STATE OF MICHIGAN

COURT OF APPEALS

ANIL K. THOMAS and ARSENIO V. DELEON,

Plaintiffs-Appellants,

v

HENRY FORD MACOMB HOSPITAL CORPORATION, d/b/a HENRY FORD MACOMB HOSPITAL and TRINITY HEALTH CORPORATION,

Defendants-Appellees.

UNPUBLISHED
September 28, 2010

No. 290732
Oakland Circuit Court
LC No. 2008-091169-CK

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

SAAD, J. (*concurring).*

Though I concur in the result reached by the majority, I respectfully write separately because there are further important reasons why plaintiffs' claims should be rejected. First, the alleged violation of the Medical Staff Bylaws, by the Medical Executive Committee (MEC) (alleged failure to hold a meeting of the entire general staff), does not state a cause of action against defendant hospital. Clearly, the hospital is not responsible for the MEC's failure to hold a meeting.

Moreover, irrespective of whether the MEC failed to convene a meeting of the general staff, and regardless of the MEC's non-binding recommendation regarding the upgrading of the intensive care unit (ICU), the board of directors of the hospital has the unilateral right, indeed the obligation, to make decisions regarding the upgrading of the ICU and enter into exclusive contracts regarding the operation of the ICU. Michigan's Public Health Code mandates that the board is responsible for all phases of the operation of the hospital, including the selection of medical staff MCL 333.21513(a), and the granting of privileges, MCL 333.215B(c)(d). Also, the hospital by-laws grant the board, not the MEC, the ultimate and unilateral authority to make exclusive professional service contracts for the hospital. See Art VII, § 11 of the hospital by-laws. Therefore, regardless of the alleged convening of a meeting and regardless of the MEC's recommendations, the board has the final authority to make such determinations and thus, whether a meeting of the general staff was called or not is quite beside the point. Of course, here, the MEC, which represents the doctors at the hospital, unanimously recommended the upgrading of the ICU and the exclusive contract to a group of doctors from within the hospital, all of whom met the new, more rigorous requirements for practice in the ICU.

The suit boils down to the fact that one member of the MEC, plaintiff deLeon, objected to upgrading the ICU (to meet the new, higher national standards promulgated by the American College of Critical Medicine) and objected to the exclusive contract to a medical group that met the higher standard, because he, deLeon, does not meet the more rigorous requirements to practice intensive care medicine. Indeed, though the MEC and the hospital delayed implementation of the preferred higher standards to give deLeon time to take the requisite tests, deLeon flunked the tests and now contests the whole process because he does not meet the higher standards. More to the point, deLeon desired the meeting in issue to reinstate his clinical privileges in the ICU, despite his failure to meet the new standards, the MEC's upgrade and exclusive contract recommendations to the board (indeed, these recommendations are by his fellow physicians), and despite the board's statutory and by-law unilateral right and obligation to make such improvements.

In other words, deLeon's case is frivolous and, sadly, simply the result of his failure to meet new and improved standards that benefit patients who are critically ill, who turn to this hospital for special expertise.

/s/ Henry William Saad