

STATE OF MICHIGAN
COURT OF APPEALS

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

UNPUBLISHED
September 30, 2010

Plaintiff-Appellant,

v

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

MIDMICHIGAN HEALTH, d/b/a GRATIOT
MEDICAL CENTER,

Defendant-Appellee,

and

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

Defendants.

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

HOEKSTRA, J. (*dissenting*).

I respectfully dissent. Because I conclude that plaintiff failed to present any evidence of an act or neglect by defendant that would generate a reasonable belief that Dr. Nathan Zziwambazza was acting as its agent, I would affirm the trial court's order granting summary disposition to defendant.

Plaintiff does not dispute that Dr. Zziwambazza was an independent contractor of defendant. Thus, plaintiff can only hold defendant liable if Dr. Zziwambazza was an ostensible agent. See *Settington v Pontiac Gen Hosp*, 223 Mich App 594, 602; 568 NW2d 93 (1997). To establish a claim of ostensible agency, a plaintiff must establish the following:

(1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence. [*Chapa v St. Mary's Hosp of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).]

I disagree with the majority's conclusion that the admission consent form and the discharge instructions could provide a basis for a reasonable belief that Dr. Zziwambazza was acting as defendant's agent. Neither the admission consent form nor the discharge instructions discuss the relationship between defendant and the physicians providing treatment in its emergency room. In addition, the only physician referred to in the admission consent form is the patient's own physician. For example, the consent form states that the patient "voluntarily permit[s] to such medical and surgical treatment, and hospital care . . . by my physician . . . as [is] necessary and proper in his/her professional judgment." The inclusion of the phrase "my physician," which indicates a relationship between the patient and the physician, in the consent form provides no suggestion that Dr. Zziwambazza was an agent of defendant. Moreover, as the majority notes, Dr. Zziwambazza never discussed his employment status with Arthur Reeves, and he wore a lab coat that displayed the logo of Emergency Physicians Medical Group, his employer. In my opinion, there is no evidence in the record that defendant did or failed to do anything that would create a reasonable belief that Dr. Zziwambazza was acting on its behalf. *Chapa*, 192 Mich App at 34. I would affirm the trial court's order granting summary disposition to defendant.

/s/ Joel P. Hoekstra