RENDERED: DECEMBER 14, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001069-MR

JASSICA SNEED — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH MCDONALD-BURKMAN, JUDGE
ACTION NO. 14-CI-004064

UNIVERSITY OF LOUISVILLE HOSPTIAL; DR. TANYA FRANKLIN; AND DR. JENNIFER FORD ALLEN — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, DIXON, AND THOMPSON, JUDGES.

DIXON, JUDGE: Appellant, Jassica Sneed, appeals from orders of the Jefferson Circuit Court granting summary judgment in favor of Appellees, Dr. Tanya Franklin, Dr. Jennifer Ford Allen, and the University of Louisville Hospital, and dismissing her claims for medical malpractice. Finding no error, we affirm.

On August 1, 2013, Sneed, who was 39 weeks pregnant, was admitted into the Labor and Delivery Unit at the University of Louisville Hospital ("Hospital"). Early the next morning, Sneed delivered her baby under the care of Obstetrician/Gynecologist Dr. Tanya Franklin and medical resident Dr. Jennifer Allen. During the delivery, Sneed suffered a 4th degree laceration, the deepest category of vaginal tears from childbirth typically characterized by a tear that extends completely into the rectum. Immediately following the birth, Dr. Allen sutured the laceration with Dr. Franklin assisting. Sneed was subsequently discharged from the Hospital on August 4, 2013.

Sneed returned to the Hospital's Labor and Delivery Triage Unit on August 9, 2013 and August 12, 2013, with complaints of stool coming out of her vagina. Both times, providers cleaned the area and provided necessary treatment. However, when Sneed again returned to the triage unit on August 13, 2013, she was admitted and diagnosed with a rectovaginal fistula, which is described as an abnormal tract or connection between the rectum and vagina. At that time, she was treated by maternal-fetal medicine physician Dr. Vernon Cook. Dr. Cook removed Sneed's sutures and packed the affected area. Dr. Cook informed Sneed at that time that there was "a small hole" from where Dr. Allen and Dr. Franklin missed a stitch in suturing her immediately after childbirth. A few days later, Sneed's sister spoke with Dr. Allen wherein she confirmed that it was she and Dr. Franklin that

initially repaired the laceration. Sneed's sister relayed this information to Sneed. Sneed subsequently stated in her deposition that sometime around August 18 or 19, 2013, she was told by "Nurse Pam"[1] that Dr. Allen and Dr. Franklin should not have attempted the repair without at least informing Sneed of the extent of the laceration. Similarly, prior to her discharge from the hospital on August 21, 2013, Sneed met with Dr. Sean Francis, a female reconstructive specialist, who was very critical of Dr. Allen and Dr. Franklin. Dr. Francis told Sneed that the initial suturing of the laceration should never have been done, and further that, because the faulty sutures had to be removed and the area packed, the tissue surrounding the lacerated area had been destroyed and would take time to regenerate before reconstructive surgery could even take place. Following Sneed's discharge from the hospital, Dr. Francis continued to provide follow-up care in contemplation of permanent reconstructive surgery. That permanent repair was subsequently performed on October 9, 2013.

On August 1, 2014, Sneed filed a medical malpractice action in the Jefferson Circuit Court against Dr. Ali Azadi,[2] the Hospital, unknown doctors, and

[1] Sneed did not testify in her deposition as to "Nurse Pam's" full identity.

[2] Neither brief explains who Dr. Azadi is or what his role was during the events at issue. He was subsequently dismissed from the litigation by agreed order.

unknown nurses. On October 20, 2014, Sneed filed a first amended complaint naming Dr. Allen and Dr. Franklin as defendants.

Thereafter, on October 30, 2014, Dr. Allen and Dr. Franklin filed a motion for summary judgment arguing that the claims against them were time-barred under KRS 413.140(1)(e). Sneed defended that the discovery rule applied and that the delay in obtaining her medical file had tolled the statute of limitations. The trial court initially held the motion in abeyance to allow Sneed the opportunity to conduct discovery. On November 2, 2015, Dr. Allen and Dr. Franklin filed a supplemental memorandum to their motion for summary judgment. Following a lengthy hearing on December 22, 2015, the trial court entered an order on February 19, 2016, granting partial summary judgment in favor of Dr. Allen and Dr. Franklin, and dismissing all claims against them. Therein, the trial court concluded,

> The cause of action accrues when the plaintiff knows she has been wronged and by whom. *Wiseman v. Alliant Hospitals, Inc.*, 37 S.W.3d 709, 712 (Ky. 2000). At her deposition on June 29, 2015, Sneed testified that while she was in the hospital in mid-August 2013 for the rectovaginal fistula, her sister came to visit her and wanted to speak to the doctor that had performed the repair following delivery. Dr. Allen spoke to Sneed and her sister together and admitted Dr. Allen and Dr. Franklin had done the repair. By her own admission, Sneed knew she had been injured and the identity of Drs. Franklin and Allen in mid-August 2013. Therefore, she should have named them in the original complaint.

> An amendment charging the party against whom a claim is filed relates back to the date of the original filing when (1) the claims arise from the same conduct, transaction or occurrence and, within the period provided for commencing the action against him, the party to be brought has received such notice of the action that he will not be prejudiced and knew or should have known that but for mistake concerning the identity of the proper party, the action could have been brought against him. CR 15.03. The mere fact that the Hospital was timely named does not impute knowledge of the action to Drs. Franklin and Allen, especially when the action was filed the day before the statute of limitations expired. See, *Schwindel v. Meade County*, 113 S.W.3d 159, 170 (Ky. 2003).

Following the dismissal of Dr. Allen and Dr. Franklin, Sneed filed her CR 26.03 expert disclosures. Sneed's two experts, OB/GYNs Dr. Pedro Miranda-Seijo and Dr. Charles E. Stoopack, did not allege any standard of care criticisms against the Hospital, but rather only alleged breaches in the standard of care on the part of "[t]he physicians treating Ms. Sneed." Accordingly, the Hospital as the sole remaining defendant[3] in the case, moved for summary judgment based upon Sneed's lack of expert support as to the direct claims of liability against the Hospital. The Hospital also moved for summary judgment on Sneed's claims of vicarious liability for the actions of Dr. Allen and Dr. Franklin.

[3] Sneed had already voluntarily dismissed individually named nurses brought in by the amended complaint.

On June 26, 2017, the trial court entered summary judgment in favor of the Hospital finding,

> Sneed's disclosed experts expressed breaches of the standard of care as to her treating physicians; however no criticism was lodged against the Hospital. Although the individual physicians have been dismissed from this action, Sneed alleges they were the employees and/or agents of the Hospital, thereby rendering the Hospital liable.
>
> . . .
>
> A signed admission form disclosing the status of the doctors as not being hospital employees relieves the Hospital of liability for the doctors' alleged wrongdoing as it gives the patient notice that the doctors were not employees. *Floyd v. Humana of Virginia*, 787 S.W.2d 267 (Ky. App. 1989).
>
> Sneed did not sign an acknowledgment form giving notice that the physicians were not hospital employees on August 1, 2013. However, she did knowingly sign acknowledgment forms when she was admitted to the Hospital on March 24, 2013 and June 13, 2013. She also executed a "Consent for Semi-Annual Signatures" on June 13, 2013, which permitted the Hospital to use that day's signature on the Consent for Medical Treatment form for up to six months. Failure to gain Sneed's signature on the consent form on August 1, 2013 is irrelevant as she had notice the physicians were not employees of the Hospital.

Sneed now appeals to this Court as a matter of right.

Summary judgment is an extraordinary remedy that should be "cautiously applied and should not be used as a substitute for trial." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 483 (Ky. 1991). Instead,

summary judgment is only appropriate "to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985). "Impossible," of course, should be interpreted in "a practical sense, not in an absolute sense." *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992). Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03. A motion for summary judgment is to be reviewed in a light most favorable to the opposing party, but the opposing party cannot defeat the motion "without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Steelvest*, 807 S.W.2d at 482. After all, a trial court's role is "not to resolve any issue of fact, but to discover whether a real fact issue exists." *Shelton v. Ky. Easter Seals Soc., Inc.*, 413 S.W.3d 901, 905 (Ky. 2013).

Our review of a trial court's resolution of a summary judgment motion involves only legal questions and, like the trial court, the determination of whether an issue of fact exists. We do not resolve issues of fact. Because of this, we operate under a *de novo* standard of review.

Sneed first argues that the trial court erred in ruling that her claims against Dr. Allen and Dr. Franklin were time-barred. Sneed contends that the doctrine of continuous treatment should have tolled the limitations period because she has been under the continuous care of a doctor at the Hospital since the date she delivered her baby.

Under Kentucky law, actions brought "against a physician [or] surgeon . . . for negligence or malpractice" are subject to a one-year statute of limitations. KRS 413.140(1)(e). "[T]he cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered[.]" KRS 413.140(2). The latter of these two provisions is what is referred to as the "discovery rule," and has been explained by our Supreme Court as follows: "[T]he statute begins to run on the date of the discovery of the injury, or from the date it should, in the exercise of ordinary care and diligence, have been discovered." *Wiseman v. Alliant Hospitals, Inc.*, 37 S.W.3d 709, 712 (Ky. 2000) (quoting *Hackworth v. Hart*, 474 S.W.2d 377, 379 (Ky. 1971)). Thus, it is the date of actual or constructive knowledge of the injury that triggers the running of the statute of limitations. "The knowledge necessary to trigger the statute is two-pronged; one must know: (1) he has been wronged; and (2) by whom the wrong has been committed." *Id.* Significantly, however, legal confirmation that one has been wronged is not necessary under the discovery rule.

Vannoy v. Milum, 171 S.W.3d 745, 748-49 (Ky. App. 2005). Rather, one must simply be aware of the facts sufficient to put him on notice that his legal rights may have been invaded and by whom; uncertainty about the legal significance of those facts does not toll the limitations period. *Id.*

In *Harrison v. Valentini*, 184 S.W.3d 521 (Ky. 2005), the Kentucky Supreme Court adopted the continuous course of treatment doctrine in medical malpractice cases, which provides that "the statute of limitations is tolled as long as the patient is under the continuing care of the physician for the injury caused by the negligent act or omission." *Id.* at 524. (footnote omitted). The doctrine relies upon the premise that a patient should not be required to choose between maintaining the doctor-patient relationship with the physician treating the condition and compromising or ending that relationship by initiating a lawsuit in order to satisfy the statute of limitations. As the *Harrison* Court explained,

> [W]here a patient relies, in good faith, on his physician's advice and treatment or, knowing that the physician has rendered poor treatment, but continues treatment in an effort to allow the physician to correct any consequences of the poor treatment, the continuous course of treatment doctrine operates to toll the statute of limitations until the treatment terminates at which time running of the statute begins.

Id. at 525. Accordingly, by tolling the statute of limitations for medical malpractice actions, the continuous course of treatment doctrine "gives the

physician a reasonable chance to identify and correct errors made at an earlier stage of treatment." *Id.* at 524-25 (citation omitted).

Citing to the *Harrison* decision, the Massachusetts Supreme Judicial Court in *Parr v. Rosenthal*, 57 N.E.3d 947, 957 (Mass. 2016), similarly observed,

> The rationale for the doctrine appears to be two-fold. First, a patient who continues a physician-patient relationship impliedly continues to have trust and confidence in the physician, and this trust and confidence put "the patient at a disadvantage to question the doctor's techniques," *Barrella v. Richmond Mem. Hosp.*, 88 A.D.2d 379, 384, 453 N.Y.S.2d 444 (N.Y. 1982), and impair "the patient's ability to make an informed judgment as to negligent treatment." *Harrison v. Valentini*, 184 S.W.3d 521, 525 (Ky. 2005). *See* [*Otto v. National Inst. of Health*, 815 F.2d 985, 988 (4th Cir. 1987)] ("The continuous treatment doctrine is based on a patient's right to place trust and confidence in his physician.... [T]he patient is excused from challenging the quality of care being rendered until the confidential relationship terminates"). Second, where there is a poor medical result from a physician's treatment or procedure, a patient is entitled to allow the physician an adequate opportunity to remedy or mitigate the poor result without needing to risk interruption of that course of treatment by exploring whether the poor result arose from that physician's negligence. *See id*. ("the doctrine permits a wronged patient to benefit from his physician's corrective efforts without the disruption of a malpractice action"); *Barrella, supra* (patient is entitled "to rely upon the doctor's professional skill without the necessity of interrupting a continuing course of treatment by instituting suit").

57 N.E.3d 947, 957 (Mass. 2016).

Herein, Sneed acknowledges that neither Dr. Franklin nor Dr. Allen provided any medical treatment after August 2, 2013. Nevertheless, she contends that because she continued to receive treatment at the Hospital for the same condition, the statute of limitations for her claims against Dr. Franklin and Dr. Allen are tolled. We must disagree.

Admittedly, this is the first time we have been presented with the issue of whether the statute of limitations against a negligent doctor is tolled by a continuous course of non-negligent treatment by a different provider after the plaintiff has actual knowledge of a negligent act. However, we agree with those jurisdictions that have concluded that the continuing course of treatment doctrine only tolls the statute of limitations until the treatment by the physician who committed the negligent act ceases and the doctor-patient relationship ends. *Cefaratti v. Aranow*, 138 A.3d 837 (Conn. 2016); *Trexler v. Pollack*, 522 S.E.2d 84, 88 (N.C. App. 1999); *Gomez v. Katz*, 61 A.D.3d 108, 111 (N.Y. App. Div. 2009); *Koenig v. Group Health Co-op. of Puget Sound*, 491 P.2d 702 (Wash. App. 1971); *Parr*, 57 N.E.3d at 950 ("[O]nce the allegedly negligent physician no longer has any role in treating the plaintiff, the continuing treatment doctrine does not apply even if the physician had at one time been part of the same 'treatment team' as the physicians who continue to provide care."). We are persuaded by the rationale in *Pierre-Louis v. Hwa*, 182 A.D.2d 55 (N.Y. App. Div. 1992), wherein

the New York court held that "the continuous treatment doctrine is not available unless there is evidence of 'some relevant continuing relation' between the patient and the allegedly negligent doctor during the period of the subsequent treatment or 'an agency or other relevant relationship' between the allegedly wrong-doing physician and the subsequent treating physician." *Id*. at 58 (quoting *McDermott v. Torre*, 437 N.E.2d 1108 (N.Y. 1982)). *But see Watkins v. Fromm*, 108 A.D.2d 233 (N.Y. 1985) (The plaintiff was considered to be a patient of the entire medical group, rather than of any one of the individual doctors, and that it was the practice of the defendant doctors to discuss, as a group, the diagnosis and treatment of all of the patients under their care.).

Implicitly, the continuous treatment doctrine "recognizes that treating physicians are in the best position to identify their own malpractice and to rectify their negligent acts or omissions." *Gomez*, 61 A.D.3d at 111. Therefore, it logically follows that to benefit from the continuing course of treatment doctrine, a patient must show that she had a continuous relationship and received subsequent treatment from the doctor who committed the negligent act. We would point out that as a matter of policy, to toll the limitations period for the alleged negligence of a doctor simply because a plaintiff continued to receive subsequent treatment at the same hospital for the same condition would result in a virtually unlimited statute of limitations for medical malpractice claims. "If we established such a precedent, a

patient could bring a medical malpractice claim long after an initial act of negligence by one doctor, merely by returning to the same hospital for a checkup. Statutes of limitations exist for a reason-to afford security against stale claims." *Trexler,* 522 S.E.2d at 88.

There is no dispute that neither Dr. Franklin nor Dr. Allen rendered any additional treatment to Sneed after suturing her following the delivery on August 2, 2013. Furthermore, it is clear from Sneed's own deposition testimony that she was told by at least three different healthcare providers over the course of her admission to the Hospital from August 13-21, 2013, that it was Dr. Franklin and Dr. Allen that did the faulty laceration repair and that she had been injured as a result. Certainly, she cannot contend that she was relying on the care and skill of either doctor to correct the injury caused by their alleged poor treatment. Further, unlike the circumstances in *Watkins v. Fromm*, there is no proof herein that the subsequent treating doctors at the Hospital discussed Sneed's diagnosis and treatment with either Dr. Franklin or Dr. Allen, or that they in any manner practiced as a team or medical group. To the contrary, the evidence established that both doctors were nothing more than independent contractors of the Hospital.

Accordingly, because Sneed did not receive subsequent treatment from either Dr. Franklin or Dr. Allen, she cannot apply the continuous course of treatment doctrine to toll the statute of limitations. By her own admission, Sneed

knew she had been wronged and, by whom, in mid-August 2013, yet did not name either Dr. Franklin or Dr. Allen as a defendant until she filed her amended complaint in October 2014. Consequently, the claims against both doctors were time-barred under KRS 413.140(1)(e) and the trial court properly granted summary judgment in their favor.

Sneed next argues that the trial court erred in granting summary judgment in favor of the Hospital because there exists a genuine issue of material fact as to whether the Hospital can be held liable for Dr. Franklin and Dr. Allen's negligent actions under the theory of ostensible agency. Sneed contends that, contrary to the trial court's findings, she was not on notice at the time of her August 2, 2013, admission to the Hospital that either doctor was an independent contractor rather than employee of the Hospital. We must disagree.

"An apparent or ostensible agent is one whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, although he has not, either expressly or by implication, conferred authority upon him." *Paintsville Hosp. Co.*, 683 S.W.2d at 257 (quoting *Middleton v. Frances*, 257 Ky. 42, 77 S.W.2d 425, 426 (1934)); *see also generally Vandevelde v. Poppens*, 552 F. Supp. 2d 662, 666-67 (W.D. Ky. 2008). In other words, an ostensible (or apparent) agent is one who effectively is held out by the principal as being his agent. *Roberts v. Galen of Virginia, Inc.*, 111 F.3d 405, 413 (6th Cir.

1997), *reversed on other grounds in Roberts v. Galen of Virginia, Inc.*, 525 U.S. 249 (1999).

In the hospital-physician context, independent contractor-physicians have been deemed ostensible agents of hospitals only in cases where the hospital did nothing to alert the public that its physicians were not hospital employees. In Kentucky's seminal case on ostensible agency, *Paintsville Hospital Company,* our Supreme Court, in discussing ostensible and apparent agency, adopted the definition of ostensible agent as set forth in the Restatement (Second) of Agency § 267 (1958):

> One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

Paintsville Hosp. Co., 683 S.W.2d at 257; *see also Roberts*, 111 F.3d 405. The Supreme Court observed that in the context of the public's reasonable expectation of emergency room physicians,

> "[P]eople who seek medical help through the emergency room facilities of modern-day hospitals are unaware of the status of the various professionals working there."
>
> In these circumstances it is unreasonable to put a duty on the patient to inquire of each person who treats him whether he is an employee or independent contractor of the hospital. *Grewe v. Mt. Clemens General Hospital*,

> 404 Mich. 240, 273 N.W.2d 429 (1978). Indeed, it would be astonishing for courts to require a patient to ask emergency room personnel such a question considering the usual circumstances of the patient at the time he seeks out the emergency room for treatment.

Id. at 258 (quoting *Arthur v. St. Peters Hospital*, 405 A.2d 443, 447 (1979)). However, the *Paintsville Hospital* Court further concluded that "**[a]bsent notice to the contrary**, . . . [a] plaintiff ha[s] the right to assume that the treatment received was being rendered through hospital employees and that any negligence associated with that treatment would render the hospital responsible." *Id.* (emphasis added) (citing *Arthur*, 405 A.2d at 447).

Since the *Paintsville Hospital* decision, Kentucky Courts have generally ruled that consent forms explicitly disclosing that the providers of care are not employees or agents of the hospital are sufficient as a matter of law to defeat a claim against a hospital for ostensible or apparent authority. In *Vandevelde,* the plaintiffs argued the hospital could be held liable on a theory of apparent authority for the acts of certain physicians who were independent contractors. 552 F. Supp. 2d 662. The hospital moved for summary judgment and relied upon two admissions forms that stated that the physicians were not employees or agents of the hospital. The plaintiff acknowledged that she signed the forms but argued that she had not read them. Applying Kentucky law, the *Vandevelde* Court held that the fact that the plaintiff did not read the form was not

dispositive. *Id*. at 667. Rather, the Court reasoned that by providing the forms to patients receiving treatment, the hospital "attempted to alert the public that its physicians were not employees or agents of the hospital," and any theory of ostensible agency or apparent authority failed as a matter of law. *Id.* Thus, whether the patient read the form or not was irrelevant; rather the focus was on the hospital's attempt to alert the patient of the situation.

Similarly, in *Floyd v. Humana of Virginia, Inc.*, 787 S.W.2d 267 (Ky. App. 1989), a panel of this Court emphasized that the admission forms at issue specifically indicated that the physicians were not agents or employees of the hospital, and that "[t]here was no representation or other action to induce appellant to believe that the physicians were employees or agents of [the hospital]." *Id*. at 270. Therefore, when a patient signs a consent or admission form that affirmatively specifies there is no agency or employment relationship between the hospital and its physicians, "no valid argument" can be made for ostensible agency. *Id.*

In *Roberts*, the Sixth Circuit Court of Appeals essentially broadened the *Floyd* rule, holding that a patient's signature on the admission form is not necessary so long as the form conveys that hospital physicians are independent contractors and no agency representation has been made by the hospital. *Roberts*, 111 F.3d at 413. Notably, in *Roberts* the patient did not even sign the admission

form, presumably because she was physically unable to do so. *Id.* Nevertheless, the Sixth Circuit affirmed summary judgment in favor of the hospital because the result must "turn on whether the hospital holds its physicians out to be employees or something else," not on whether the patient reads and signs the disclaimer. *Id.* The Court held:

> Whether or not [the patient] read or signed the disclaimer is not dispositive. If it were dispositive, patients too critical to sign the consent form could sue residents for negligence whereas those able to read and sign the form could not. As stressed by Kentucky case law, the result should, instead, turn on whether the hospital holds its physicians out to be employees or something else. The passages cited to approvingly by Kentucky courts focus particularly on the actions of the hospital.

Id. Accordingly, the test is not whether the patient read and/or signed a consent form containing a disclaimer; rather, the test is whether the hospital took steps to notify the public about the status of the physicians. *Vandevelde*, 552 F. Supp. 2d at 667; *Roberts*, 111 F.3d at 413; *Floyd*, 787 S.W.2d at 270.

There is no dispute herein that on March 24, 2013 and June 13, 2013, Sneed signed an acknowledgement form that provided in relevant part:

> RECOGNITION OF INDEPENDENT CONTRACTORS:
>
> > Physicians are not hospital employees and the hospital is not responsible for the actions of the physicians. I understand and agree that I may require the services of physician or groups of physicians who are not hospital employees, including emergency room

> physicians, radiologists, pathologists, anesthesiologists, etc. who bill and collect independently for their services. I understand that their bills will be separate and apart from the hospital's billing and collections, or that the hospital may bill me on the physicians' behalf, but subject to the authorization granted by me in accordance with paragraphs VI and VII.

On June 13, 2013, Sneed signed an additional form that provided:

> CONSENT FOR SEMI-ANNUAL SIGNATURES
>
> Permission to Use Semi-Annual Signatures
>
> I grant permission to the University of Louisville Hospital to use today's signatures on the following forms for outpatient services I receive for six (6) months from today's date. I understand this permission commits me to abide by the terms of each form for the following year.
>
> - Consent for Medical Treatment
> - Conditions of Admission/Treatment
> - Medicare Secondary Payor Information.
>
> . . . .
>
> Inpatient Services
>
> Most insurance companies and other payors require the hospital to bill separately for inpatient and all types of surgical services. Today's signature will be used if I am admitted or receive outpatient services in the next six (6) months.
>
> . . . .

Sneed contends that the Hospital is precluded from denying ostensible agency because it did not require her to sign the acknowledgment form upon her admission on August 2, 2013. Further, she argues that the June Consent for Semi-Annual Signatures form cannot be deemed to cover her August 2, 2013 admission because it only authorized the use of her signature on subsequent outpatient services. We must disagree.

Admittedly, the Consent for Semi-Annual Signatures form could have been worded more precisely. Nonetheless, under the paragraph entitled "Inpatient Services" it clearly states, "Today's signature will be used if **I am admitted** or receive outpatient services in the next six (6) months." (Emphasis added). We must conclude that said form applied to both outpatient and inpatient services. "It is the rule in this state that a party who can read and has an opportunity to read the contract which he signs must stand by the words of the contract unless he is misled as to the nature of the writing which he signs or his signature is obtained by fraud." *Simmerman v. Fort Hartford Coal Co.*, 310 Ky. 572, 221 S.W.2d 442, 447 (1949).

In this case, the Hospital took affirmative action to put patients and the public on notice that an agency relationship did not exist between the Hospital and its physicians. Like the admissions forms discussed in the above-cited cases, the form herein clearly expressed that physicians were independent contractors and not employed by the Hospital. Nor was there any representation or action

otherwise to induce Sneed to believe that the physicians were employees or agents of the Hospital. Accordingly, there can be no valid argument that the ostensible agency doctrine would make the Hospital liable for the actions of Dr. Franklin or Dr. Allen. *See Williams v. St. Claire Medical Center*, 657 S.W.2d 590 (Ky. App. 1983). Therefore, summary judgment in favor of the Hospital was proper.

Finally, Sneed alleges that summary judgment in favor of Dr. Franklin and Dr. Allen was improper because she presented overwhelming proof that both doctors were aware of her claims but took active steps, in conjunction with the Hospital, to conceal their identities and negligence. The basis of Sneed's argument appears to concern the defendant parties' alleged failure and/or refusal to produce medical records until after the statute of limitations had expired.

Notwithstanding any issue regarding the production of medical records, Sneed's argument fails to acknowledge that she was aware of the negligent parties' identity and her injury no later than August 21, 2013. That she may, or may not, have timely received records has no bearing on the statute of limitations in this case. Sneed certainly could have named Dr. Franklin and Dr. Allen in her original complaint but for reasons unknown chose not to do so. We can reach no other conclusion than that her action was time-barred, and summary judgment was proper.

For the reasons set forth herein, the orders of the Jefferson Circuit Court are affirmed.

ACREE, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEES:
Nader George Shunnarah Louisville, Kentucky	David B. Gazak Ryan T. Wood Louisville, Kentucky