

# Third District Court of Appeal

## State of Florida

Opinion filed November 27, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-1017  
Lower Tribunal No. 09-47443

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**Melissa Ann King,**  
Appellant,

vs.

**Baptist Hospital of Miami, Inc., and Baptist Hospital of Miami, Inc.  
d/b/a Baptist Children's Hospital,**  
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Antonio E. Marin  
and Mavel Ruiz, Judges.

Gaebe, Mullen, Antonelli & DiMatteo, and Elaine D. Walter, Michael A.  
Mullen, and Joseph M. Winsby, for appellant.

Falk, Waas, Hernandez, Cortina, Solomon & Bonner, P.A., and Richard A.  
Warren, and Scott L. Mendlestein, for appellees.

Before FERNANDEZ, and LINDSEY, JJ., and LEBAN, Senior Judge.

PER CURIAM.

Melissa Ann King appeals the trial court’s entry of final summary judgment on her amended complaint in favor of Baptist Hospital of Miami, Inc., and Baptist Hospital of Miami, Inc. d/b/a Baptist Children’s Hospital (collectively “Baptist”). King asserts the trial court erred in finding that there was no evidence from which a jury could have concluded that Dr. Thompson was an apparent agent of Baptist. We agree and reverse. See Guadagno v. Lifemark Hosps. of Fla., Inc., 972 So. 2d 214, 218 (Fla. 3d DCA 2007) (“Under certain circumstances . . . a hospital may be held vicariously liable for the acts of physicians, even if they are independent contractors, if these physicians act with the apparent authority of the hospital.” (quoting Roessler v. Novak, 858 So. 2d 1158, 1162 (Fla. 2d DCA 2003))).

“An apparent agency exists only if all three of the following elements are present: (a) a representation by the purported principal; (b) a reliance on that representation by a third party; and (c) a change in position by the third party in reliance on the representation.” Id. “‘Apparent authority’ does not arise from the subjective understanding of the person dealing with the purported agent, nor from appearances created by the purported agent himself; instead, ‘apparent authority’ exists only where the *principal* creates the appearance of an agency relationship.” Izquierdo v. Hialeah Hosp., Inc., 709 So. 2d 187, 188 (Fla. 3d DCA 1998) (quoting Spence, Payne, Masington & Grossman, P.A. v. Philip M. Gerson, P.A., 483 So. 2d 775, 777 (Fla. 3d DCA 1986)). “The existence of an agency relationship is normally

one for the trier of fact to decide.” Villazon v. Prudential Health Care Plan, Inc., 843 So. 2d 842, 853 (Fla. 2003).

We have thoroughly reviewed the record and, viewing the evidence in the light most favorable to King as we must, find there is evidence from which a jury could conclude that Baptist engaged in activities to create the appearance of an agency relationship. Compare Cuker v. Hillsborough Cty. Hosp. Auth., 605 So. 2d 998, 999 (Fla. 2d DCA 1992) (“The theory of apparent agency is applicable where a hospital holds out a physician as its agent and/or employee, and a patient accepts treatment from that physician in the reasonable belief that it is being rendered on behalf of the hospital.”) and Irving v. Doctors Hosp. of Lake Worth, Inc., 415 So. 2d 55, 59 (Fla. 4th DCA 1982) (“The hospital held itself out as affording emergency treatment and the jury could well find that Irving was dealing with the hospital.”) and Webb v. Priest, 413 So. 2d 43, 47 (Fla. 3d DCA 1982) (“The fact that defendant doctors were employed . . . not directly by the hospital does not preclude a finding of apparent agency.”) with Guadagno, 972 So. 2d at 218 (“[T]he principal . . . expressly disavowed an agency or employee relationship, conveyed that information to the decedent, and the decedent acknowledged this by signing the admission documents.”). Accordingly, we reverse and remand for proceedings consistent herewith.

Reversed and remanded.