

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN E. WESLEY,

Plaintiff-Appellant,

v

CHARLES F. GEHRKE, MD,

Defendant-Appellee.

UNPUBLISHED

July 24, 1998

No. 194781

Washtenaw Circuit Court

LC No. 95-005471-CZ

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition based on the two-year limitations period for malpractice actions. MCL 600.5805(4); MSA 27A.5805(4). We reverse.

The only question on appeal is whether a claim that a physician failed to complete an "attending physician's report" in a timely manner should be considered a medical malpractice action or an ordinary negligence action. Resolution of this issue will determine whether the two-year limitations period for medical malpractice actions applies. We conclude that such a claim sounds in ordinary negligence.

A plaintiff may not evade the appropriate limitation period by artful drafting. *Simmons v Apex Drug Stores*, 201 Mich App 250, 253; 506 NW2d 562 (1993). Instead, a court must determine the gravamen of an action by reading the claim as a whole. The type of interest allegedly harmed is the focal point in determining which limitation period controls. *Id.* Thus, a plaintiff may not simply convert a malpractice claim into an ordinary negligence claim. *Id.* at 254. On the other hand, medical professionals may be liable for ordinary negligence as well as for malpractice. *Adkins v Annapolis Hosp*, 420 Mich 87, 95, n 10; 360 NW2d 150 (1984); *MacDonald v Barbarotto*, 161 Mich App 542, 549; 411 NW2d 747 (1987). Our colleague, Judge Gribbs, has distilled the distinguishing features of a malpractice claim: "Malpractice is essentially negligence in the performance of professional services utilizing the standard of care of the profession." *Nemzin v Sinai Hosp*, 143 Mich App 798, 804; 372 NW2d 667 (1985) (Gribbs, P.J., concurring). This definition accurately separates claims for

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

violation of the medical profession's standard of care from claims for violation of the ordinary standard of care. Thus, negligence in the diagnosis of a patient's condition is malpractice. *MacDonald, supra* at 549-550. But negligence in assisting a patient who is trying to walk to the bathroom, or negligence in failing to support a patient who is getting onto an examination table, is ordinary negligence. *Fogel v Sinai Hosp*, 2 Mich App 99; 138 NW2d 503 (1965); *Gold v Sinai Hosp*, 5 Mich App 368; 146 NW2d 723 (1966).

Here, plaintiff's complaint simply alleged that defendant failed to timely complete and submit an "attending physician's report." Clearly, any duty that defendant had to timely complete the physician's report arose subsequent to the provision of medical treatment and was only incidental to the rendering of professional medical services. In addition, evaluation of this claim does not require any reference to the standard of care of the medical profession. Under these circumstances, plaintiff's claim was one for ordinary negligence rather than medical malpractice, and was not subject to the two-year limitations period provided by MCL 600.5805(4); MSA 27A.5805(4). Thus, the trial court erred in granting summary disposition for defendant.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan