

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA JORAE and ROBERT L. JORAE,

Plaintiffs-Appellants,

v

SHIAWASSEE COMMUNITY MENTAL HEALTH
DEPARTMENT, JOHN BAKER III, M.D. and
STACY STAUFFER,

Defendants-Appellees.

UNPUBLISHED
October 21, 1997

No. 199087
Shiawassee Circuit Court
LC No. 96-005973-CZ

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(8). We affirm.

Plaintiffs argue on appeal that the trial court erred in finding that the consideration for the implied contract between the parties was negated by a preexisting duty to render services, and based upon that finding, granting summary disposition in defendants' favor. We disagree.

This Court reviews a trial court's decision to grant summary disposition de novo. *International Brotherhood of Electrical Workers, Local Union No 58 v McNulty*, 214 Mich App 437, 442; 543 NW2d 25 (1995). A motion pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the claim and permits a trial court to grant summary disposition when a plaintiff has failed to state a claim upon which relief can be granted. *Pawlak v Redox Corp*, 182 Mich App 758, 763; 453 NW2d 304 (1990).

An implied contract must satisfy the elements of mutual assent and consideration. *Pawlak, supra* at 765. Valid consideration requires a bargained-for exchange. *Higgins v Monroe Evening News*, 404 Mich 1, 20; 272 NW2d 537 (1978). It is a well-established principle of law that a preexisting duty to provide a treatment or service negates a finding of the consideration required to create a contract. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 525; 529 NW2d 318 (1995); *Pawlak, supra* at 765.

Here, the relevant statute at issue, MCL 330.1810; MSA 14.800(810), states:

An individual shall not be denied services because of the inability of responsible parties to pay for the services.¹

In arguing that their complaint stated a valid cause of action for breach of an implied contract because they paid for the services rendered, plaintiffs rely on *Rocco v Dep't of Mental Health*, 114 Mich App 792; 319 NW2d 674 (1982), aff'd sub nom *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984). However, plaintiffs' reliance is misplaced because *Rocco* did not address the issue of consideration as it relates to a preexisting duty, but rather focused on whether a contract claim was barred by governmental immunity. Furthermore, defendants, in the instant case, were obligated by statute to provide services to plaintiffs regardless of plaintiffs' ability to pay. See *Borg-Warner Acceptance Corp v Dep't of State*, 433 Mich 16, 20-22; 444 NW2d 786 (1989).

We agree with the trial court that defendants had a preexisting duty to provide mental health services which negated a finding of the consideration necessary to create an implied contract. Therefore, plaintiffs have failed to state a claim upon which relief can be granted, and the trial court properly granted summary disposition pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Maura D. Corrigan

/s/ Richard A. Griffin

/s/ Joel P. Hoekstra

¹ This version of the statute took effect in 1995. The prior version read:

No person shall be denied services because of an inability to pay for such services on the part of the individual, the spouse, or the parents.