

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UNPUBLISHED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

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

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

Defendant-Appellee.

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

WILDER, P.J., (*concurring in part and dissenting in part*).

I join with the majority opinion in rejecting plaintiff's assertion that the trial court lacked subject matter jurisdiction to rule on the issue of the licensure applicable in the instant case. Questions of statutory standing require this Court to analyze the statutory language to determine legislative intent. *Miller v Allstate Ins Co*, 481 Mich 601, 609-610; 751 NW2d 463 (2008). MCL 500.3157 provides in relevant part that "a physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person . . . may charge a reasonable amount. . . ." This Court held in *Healing Place at North Oakland Medical Center v Allstate Ins Co*, 277 Mich App 51, 60; 744 NW2d 174 (2007) (hereinafter *Naylor*), that "under MCL 500.3157, 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." Nothing in MCL 500.3157 states that the question whether a person or institution is lawfully rendering treatment to an injured person may only be reviewed by this Court following a contested procedure under the Administrative Procedures Act. See *Miller*, 481 Mich at 611.

I disagree with the majority's conclusion, however, that summary disposition in favor of defendant was improper as it concerned psychiatric services provided to Linda Wallace at facilities other than North Oakland Medical Center. The evidence is undisputed that New Start was licensed as an outpatient substance abuse program, and that The Healing Place, Ltd. had no license at all. There is *no* evidence in the record that Wallace was rendered *any* treatment at The

Healing Place of Detroit, located at the Samaritan Center, and The Healing Place of Detroit is not a party to this action seeking relief. On the record before us, plaintiff has failed to provide any evidence to distinguish this case from *Naylor* insofar as it involves the trial court's grant of summary disposition as to psychiatric services provided to Wallace. I would affirm in its entirety the trial court's grant of summary disposition on the question of psychiatric services rendered to Wallace.

I also disagree with the majority's conclusion that the trial court erred in granting summary disposition in favor of defendant on the question whether the remaining services provided to Wallace were required to be provided by an adult foster care facility. Under MCL 400.703(4), an "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 do not require continuous nursing care."

Roman Frankel, shareholder and officer of New Start, The Healing Place at North Oakland Medical Center and The Healing Place, Ltd., testified that in the Healing Place residential program, Wallace received 24-hour staff interaction, and that staff maintained a medication schedule for her. Dr. Bruce Lessien testified that at the time of his deposition, Wallace was in a New Start apartment in a supervised independent living setting. According to Dr. Lessien, because of the supervision provided, Wallace has external controls placed on her including her hours, the routine determination of who is permitted and is not permitted in her apartment, and how her apartment is maintained, including regular inspections. Dr. Lessien also testified that Wallace lacked sufficient internal controls such that she has impaired ability to derive benefit from traditional substance abuse treatment, thus making her at higher risk for substance abuse relapse without external controls. Further, in response to defendant's third requests for admission, plaintiffs admitted that Another Step Forward was not licensed as an adult foster care facility or a psychiatric hospital unit. In reply to defendant's motion for summary disposition, plaintiffs offered no evidence that the services offered to Wallace by Another Step Forward did not require ongoing supervision of Ms. Wallace.

Contrary to the majority, I would conclude that the record is more than sufficient to support the conclusion that Wallace "require[d] supervision on an ongoing basis but [did] not require continuous nursing care," MCL 400.703(4), and that therefore, the trial court did not err in granting summary disposition in favor of defendant on the basis that plaintiffs provided adult foster care facility services without proper licensure.

For the foregoing reasons, I would affirm in its entirety the trial court's order granting summary disposition in favor of defendant.

/s/ Kurtis T. Wilder