

STATE OF MICHIGAN
COURT OF APPEALS

JESUBEN ENGELHARDT and LORI
ENGELHARDT,

UNPUBLISHED
April 19, 2012

Plaintiffs-Appellees,

v

No. 292143
Macomb Circuit Court
LC No. 2007-004652-NM

ST. JOHN HEALTH SYSTEM-DETROIT-
MACOMB CAMPUS, d/b/a ST. JOHN
MACOMB HOSPITAL,

Defendant-Appellant,

and

RAJESH C. BHAGAT, M.D., and RAJESH C.
BHAGAT, M.D., P.C.,

Defendants.

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

FORT HOOD, J. (*dissenting*).

Because I conclude that factual issues exist that preclude summary disposition, I respectfully dissent.

When ruling on a motion for summary disposition, the court does not assess the credibility of the witnesses. *White v Taylor Distrib Co*, 482 Mich 136, 139; 753 NW2d 591 (2008). “Summary disposition is suspect when motive and intent are at issue or where the credibility of a witness is crucial.” *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). When the truth of a material factual assertion made by a moving party is contingent upon credibility, summary disposition should not be granted. *Id.* at 136. The trial court may not make factual findings or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). When the evidence conflicts, summary disposition is improper. *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003). Inconsistencies in statements given by witnesses cannot be ignored. *White*, 482 Mich at 142-143. Rather, application of disputed facts to the law present proper questions for the jury or trier of fact. *Id.* at 143.

To succeed on a claim of medical malpractice, a plaintiff must establish: “(1) the appropriate standard of care governing the defendant’s conduct at the time of the purported negligence, (2) that the defendant breached that standard of care, (3) that the plaintiff was injured, and (4) that the plaintiff’s injuries were the proximate result of the defendant’s breach of the applicable standard of care.” *Craig v Oakwood Hosp*, 471 Mich 67, 97; 684 NW2d 296 (2004). “To establish a prima facie case of negligence, a plaintiff must prove the following elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant’s was a proximate cause of the plaintiff’s damages.” *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; ___ NW2d ___ (2011). Proximate cause is a legal term signifying both cause in fact and legal cause. *Craig*, 471 Mich at 86. Generally, an act or omission is a cause in fact of a plaintiff’s injury only where the injury would not have occurred without that act or omission. *Id.* at 87. To establish cause in fact, a plaintiff must present specific facts that “would support a reasonable inference of a logical sequence of cause and effect.” *Craig*, 471 Mich at 87.

“Under Michigan negligence jurisprudence, it is not necessary to show that a party’s conduct was ‘the’ proximate cause of the injuries – showing that the party’s conduct was ‘a’ proximate cause of the injuries is sufficient.” *Orzel v Scott Drug Co*, 449 Mich 550, 56-567; 537 NW2d 208 (1995). The issue of proximate cause normally presents a question to be decided by the trier of fact. *Dep’t of Transp v Christensen*, 229 Mich App 417, 424; 581 NW2d 807 (1998). However, if the facts underlying the issue of proximate cause are undisputed and reasonable minds could not differ, the issue may be decided by the court. *Id.* “[A] proximate cause is a foreseeable, natural, and probable cause of the plaintiff’s injury and damages.” *Unibar Maintenance Services, Inc v Saigh*, 283 Mich App 609, 625; 769 NW2d 911 (2009). The plaintiff bears the burden of that he suffered an injury that “more probably than not was proximately caused by the negligence of the defendant[.]” MCL 600.2912a(2); *Craig*, 471 Mich at 86 n 45.

The governing body of a hospital is responsible for selection of the medical staff and the quality of care rendered in the hospital. MCL 333.21513(a). A hospital’s primary function includes screening of the staff physicians to “insure” that only competent physicians are permitted to practice in the hospital. See MCL 333.21513(b), (c); *Ferguson v Gonyaw*, 64 Mich App 685, 697; 236 NW2d 543 (1975). The violation of a statute creates a rebuttable presumption of negligence. *Candelaria v B C Gen Contractors, Inc*, 236 Mich App 67, 82 n 5; 600 NW2d 348 (1999).

In the present case, the testimony of the witnesses diverged. Dr. Bhagat testified that he last had a meeting regarding credentialing in the 1990s. He merely filled out an application to become recredentialed. Marcia Webb, the credentialing coordinator for defendant, testified that a physician seeking reappointment submitted a form to the credentialing department. Webb verified the information contained in the form, checked other resources and databases, and examined the physician’s background that included medical malpractice history. Webb’s department did not make recommendations regarding appointment or reappointment, but simply gathered information. The chief of the physician’s specialty department made a recommendation to the credentials committee, and the credentials committee made the final decision.

Dr. Roberto Barretto, defendant’s vice president of medical affairs/chief medical officer, testified that medical malpractice history is a consideration when examining the physician’s

credential file. He testified that if the division chief had a question regarding an applicant, the division chief should have brought the matter to the chief medical officer's attention. However, Dr. Guy Pierrot, the division chief, testified that the issue of medical malpractice was raised by other individuals who are "much more important in that process." Additionally, the testimony from hospital personnel differed regarding the extent of the history of medical malpractice in the credentialing file, and the degree of the availability of the information prior to the most recent credentialing period. Thus, the witnesses disputed the extent of the investigation and the individual responsible for the investigation into the qualifications of the physician seeking recredentialing. Inconsistent statements by witnesses cannot be ignored, and the application of disputed facts to the law present proper questions for the jury. *White*, 482 Mich at 142-143.

I would affirm the trial court.

/s/ Karen M. Fort Hood