

STATE OF MICHIGAN
COURT OF APPEALS

HELENE BLACK, Individually and as Personal
Representative of the Estate of RICHARD BLACK,
Deceased,

Plaintiff-Appellant,

v

MAX ALI, and BELLEVILLE MEDICAL CLINIC,
P.C., individually and d/b/a BELLEVILLE MEDICAL
CLINIC,

Defendants-Appellees,

and

TRI-COUNTY MEDICAL ASSOCIATES, P.C., and
J.K. DESAI, jointly and severally,

Defendants.

Before: Michael J. Kelly, P.J., and Markman and J. L. Martlew,* JJ.

PER CURIAM.

Plaintiff appeals by right an order granting the summary disposition motion of defendants Max Ali and Belleville Medical Clinic, P.C., individually and d/b/a Belleville Medical Clinic. We affirm.

This appeal arises out of a medical malpractice/ wrongful death action. Plaintiff's husband went to the Belleville Medical Clinic (the clinic) for treatment of common cold symptoms on October 4, 1990. He was given an injection of penicillin by one of the staff members. The injection induced cardiac arrest and plaintiff's husband died.

* Circuit judge, sitting on the Court of Appeals by assignment.

The parties dispute who owned the clinic at the time of plaintiff's husband's treatment. Defendant Ali formed a corporation, named Masroor Ali, M.D., P.C. in 1978. In January 1985, he filed a certificate of assumed name indicating that his P.C. would thereafter do business as Belleville Medical Clinic. In October 1985, he amended the name of his P.C. to "Belleville Medical Clinic, P. C." (Belleville). A written agreement dated August 11, 1989 provided for the sale of the clinic (the practice and the building). It lists Ali and Belleville as sellers and J. K. Desai, M.D. as buyer. Desai is the president and sole shareholder of Tri-County Medical Associates, P.C. (Tri-County). This agreement set forth a purchase price and payment terms (including a \$60,000 payment due on August 11, 1989 and a \$40,000 payment due on December 31, 1989) provided that the buyer would take possession of the premises as of August 11, 1989 and provided that the buyer would not be liable for any "pre-existing litigations" including medical malpractice claims. The agreement stated that it was an "initial contract" and that the parties would consult with their attorneys and later draft a formal document. According to Belleville's counsel's undisputed representations at the motion hearing,¹ Tri-County made a \$60,000 payment in August 1989 and a \$40,000 payment in December 1989. In August 1989, clinic employees' paychecks began being issued by Tri-County, rather than by Belleville.. However, the clinic continued to operate under the name "Belleville Medical Clinic." On December 15, 1990, following the treatment of plaintiff's husband, the parties signed the final sale agreement, which had terms substantially similar to those of the August 1989 agreement.

On July 8, 1992, plaintiff filed the present action against Belleville. Plaintiff attempted to serve Ali, as Belleville's resident agent.² According to plaintiff's motion for substituted service, she received correspondence from Ali in October 1992, in which Ali stated that he sold the clinic in August 1989. On December 29, 1993, plaintiff filed an amended complaint that added Ali, Desai, and Tri-County as defendants and added additional allegations of fraud and concealment.³ Belleville and Ali moved for summary disposition. The trial court granted their motions for summary disposition pursuant to MCR 2.116(C)(10).

This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to [judgment] as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

On appeal, plaintiff first claims that Ali and Desai fraudulently conveyed title to the clinic. Plaintiff alleges that the formal sale of the clinic did not take place until December 1990, after the time at which plaintiff's husband was treated at the clinic. She argues that defendants' attempts to convert the August 1989 initial offer of sale document into a final closing document are fraudulent and void under the Uniform Fraudulent Conveyances Act (UFCA). MCL 566.17; MSA 26.887 of the UFCA states:

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

A tort claimant is a creditor under the UFCA from the date of the tort. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 661; 513 NW2d 441 (1994).

Here, plaintiff contends that the sale of the clinic was not final until December 1990 but she provided no documentary evidence that indicated Tri-County did not operate the practice at the time of her husband's October 1990 treatment there. The August 1989 agreement well predates plaintiff's husband's treatment at the clinic. Clinic employees' paychecks began being issued from Tri-County at that time. At the summary disposition hearing, Tri-County's counsel stated:

I am here to state that it is the position of Tri-County that they owned the practice that was being run and operated on the day that [plaintiff's husband] received care and treatment

Plaintiff thus failed to create a genuine factual issue regarding her theory that the clinic was not actually conveyed to Tri-County in August 1989. The evidence demonstrated that Tri-County operated the clinic at the time plaintiff's husband was treated. Therefore, plaintiff's malpractice claim is properly against Tri-County, not Belleville.⁴ Accordingly, plaintiff is not a creditor of Belleville and plaintiff's fraudulent conveyance claim against Belleville and Ali fails.

Plaintiff next claims fraudulent concealment. She charges Ali with fraud because he did not inform her of the identity of the person or entity to whom he sold the clinic until after the statute of limitations had run on plaintiff's claim. In *McMullen v Joldersma*, 174 Mich App 207, 213; 435 NW2d 428 (1988), this Court reiterated the elements of fraud, quoting from *Jaffa v Shacket*, 114 Mich App 626, 640-641; 319 NW2d 604 (1982):

(1) a material representation which is false; (2) known by defendant to be false, or made recklessly without knowledge of its truth or falsity; (3) that defendant intended plaintiff to rely upon the representation; (4) that, in fact, plaintiff acted in reliance upon it; and (5) thereby suffered injury. . . .The false material representation needed to establish fraud may be satisfied by the failure to divulge a fact or facts the defendant has a duty to disclose. Such an action is one of fraudulent concealment.

Plaintiff argues that Ali had an equitable duty to disclose Tri-County's identity to her. However, plaintiff cites no legal authority that supports the imposition of such a duty. See *Winiemko v Valenti*, 203 Mich App 411, 415; 513 NW2d 181 (1994). This Court will not search for authority to support a party's position. *Id.* Thus, this fraud claim fails.

Plaintiff also claims that Ali engaged in fraud by holding himself out to the public as president and registered agent for Belleville as of the date of her husband's treatment. She alleges that this representation was false; that plaintiff relied on it when choosing whom to sue; and that Ali intended for

plaintiff to rely on it. This fraud claim fails because Ali did not make a false representation in his September 1990 filing of a Michigan Annual Report for Belleville. At the time of the filing, Belleville continued to exist and Ali was still its registered agent. Ali did not dissolve Belleville until after the December 1990 final agreement. However, Tri-County, not Belleville, operated the clinic on the date of plaintiff's husband's treatment. Belleville is therefore not subject to liability arising out of the treatment of plaintiff's husband. Because Ali made no false representation to plaintiff, this fraud claim also fails.

Finally, plaintiff claims that Ali and Belleville should be estopped from denying liability due to the unusual facts of the case. "Equitable estoppel is usually invoked as a defense; it is not a cause of action in itself and provides no remedy such as damages." *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 443-444; 505 NW2d 275 (1993). The doctrine of equitable estoppel may merely assist a plaintiff in a fraud or negligence claim involving misrepresentation. *Hoye v Westfield Ins Co*, 194 Mich App 696, 705-707; 487 NW2d 838 (1992). Since plaintiff has not established such a cause of action here, the doctrine of equitable estoppel cannot be of assistance.

For these reasons, we affirm the trial court order granting the summary disposition motions of Ali and Belleville.

Affirmed.

/s/ Michael J. Kelly

/s/ Stephen J. Markman

/s/ Jeffrey L. Martlew

¹ At the time of the hearing, the depositions of Desai and other Tri-County employees had been taken, but the transcripts were not yet available. Counsel for the various parties made representations at the hearing regarding this deposition testimony.

² In September 1990, Ali filed a Michigan Annual Report for his P.C., Belleville, which listed him as resident agent.

³ We note that plaintiff did not amend her complaint to add Desai and Tri-County as defendants until more than fourteen months after first learning that Ali had sold the clinic in August 1989.

⁴ Plaintiff's underlying concern appears to be that Tri-County and Desai will attempt to avoid liability pursuant to the statute of limitations. That issue is not properly before us. However, as defendant Ali himself suggests, Tri-County's failure to promptly file a certificate of assumed name when it took over operation of the clinic in August 1989 may arguably toll the statute of limitations under MCL 600.5855; MSA 27A.5855.