STATE OF MICHIGAN

COURT OF APPEALS

BRENDA L. ELLENS,

Plaintiff-Appellant,

v

EDWARD W. SPARROW HOSPITAL d/b/a SPARROW HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
December 16, 1997

No. 196963
Ingham Circuit Court
LC No. 95-079888-NH

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff filed suit against the defendant hospital and her treating physician alleging that she was injured as a result of a laser surgery procedure negligently performed by her treating physician at the defendant hospital. In her complaint, plaintiff alleged (1) that her treating physician, Doctor Sung Lee, was negligent in performing the procedure, (2) that defendant was vicariously liable for defendant's negligence, and (3) that defendant was independently negligent for failing to ensure that Doctor Lee was competent to perform the procedure. After plaintiff's first two allegations were resolved by the parties,[1] and discovery was closed, the trial court granted defendant's motion for summary disposition as to plaintiff's remaining claim. Defendant's motion for summary disposition was brought pursuant to MCR 2.116(C)(10). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) test the factual basis underlying a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). On appeal, plaintiff argues that summary disposition was improper because genuine issues of material fact exist as to whether defendant was negligent in granting laser surgery privileges to Doctor Lee. We disagree.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Pinckney Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court

must consider the pleadings, affidavits, admissions, depositions, and any other documentary

evidence available to it in a light most favorable to the nonmoving party. *Tranker v Figgie International, Inc*, 221 Mich App 7, 11; 561 NW2d 397 (1997). We must then determine whether there exists a genuine issue of material fact on which reasonable minds could differ or whether the moving party is entitled to judgment as a matter of law. *Id*. The moving party is entitled to judgment as a matter of law if the claim suffers a factual deficiency that cannot be overcome. See *SSC Associates Limited Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364-365; 480 NW2d 275 (1991).

In a negligence action, summary disposition is appropriate where the plaintiff has failed to establish a prima facie case of negligence. *Richardson v Michigan Humane Society*, 221 Mich App 526, 528; 561 NW2d 873 (1997). To establish a prima facie case of negligence, a plaintiff must show (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty, (3) that the defendant's breach was the proximate cause of the plaintiff's injuries, and (4) that the plaintiff suffered damages. *Id.* One of the primary functions of a hospital is to screen its staff of physicians to ensure that only competent physicians are allowed to practice in the hospital. *Ferguson v Gonway*, 64 Mich App 685, 697; 236 NW2d 543 (1975). Accordingly, a hospital may be held liable in negligence if it fails to act as a reasonably prudent hospital in checking the qualifications of a physician. *Id.* at 697-698. In moving for summary disposition, defendant did not dispute the fact that it had a duty to take reasonable measures to ensure that Doctor Lee was competent. Instead, defendant argued only that no genuine issue of material fact existed as to whether defendant had breached that duty. We agree with defendant, although for a reason different than that relied upon by the trial court. This Court will not reverse where the correct result is reached for the wrong reason. See, e.g., *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

Defendant, as the party moving for summary disposition, had the initial burden of supporting its position with documentary evidence. See *Munson Medical Center v Auto Club Ins Ass'n*, 218 Mich App 375, 386; 554 NW2d 49 (1996). Defendant satisfied this initial burden with three affidavits. First, S. Leonard Cohn, M.D., swore in an affidavit that, based on his personal knowledge, Doctor Lee possessed the proper education, training, and experience necessary to conduct the laser surgery. Second, Ronald Swenson, M.D., swore in an affidavit (1) that he was a participant in the peer review process used by defendant to investigate and assess the physicians admitted to practice in the hospital, (2) that the purpose of the process was to improve the quality of patient care provided by defendant, (3) that records regarding the qualifications of the various physicians practicing at the defendant hospital were maintained in confidential files,[2] (4) that he was familiar with the qualifications of Doctor Lee, and (5) that, based on these qualifications, Doctor Lee was extended unmonitored privileges to use the laser at the time of plaintiff's surgery. Finally, Elizabeth Uptegraft, R.N., the nurse present during plaintiff's surgery, swore (1) that, based on her review of the medical records, no representative from the laser company could have been present during plaintiff's surgery, (2) that it was never the practice to provide laser training to doctor's by company representatives during a patient's laser surgery, and (3) that Doctor Lee would not have received laser training during plaintiff's surgery because he was already "credentialed" in the use of the laser.

Once the moving party properly supports its motion, the opposing party bears the burden of showing that a dispute exists regarding a genuine issue of material fact. *Munson Medical Center*, *supra* at 386. In doing so, the opposing party may not rest upon mere allegations or denials in the pleadings, but must respond with documentary evidence setting forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4); *Richardson*, *supra* at 527. Plaintiff failed to satisfy her burden. In response to defendant's motion, plaintiff offered the affidavit of Michael Berke, M.D., who swore that, based on his review of the medical records, the acts and omissions of Doctor Lee and defendant constituted a "violation of the applicable standard of care." However, because Berke's affidavit was based only on a review of plaintiff's medical records and did not address either (1) the qualifications of Doctor Lee or (2) defendant's credentialing process, it was insufficient to show the existence of a factual dispute regarding the issue whether defendant breached its duty to assess Doctor Lee's qualifications. MCR 2.116(G)(4).

Plaintiff also offered her deposition testimony that, immediately before her surgery, a woman was present in the operating room in addition to Doctor Lee, the nurse (Uptegraft), the anesthetist, and the resident assisting the anesthetist. Plaintiff testified that she overheard the nurse tell Doctor Lee that the woman "from the company" was there to help teach him how to use the laser. The trial court discounted plaintiff's deposition testimony, because plaintiff was "under the influence of two mind-altering drugs"[3] when she allegedly overheard the nurse's comment. This was improper. In ruling on a motion for summary disposition, a trial court is not permitted to assess credibility or to determine facts. *Skinner v. Square D Co*, 445 Mich. 153, 161; 516 NW2d 475 (1994). Accordingly, because the effect of the drugs on plaintiff's perception weighed only against plaintiff's credibility, the trial court should have accepted her deposition testimony as true for purposes of defendant's motion for summary disposition.

In any event, even if plaintiff's deposition testimony had been accepted as true, defendant would have been entitled to summary disposition. To preclude summary disposition, the disputed factual matter must be material to the issue in dispute. See *State Farm & Casualty Co v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1991). Giving plaintiff the benefit of reasonable doubt, the record indicates that, at the time of plaintiff's surgery, the hospital had extended Doctor Lee unmonitored privileges in using the laser, and that, during the course of plaintiff's surgery, Doctor Lee received training in the use of the laser. One could infer from the fact that Doctor Lee received training in the use of the laser during the procedure that he needed such training in order to perform the procedure. However, the fact that defendant ultimately granted privileges to an unqualified physician would not, in itself, establish the existence of a factual dispute regarding the issue of defendant's alleged negligence. Nothing in the record indicates that further evaluation of Doctor Lee would have actually disclosed a lack of qualification, or that defendant's method of screening physicians was flawed in any specific way. In sum, because plaintiff has offered nothing to show how defendant acted with respect to Doctor Lee, there was nothing to suggest that defendant acted differently than a reasonably prudent hospital would have under the circumstances. *Ferguson*, *supra* at 697-698; see also *Reynolds v Mennonite Hospital*, 522 NE2d 827, 829 (Ill App Ct, 1988). Therefore, on the record before the trial court, defendant was entitled to summary disposition.

Plaintiff's assertion that defendant must have been negligent simply because it failed to uncover Doctor Lee's alleged lack of qualification is akin to an assertion that a hospital should be held strictly liable whenever it grants privileges to an unqualified physician. Although such a standard may be warranted as a matter of policy, it should not be imposed by a panel of this Court.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

[1] Plaintiff settled her claim against the treating physician and plaintiff's claim against the hospital alleging vicarious liability was dismissed with prejudice pursuant to a stipulation by the parties.

[2] Pursuant to the Public Health Code, MCL 333.1101 *et seq.*; MSA 14.15(1101) *et seq.*, hospitals are required to review their professional practices and procedures to improve the quality of patient care and reduce morbidity and mortality. *Gallagher v Detroit-Macomb Hospital Ass'n*, 171 Mich App 761, 768; 431 NW2d 90 (1988). Records compiled for this purpose by a committee or individual assigned a review function are exempted from court subpoena. MCL 333.21515; MSA 14.15(21515); *Gallagher*, *supra* at 768.

[3] Plaintiff's medical records indicated that she was given Valium and Versed prior to undergoing her laser surgery.