

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MUSA ABDUR-RAHMANN and KHADIJAH  
AMATUR-RAHMAAN,

UNPUBLISHED  
January 8, 1999

Plaintiffs-Appellants,

v

No. 201127  
Wayne Circuit Court  
LC No. 95-533319 NZ

HUTZEL HOSPITAL, MASON-WILLIAMS  
FUNERAL HOME and BARKSDALE FUNERAL  
HOME,

Defendants-Appellees.

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Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from several orders of the trial court which granted summary disposition to defendants. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiffs first argue that the trial court erred by granting summary disposition to defendant, Hutzel Hospital ("Hutzel"), on plaintiffs' negligence claim. We agree. Plaintiffs' negligence claims were not barred by the two-year medical malpractice statute of limitations, MCL 600.5805(4); MSA 27A.5805(4). Plaintiffs' claims sounded in ordinary negligence, not medical malpractice and, therefore, were not subject to dismissal pursuant to MCR 2.116(C)(7).

In determining whether a claim sounds in professional malpractice or ordinary negligence, a court should examine the nature of the interest allegedly harmed and the claims set forth in the complaint. *Adkins v Annapolis Hospital*, 116 Mich App 558, 563; 323 NW2d 482 (1982), aff'd 420 Mich 87 (1984). Plaintiffs claimed that Hutzel breached its duty of care by incorrectly numbering the body of their deceased infant (who weighed nine ounces and only lived for a short period of time), by releasing the incorrect body to the funeral home, and by sending a minister of a different faith to their home to inform them of the mistake. These acts are matters of ordinary negligence and did not involve the application of any particular medical skill or medical judgment. Plaintiffs claimed that as a result of this alleged negligence, they suffered financial harm, emotional and mental anguish, and religious censure.

Plaintiffs did not claim any physical injury as would be typical in a medical malpractice case. Plaintiffs' allegations of negligence did not fall within the

definition of medical malpractice. See *Cotton v Kambly*, 101 Mich App 537, 540-541; 300 NW2d 627 (1980). The trial court erred by granting summary disposition on the basis of MCR 2.116(C)(7). Therefore, we remand this case for further proceedings on this claim. We express no opinion as to whether Hutzell would be entitled to summary disposition on a different basis.

Plaintiffs also argue that the trial court erred by granting summary disposition to defendants, Barksdale Funeral Home (“Barksdale”) and Mason-Williams Funeral Home (“Mason-Williams”), on plaintiffs’ negligence claims. We hold that plaintiffs cannot complain on appeal to the dismissal of those claims because any error was caused by the inaccurate representations of plaintiffs’ counsel that these claims had been dismissed earlier in the litigation. Plaintiffs’ counsel was apparently under the mistaken belief that plaintiffs’ claims of negligence against the funeral homes were dismissed pursuant to the trial court’s dismissal of the negligence claim against Hutzell on the basis of the statute of limitations. There is no support in the lower court record for this belief but, nonetheless, plaintiffs’ counsel made numerous representations to this effect at subsequent hearings. Based on those representations, the trial court never ruled on whether the funeral homes would be entitled to summary disposition on another basis. Review by this Court is unnecessary because plaintiffs cannot now seek reversal of the potentially mistaken dismissal of those claims because plaintiffs’ counsel caused the error by her representations to the trial court. See *Detroit v Larned Associates*, 199 Mich App 36, 38; 501 NW2d 189 (1993); *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997).

Plaintiffs next argue that the trial court erred by granting summary disposition to all three defendants on plaintiffs’ claims of intentional infliction of emotional distress. We disagree. The trial court properly granted summary disposition because plaintiffs failed to establish that a genuine issue of material fact existed for trial with regard to whether defendants acted intentionally or recklessly. See *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996). Plaintiffs failed to present sufficient evidence to create a genuine issue of fact as to the required element of intent.

To establish intent, plaintiffs must demonstrate that defendants acted with the specific intent to injure plaintiffs or acted in a willful and wanton manner despite their knowledge that their actions were substantially certain to injure plaintiffs. See *Beauchamp v Dow Chemical Co*, 427 Mich 1, 20-25; 398 NW2d 882 (1986); *Cebulski v Belleville*, 156 Mich App 190, 195; 401 NW2d 616 (1986). Plaintiffs’ responses to defendants’ motions for summary disposition generally relied on the facts presented in their complaint and provided little to no documentary evidence in support of their claims. Where the nonmovant has the burden of proof, it may not rest upon mere allegations or denials in its pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Plaintiffs failed to set forth any documentary evidence on this issue. While the entire scenario of events concerning the death and burial of plaintiffs’ deceased infant was tragic and undoubtedly caused plaintiffs to suffer emotional distress, there is no evidence that any one of these defendants intended to cause such distress or acted in a willful and wanton manner despite knowledge that their actions were substantially certain to injure plaintiffs. See *Beauchamp, supra*; *Cebulski, supra*.

Plaintiffs never competently demonstrated how any of these defendants intended to cause them harm. Plaintiffs similarly failed to demonstrate how defendants acted in a willful and wanton manner

despite having any knowledge that their actions were substantially certain to injure plaintiffs. Plaintiffs failed to demonstrate how Hutzel's policies and procedures with regard to the release of bodies were so inadequate as to make mistakes substantially certain to occur or how Hutzel should have known that sending a Christian minister to their home would cause them emotional harm. Plaintiffs also failed to show how Mason-Williams' act of relying on Hutzel's reassurance that the correct body was being released was unreasonable or how Mason-Williams could have harassed them about the disinterment of the other infant when they admitted that Mason-Williams never directly contacted them. Finally, plaintiffs failed to show how Barksdale's provision of an inexpensive burial plot that was specifically selected by members of plaintiffs' religious group or its storage of their child's body was inappropriate or otherwise intended to cause them emotional distress. The series of mishaps that occurred in this case was indeed unfortunate, but none of the individual defendants intended to cause plaintiffs to suffer any harm. Therefore, the trial court was correct in granting summary disposition on the intentional tort claims.

Affirmed in part, reversed in part, and remanded to the trial court for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Roman S. Gribbs

/s/ Michael J. Talbot