

was receiving ongoing supervision. Therefore, the trial court's grant of summary disposition was in error to the extent that it was the result of a determination that plaintiffs provided Wallace with adult foster care facility services. The decision in *Naylor* was based on the specific facts of that case. The *Naylor* opinion, while concluding that the services were of the nature of those provided in adult foster care, does not provide extensive details regarding the services provided to the patient. Based on the extensive record available in the present case, it is clear that the facilities were not providing the types of services to Wallace that are within the ambit of the applicable statutes.

VI. Conclusion

The trial court's order granted summary disposition as to all claims filed. We hold that defendant was only entitled to summary disposition for plaintiffs' claims that related to psychiatric services provided at in the facilities at NOMC. It is not apparent from the record that all of the services rendered were delivered at NOMC. Only those services were properly rejected as "not lawfully rendered." Therefore, upon remand the trial court is to hold a hearing to determine whether any of the psychiatric services were provided to Wallace after the affiliation with NOMC ended.

Affirmed in part, reversed in part and remanded for further proceedings. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Kathleen Jansen