IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ERNESTA COURSEY AND WILLIAM COURSEY, Plaintiffs, v. ST. FRANCIS HOSPITAL, INC. AND ST. FRANCIS HOSPITALISTS, LLC, Defendants.	:	C.A. No. S19C-10-009 RFS

ORDER

Submitted: 10/14/2020
Decided: 12/8/2020

Edward C. Gill, Esq., 16 North Bedford Street, P.O. Box 824, Georgetown, DE 19947, Attorney for Plaintiffs.

Colleen D. Shields, Esq. and Alexandra D. Rogin, Esq., 222 Delaware Avenue, 7th Floor, Wilmington, DE 19801, Attorneys for Defendant, St. Francis Hospital, Inc.

I. INTRODUCTION

Before the Court is St. Francis Hospital, Inc.'s ("Defendant") motion for summary judgment.[1] For the reasons that follow, the motion is **GRANTED**.

II. FACTUAL AND PROCEDURAL HISTORY

Defendant is a hospital located in Delaware. On October 10, 2018, Ernesta Coursey ("EC") was a patient of Defendant to give birth to her son. On October 11, 2018, both

[1] Defendant, St. Francis Hospitalists, LLC has not been served and is a named defendant in the complaint; however, St. Francis Hospitalists, LLC is not involved in the present motion.

EC and the child's urine tested positive for marijuana. That same day, Defendant reported the positive drug screen to the Division of Family Services ("DFS"). The medical records provided by Defendant indicate both EC and her child were to be discharged on October 12, 2018.[2] EC and her child were discharged on October 12, 2018.[3]

On October 8, 2019, EC, along with her husband William Coursey ("WC") (collectively, the "Plaintiffs"), filed a complaint in this Court alleging that Defendant discriminated against EC, causing EC emotional trauma.[4] In addition, WC alleges loss of consortium of his wife.

The complaint alleges Defendant discriminated against EC because of EC's use of medical marijuana. Plaintiffs allege Defendant harassed EC and questioned whether she should be breastfeeding her child. EC was encouraged not to breastfeed due to her use of marijuana; however, EC continued to breastfeed.

III. STANDARD OF REVIEW

Under Superior Court Civil Rule 56(c), a party is entitled to summary judgment if the moving party can show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[5] The party moving for summary judgment bears the initial burden of showing no material issues of fact are present.[6] When a moving party meets her initial burden of showing that no material issues of fact exist, the burden shifts to the

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[2] Def.'s Mot. Ex. A (Anticipated Discharge Date listed as 10/12/2018 EDT).
[3] *Id.*
[4] Plaintiffs allege the following: (i) EC persistently re-experiences the traumatic event; (ii) recurrent, involuntary and intrusive memories; (iii) traumatic nightmares; (iv) dissociative reactions; (v) intense or prolonged distress after exposure to traumatic reminders; (vi) marked physiologic reactivity after exposure to trauma-related stimuli; (vii) trauma-related thoughts or feelings; (viii) persistent negative trauma-related emotions; (ix) markedly diminished interest in (pre-traumatic) significant activities; (x) feeling alienated from others; (xi) hypervigilance; (xii) inability to feel safe and secure; and (xiii) mental anguish and emotional harm.
[5] Super. Ct. Civ. R. 56(c).
[6] *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979).

nonmoving party to show that such issues do exist.[7] The facts must be viewed in a light favorable to the non-moving party.[8]

"The 'mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment;' a factual dispute is genuine only where 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"[9]

IV. DISCUSSION

Defendant moves for summary judgment, contending Plaintiffs fail to establish entitlement to relief under either 16 *Del. C.* § 4903A or 16 *Del. C.* § 4905A. Defendant argues Plaintiffs fail to identify a right or privilege EC was denied while at the hospital.

Plaintiffs oppose Defendant's motion, arguing section 4903A provides a patient shall not be denied a right or privilege and section 4905A provides the use of medical marijuana shall not constitute the use of an illicit substance. Plaintiffs argue Defendant listed marijuana under substance use for non-medical purposes and listed the use of medicinal marijuana as a risk factor. Further, Plaintiffs allege EC's son was not released from the hospital at the regularly scheduled time.

In relevant part, 16 *Del. C.* § 4903A states:

> (a) A registered qualifying patient shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana pursuant to this chapter....

In relevant part, 16 *Del. C.* § 4905A states:

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[7] Super. Ct. Civ. R. 56(c).
[8] *Guardian Const. Co. v. Tetra Tech Richardson, Inc.*, 583 A.2d 1378, 1381 (Del. Super. Ct. 1990).
[9] *Smith v. Delaware*, 745 F. Supp. 2d 467, 478 (D. Del. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

> (b) A person otherwise entitled to custody of or visitation or parenting time with a minor shall not be denied such a right, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this chapter, unless the person's actions in relation to marijuana were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

EC's medical records indicate EC was not deprived of any right or privilege due to her use of medical marijuana.[10] EC was encouraged not to breastfeed; however, Defendant did not prevent EC from breastfeeding her child.[11] Further, Plaintiffs argue Defendant incorrectly classified EC's marijuana use. Specifically, Plaintiffs claim EC's medical records indicate that she used marijuana for non-medical use and that it constituted a risk factor. Section 4905A provides that a patient's authorized use of marijuana "shall not constitute the use of an illicit substance...."[12] The medical records indicated that EC has a script for the marijuana; therefore, the Court finds Defendant properly classified EC's marijuana use.[13]

The Court also finds the medical records show EC did not lose any parenting time with her child. The hospital records indicate that on October 11, 2018, the hospital logged the anticipated discharge date was October 12, 2018.[14] EC's child was discharged to her on October 12, 2018, as evidenced by the Social Discharge Approval letter from DFS.[15] Additionally, the hospital records note that EC "has been very independent with care, frequent interaction with baby."[16]

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[10] Def.'s Mot. Ex. A.
[11] *Id.* at 2 (..."MOB was encouraged not to breast feeding due to AAP guidelines- however MOB continues to do so."
[12] 16 *Del. C.* § 4905A (a)(2).
[13] Pl.'s Reply Ex. A at 2. (Below the category titled "Substance Use" notes that EC "...uses marijuana oils. Has a script for it.")
[14] Def.'s Mot. Ex. A at 1.
[15] *Id.* at 4.
[16] *Id.* at 3.

Further, Defendant argues, even if a right had been violated, Defendant was acting in accordance with 16 *Del. C.* § 903B. Section 903B provides that "the healthcare provider who is involved in the delivery or care of an infant with prenatal substance exposure shall make a notification to the Division...."[17] Because Defendant was required to make a report, Defendant argues they are afforded immunity; therefore, if the Court was to find an issue of material fact, Defendant argues they are entitled to summary judgment as a matter of law.

Defendant was required to notify DFS pursuant to 16 *Del. C.* § 903B. In relevant part, section 903B provides:

> (a) The healthcare provider who is involved in the delivery or care of an infant with prenatal substance exposure shall make a notification to the Division by contacting the Division report line as identified in § 905 of this title.[18]

Defendant contacted DFS because EC's child tested positive for marijuana. Pursuant to statute, Defendant notified the appropriate agency in response to delivering an infant with prenatal substance exposure. A social worker with DFS met with EC. The exhibits provided by Defendant along with their motion to dismiss evidences EC and her child were cleared by DFS and discharged as scheduled.[19]

Section 903B further provides "[t]he immunity provisions under § 908 of this title will also apply to this chapter."[20]

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[17] 16 *Del. C.* § 903B(a).
[18] 16 *Del. C.* § 903B(a)
[19] Def.'s Mot. Ex. A at 4.
[20] 16 *Del. C.* § 903B. Section 908 provides, in relevant part:

> any person participating in good faith in the making of a report or notifying police officers pursuant to this chapter.... performing a medical examination without the consent of those responsible for the care, custody, and control of a child pursuant to § 906(e) of this title; or exercising emergency protective custody in compliance with § 907 of this title has immunity from any liability, civil or criminal, that might otherwise exist, and such immunity extends to participation in any judicial proceeding resulting from the above actions taken in good faith. 16 *Del. C.* § 908(a).

If Defendant is immune for reporting the urine test, summary judgment should be granted. Immunity under section 908 has been discussed by Delaware courts. In *Hedrick v. Quest Diagnostics Clinical Labs., Inc.*, the laboratory received a urine test for a girl suspected of having a urinary tract infection.[21] Quest tested the sample and noted the presence of sperm. After retesting and confirming the presence of sperm, Quest provided the doctor their findings. As a result of Quest's test, the authorities were contacted. Consequences for the girl's family included the father being treated as a suspect.[22] The family brought suit against Quest; however, the Court determined Quest was immune.[23]

The *Hedrick* court reasoned that section 908 immunized Quest even though Quest did not make the report to the authorities.[24] The doctor who reported it could not have made the report without Quest's test; therefore, the court concluded the statute extended immunity to Quest as a participant.[25] The court stated "[a] primary intent of this or similar immunity provisions is to encourage the reporting of child abuse and not place an undue chill on the willingness to do so."[26]

The court in *Hedrick* extended immunity to a laboratory that did not make the report themselves. Here, we are faced with deciding whether a hospital that made a report in accordance with statute is immune. As the court stated in *Hedrick*, the intent of the immunity provisions is to encourage reporting. Therefore, the Court finds the present case is one where the statute provides immunity. Here, EC and her child both tested positive for marijuana. Defendant, based on statute, contacted DFS based on the child's urine test. The Court finds the Defendant's

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[21] *Hedrick v. Quest Diagnostics Clinical Labs., Inc.*, 807 A.2d 584, 586 (Del. Super. Ct. 2002).
[22] *Id.*
[23] *Id.* at 594.
[24] *Id.*
[25] *Id.*
[26] *Id.* at 593.

report to DFS to be in good faith and based on the positive urine test. The fact that EC has a prescription to use the medical marijuana would not erase Defendant's immunity under the statute. If the Court were to accept such a notion, it would place a burden on anyone making a report pursuant to section 903B to investigate the reasons for an infant's positive urine test.

Defendant also moves for summary judgment regarding WC's loss of consortium claim. "The cause of action for loss of consortium rests upon the elements, (1) that the party asserting that cause of action was married to the person who suffered physical injury at the time the injury occurred, (2) that the spouse suffered injury which deprived the other spouse of some benefit which formerly existed in the marriage, and (3) that the injured spouse has a valid cause of action for recovery against the tortfeasor."[27] Here, as discussed above, EC does not have a valid cause of action. Because WC's claim for loss of consortium is dependent upon EC's valid cause of action, the release of her direct claim also bars the derivative claim.[28]

Lastly, the Court will address Plaintiffs' argument that the motion is premature because discovery has not taken place. Defendant argues discovery would not change the outcome of the case, so, the motion is not premature. As a matter of law, Defendant is entitled to summary judgment. As discussed above, Defendant acted pursuant to statute and is afforded immunity pursuant to section 903B; therefore, discovery will not lend merit to Plaintiffs' case. Therefore, Defendant is entitled to summary judgment as a matter of law.

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[27] *Kelleman v. Kennedy*, 2006 WL 3545144, at *1 (Del. Super. Ct. Nov. 3, 2006) (citing *Lacy v. G.D. Searle & Co.*, 484 A.2d 527, 532 (Del.Super.1984)).
[28] *Jones v. Elliott*, 551 A.2d 62, 64 (Del. 1988).

V. CONCLUSION

Considering the foregoing, Defendant's Motion for Summary Judgment is **GRANTED**

IT IS SO ORDERED.

Richard F. Stokes, Judge

FILED PROTHONOTARY
SUSSEX COUNTY

cc: Prothonotary's Office