

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

DENISE REEVES, Guardian of ARTHUR L.  
REEVES a/k/a MICHAEL TALLY,

Plaintiff-Appellant,

V

MIDMICHIGAN HEALTH d/b/a GRATIOT  
MEDICAL CENTER,

Defendant-Appellee,

and

NATHAN Z. ZZIWAMBAZZA, M.D., and  
EMERGENCY PHYSICIANS MEDICAL  
GROUP, P.C.,

Defendants.

---

UNPUBLISHED  
September 30, 2010

No. 291855  
Gratiot Circuit Court  
LC No. 07-010757-NH

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant Gratiot Medical Center's motion for summary disposition pursuant to MCR 2.116(C)(10). The court held that plaintiff could not demonstrate that Gratiot Medical Center was vicariously liable under a theory of ostensible agency for the actions of emergency room physician Nathan Zziwambazza, M.D. We reverse and remand for further proceedings.

Plaintiff is the wife of Arthur Reeves. He was in prison when he experienced a catastrophic stroke after being discharged from the emergency room at Gratiot Medical Center where Zziwambazza treated him. He could not testify because he remained in a vegetative state after the stroke.

Plaintiff argues that the trial court erred in not finding a genuine issue of material fact regarding whether Zziwambazza was acting as the ostensible agent of Gratiot Medical Center. We agree. A trial court's determination of a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), the court considers the affidavits,

depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Generally speaking, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients. *Settingington v Pontiac Gen Hosp*, 223 Mich App 594, 602; 568 NW2d 93 (1997). However, a hospital may be held vicariously liable for the acts of its agents. *Grewe v Mt Clemens General Hosp*, 404 Mich 240, 390; 273 NW2d 429 (1978). A plaintiff may show that a physician was the ostensible agent of a hospital where (1) the plaintiff dealt with the physician while having a reasonable belief in the physician's authority as an agent of the hospital, (2) the plaintiff's belief was generated by some act or neglect on the part of the hospital, and (3) the plaintiff was not guilty of negligence. *Zdrojewski v Murphy*, 254 Mich App 50, 66; 657 NW2d 721 (2002), citing *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

Plaintiff argues that the trial court erred by not focusing solely on whether the prison staff looked to the hospital for treatment. Plaintiff notes that, in *Grewe*, 404 Mich at 251, the Court stated that, in order to determine ostensible agency, "the critical question is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems." Plaintiff urges that whether plaintiff looked to the hospital for treatment is the sole question in ascertaining an agency relationship between a physician and hospital, and that *Grewe* did not establish a three-part test. However, in *Grewe*, 404 Mich at 252-253, the Court cited with approval the three part-test utilized in *Hill v Citizens Nat'l Trust & Savings Bank*, 9 Cal 2d 172, 176; 69 P2d 853 (1937). Additionally, *Grewe* also stated "if the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found." *Grewe*, 404 Mich at 250-251 (emphasis added).

In *Chapa*, 192 Mich App at 32, the Court rejected the argument that *Grewe* stood for the proposition that the dispositive test was whether a plaintiff looked to the hospital for treatment. The Court reasoned that *Grewe* framed that "critical question" based on the unique facts of that case. Moreover, the Court noted that it would be illogical, and in contrast with the fundamental agency principles noted in *Grewe* and subsequent cases, to hold a hospital liable for the malpractice of independent contractors merely because the patient "looked to" the hospital for treatment at the time of admission. *Id.* at 32-33. The Court concluded that the agency principles in *Grewe* had been distilled into the three-part test put forth above, and that the "key test" under *Grewe* was the "reasonableness of the patient's belief in light of the representations and actions of the hospital." *Id.* at 33-34. Thus, the "critical question" in *Grewe* was intended to relate to the patient's belief about the physician's relationship to the hospital, while taking into consideration the hospital's behavior.

Here, the court correctly concluded that *Grewe* and *Chapa* were consistent in requiring "conduct by both the plaintiff and the defendant that creates this ostensible agency. The hospital must either hold itself out or allow itself to be held out by others as the principal, and the patient

must reasonably believe that the physician is an employee or agent of the hospital as a result of this holding out or permitting itself to be held out.

In granting Gratiot Medical Center's motion for summary disposition, the court, when addressing whether plaintiff possessed a reasonable belief, noted: "Quite frankly, and quite sadly, I think the fact that the patient did not have any choice as to where [he would] be hospitalized is an argument against his relying upon any holding out of the hospital of [Zziwambazza] as its agent." Like the trial court, Gratiot Medical Center also emphasizes that Reeves did not select the facility that provided his treatment. In focusing on whether the patient chose the facility he was treated at, defendant is essentially encouraging this Court to modify the well-established test for ostensible agency. The test set forth in *Chapa* does not require that the patient relied on any belief in ultimately selecting the hospital as the situs of his treatment, and defendant cites to no binding authority in support of that proposition. Rather, the issue is whether Reeves reasonably believed that Dr. Zziwambazza was an agent of the hospital. Whether Reeves could have chosen another medical provider is irrelevant. In that sense he is no different than any patient rushed to an emergency facility in accordance with local protocol by an EMT. In determining whether plaintiff's belief in the physician's authority as an agent of the hospital was reasonable, it is relevant to consider whether the hospital provided the plaintiff with a physician or whether the plaintiff and the physician had an existing patient-physician relationship independent of the hospital setting. See e.g. *Grewe*, 404 Mich at 250-251; *Setterington*, 223 Mich App at 603; *Zdrojewski*, 254 Mich App at 66. Here, it does not appear that Reeves had any previous relationship with Dr. Zziwambazza. Furthermore, as discussed below, the circumstances surrounding Reeves's treatment certainly could have created a belief that an agency relationship existed. Therefore, based on the evidence in the record, a finder of fact would not be precluded from concluding that Reeves reasonably believed that Dr. Zziwambazza was an agent of Gratiot Medical Center.

Because we conclude that Reeves may have reasonably formed a belief regarding the existence of an agency relationship, we must next address whether that belief resulted from the acts or omissions of Gratiot Medical Center. In discussing this issue, the trial court noted: "[b]ut more basically, it seems to me that there is no evidence of any act or omission on the part of the hospital that constitutes a representation, a holding out, of Dr. [Zziwambazza] as its agent." We disagree. In resolving this case, it is essential to look to the whole record. The record contains several hospital forms signed by Mr. Reeves. Chief among them is the admission consent form. That form contains six references to Gratiot Medical Center. In the admission consent form, the patient agrees that the facility may be paid for services rendered and specifically authorizes the hospital to treat him retain and test his bodily fluids. The patient acknowledges that he has been given no special warranties of care. The patient also received discharge instructions, which were printed on facility letterhead. Those instructions were also purportedly read to Mr. Reeves. The admission consent and discharge papers can reasonably be inferred to be written representations that Gratiot Medical Center was managing the patient's care. The admission consent form begins with the patient giving permission "to be treated by interns, residents medical students and trainees." Nowhere in the form does the patient give permission to be treated by independent contractors. The admission consent form also addresses the professional judgment to be exercised by "my physician," but never notes that that physician is anything other than an agent of the facility. It is worthy to note that Dr. Zziwambazza provided testimony that he wore the logo of his employer-in-fact and never addressed his employment status while treating the

patient. While this is evidence that rational trier of fact may consider in determining whether the patient reasonably relied on a belief that the facility was managing his care, it is not evidence that renders the claim of ostensible agency untenable.

The reasoning behind *Grewe* and its predecessor *Chapa* was to allocate responsibility for care to the entity to which the patient looked for medical judgment. It was intended to preclude the shifting of responsibility from a physician with whom the patient had a previous relationship to an institution that merely granted her privileges of patient admission. On the facts of this case, there is a material question of fact regarding whether Zziwambazza was an ostensible agent of Gratiot Medical Center. Accordingly, summary disposition was improperly granted.

Reversed and remanded. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Cynthia Diane Stephens