STATE OF MICHIGAN

COURT OF APPEALS

AMIRA ABOUHASSAN, Plaintiff-Appellant,	UNPUBLISHED October 7, 2010
v	No. 291294 Wayne Circuit Court
DETROIT BIOMEDICAL LABORATORIES, INC., Defendant-Appellee.	LC No. 08-125921-CZ

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

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

I concur with the majority that plaintiff's defamation claim was properly dismissed under MCR 2.116(C)(7) given the statutory immunity from civil liability enjoyed by entities that make such reports to the health department as mandated by MCL 333.5114. I also agree with the majority that summary disposition as to plaintiff's claim for intentional infliction of emotional injury was properly granted under MCR 2.116(C)(10), as plaintiff failed to provide evidence to support a claim for intentional infliction of emotional injury. However, I respectfully dissent from the majority opinion's affirmance of the dismissal of plaintiff's negligence claim set forth in Count III of her complaint.

It is uncontested that plaintiff was not infected with either the AIDS virus nor the Hepatitis B virus and that, despite this fact, on October 30, 2007, defendant, a licensed clinical laboratory, advised plaintiff's physician, who in turn advised plaintiff, that the blood sample obtained from plaintiff was positive for both of these viruses. In addition, pursuant to the mandatory requirements of MCL 333.5114, defendant reported the positive findings and plaintiff's name to the Michigan Department of Public Health (MDPH). The blood sample identified as plaintiff's by the laboratory was also sent to MDPH where the positive findings were confirmed. It is uncontested that the blood sample tested was Type B and that plaintiff's actual blood type is A positive. Thus, there appears to be no question but that the reports to plaintiff's physician and the MDPH that she was positive for HIV and Hepatitis B were based upon readings of a blood sample that did not in fact belong to plaintiff. It is also undisputed that the only persons who handled the subject sample were agents of plaintiff's physician and agents of defendant laboratory. According to an affidavit from the manager of the physician's office who personally reviewed the relevant office records, no Type B blood samples were sent by that office to defendant lab on the relevant date, suggesting that the sample identified by the lab as

plaintiff's could not even have come from the office of plaintiff's doctor. Accordingly, plaintiff asserts that defendant misattributed findings concerning the blood of another patient to her and that since her doctor did not draw any Type B blood on the day in question, the mislabeling or mishandling must have occurred at defendant laboratory.

Contrary to defendant's assertion, MCL 333.5131(6) immunity does not shield defendant from plaintiff's claim that it negligently reported the wrong blood sample results to plaintiff or her doctor and that plaintiff suffered emotional injury as a result. I agree that MCL 333.5131(6) provides immunity "for the release of th[e] information," providing defendant with immunity for its release of the results of the testing. The statute is silent, however, on immunity for *inaccurate* testing and results. There is nothing in the language of the statute that provides or even implies immunity for a defendant that has negligently handled, labeled or tested samples resulting in inaccurate results. The distinction is simple to understand. The statute was designed to allow the disclosure of test results without fear of prosecution for a confidentiality violation based on a lack of patient permission to disclose. This is evident given that the Legislature gave the immunity to the "person who releases the results." MCL 333.5131(6). The statute provides no immunity to the testing company for negligent actions that result in inaccurate results being reported. Thus, although the act of actually releasing test results is protected, negligence that results in inaccurate test results being reported is not. Because plaintiff's claim arises from defendant's negligent labeling, handling, or testing, which resulted in inaccurate test results, there was no statutory immunity and summary disposition of plaintiff's negligence claim under MCR 2.116(C)(7) was improper.

Summary disposition as to Count III was also improper under MCR 2.116(C)(10) as defendant did not submit any evidence in support of its motion as required by MCR 2.116(G)(3)(b). The only "affidavits, depositions, admissions, or other documentary evidence in support" of its (C)(10) motion was an affidavit signed by the general manager of defendant lab. However, that affidavit does not pass muster under MCR 2.116(G)(6) which requires that such affidavits "shall only be considered to the extent that the content or substance would be admissible as evidence." The affidavit submitted by the defense and relied upon by the trial court amounts to nothing more than a recitation of defendant's version of the facts signed by a person who had no personal knowledge of these facts and whose entire affidavit consists of unsupported hearsay.

The affiant does not indicate that he personally labeled, handled or tested the subject specimen or that he has personal knowledge of same. He does not even assert that he spoke with any person who labeled, handled or tested the specimen, or what documents he reviewed, which would at least provide some basis for his hearsay statements. Despite this, he makes assertions as to what blood specimens were received by his laboratory, how plaintiff's sample was labeled, and what the test results were. In sum, he recites why in his opinion he thinks that his laboratory did not make a mistake and that the mistake must have happened at the doctor's office. He does nothing more than state what he believes, or hopes, the evidence will ultimately show. He does not assert that he possesses that evidence or even how that evidence will be shown at trial. This is plainly an inadequate basis upon which to grant summary disposition.

For these reasons, I would reverse and remand for further proceedings as to Count III.

/s/ Douglas B. Shapiro