STATE OF MICHIGAN

COURT OF APPEALS

MARGARET COBB, individually and as a personal representative of the Estate of ALLEN E. COBB, Plaintiff-Appellant,	UNPUBLISHED February 6, 1998
v	No. 187421R Livingston Circuit Court
BEATTY CHIROPRACTIC CLINIC and JOHN BEATTY, D.C., Defendants-Appellees.	LC No. 91-11189 NO ON REHEARING

Before: Jansen, P.J., and Reilly, and E. Sosnick,* JJ.

PER CURIAM.

This case is before us on rehearing. We originally reversed the trial court's order granting defendants' motion for summary disposition. Defendants argue that our original opinion misconstrued the effect of the chiropractic act, MCL 333.16401 *et seq*.; MSA 14.15(16401) *et seq*., on the scope of the duty owed to plaintiff's decedent by defendant Beatty. Upon further review, we vacate our prior ruling and affirm the trial court's grant of summary disposition.

Although the chiropractic act does not establish a standard of care for chiropractors, it does set the parameters of the practice of chiropractic. *Wengel v Herfert*, 189 Mich App 427, 430; 473 NW2d 741 (1991). Accordingly, this Court has reasoned that, because general physical examinations are outside of the scope of the practice of chiropractic, as defined by the chiropractic act, a jury could not properly find a defendant chiropractor negligent for failing to conduct a thorough physical examination. See *Wengel*, *supra* at 430-432. Relying on *Wengel*, *supra*, in our original opinion, we held that plaintiff was "precluded from establishing that defendants breached the standard of care (e.g. were negligent) by not performing a thorough physical examination." However, we also held that plaintiff stated a claim when she alleged that, "during the course of the chiropractic examination, Beatty should have suspected that plaintiff's decedent was suffering from a serious medical condition and referred plaintiff's decedent for medical care." We now hold that Beatty was under no such duty to "suspect" and "refer."

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

Interpreting the chiropractic act in *Attorney General v Beno*, 422 Mich 293, 313-315; 373 NW2d 544 (1985), the Michigan Supreme Court explained that the Legislature did not intend to authorize chiropractors to undertake differential diagnostic techniques to diagnose or rule out the existence of localized non-spinal ailments. As noted in *Beno*, the House rejected the following proposed amendment to § 16401 of the chiropractic act:

> [The practice of chiropractic includes:]
>
> Advising a patient to consult a health professional licensed under another section of this act in the event the patient's condition cannot in whole or in part, be treated under this part. [*Beno*, *supra* at 315, quoting 1977 Journal of the House 1694.]

The Supreme Court then reasoned that the Legislature's rejection of this (and another) proposed change indicated "an intent that the scope of the practice of chiropractic not include the duty to originally diagnose non-spinal ailments to determine whether they are treatable by chiropractic or whether the treatment should be done by another health-care professional." *Beno*, *supra* at 315. We are persuaded, based on this interpretation of the chiropractic act, that *suspecting* the existence of a serious medical condition during a chiropractic examination and then *referring* the patient for treatment of that condition are duties beyond the scope of the practice of chiropractic. The imposition of such a duty would potentially hold chiropractors liable for failing to discover the existence medical conditions outside of the parameters of the practice of chiropractic. Therefore, we hold that Beatty cannot be held accountable for malpractice for his alleged failure to suspect plaintiff's decedent's serious condition and refer him for medical treatment. *Wengel*, *supra* at 431.

Plaintiff also alleged that Beatty was negligent for failing to warn plaintiff's decedent that, as a chiropractor, he was "not allowed by statute to diagnose or treat any condition other than subluxation." In her supplemental brief, plaintiff cites *Wengel*, *supra*, and *Janssen v Mulder*, 232 Mich 183; 205 NW 159 (1925), in support of her proposition that chiropractors have an affirmative duty to warn patients of the limits of their profession. In *Janssen*, a case pre-dating the chiropractic act, the Michigan Supreme Court held that a defendant chiropractor had a duty to use reasonable care and skill to ascertain whether his patient's ailments "were of the class to which his treatment applied" and, *if not*, "to so advise plaintiff, in order that she might secure the services of one familiar with such ailments." *Janssen*, *supra* at 192-193. Thus, under *Janssen*, the chiropractor's duty to advise his patient of the limitations of the practice of chiropractic was tied to and dependent upon the chiropractor's duty to undertake differential diagnostic techniques for the purpose of ruling out the existence of non-spinal ailments. However, as noted *supra*, with the passage of the chiropractic act, the Legislature has since made the policy decision that such measures are beyond the scope of the practice of chiropractic. The *Wengel* case involved allegations by the plaintiff that the defendant chiropractor had practiced outside the scope of chiropractic and misrepresented to the plaintiff that chiropractic treatment could help diabetes. *Wengel*, *supra* at 433. Nothing in *Wengel* addressed the existence or nonexistence of an affirmative duty on the part of chiropractors to warn their patients of the limits of the practice of chiropractic. We are not persuaded that the law requires chiropractors, as opposed to any other professionals, to affirmatively warn their clients of the limits of their profession.

For these reasons, we now hold that the trial court did not err in granting summary disposition to defendants pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ Edward Sosnick