

STATE OF MICHIGAN
COURT OF APPEALS

YOHANIS TAYE,

Plaintiff-Appellant,

v

JERRY APPEL, D.O. and DMC HEALTH CARE
CENTERS,

Defendants-Appellees.

UNPUBLISHED

April 25, 2000

No. 211250

Wayne Circuit Court

LC No. 96-644935-NH

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition in this medical malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff received a physical examination in July 1994 from defendant Dr. Appel, at which he reported a limp in his right leg, right knee pain, and upper back pain. Plaintiff informed Dr. Appel that he had been seen by a podiatrist. Dr. Appel conducted an examination, performed tests, and referred plaintiff to a rheumatologist. Plaintiff discarded the referral card, and sought no further treatment at that time.

In May 1995, plaintiff returned to the health center and was seen by a different doctor, who referred him to a psychiatrist and a neurologist. Plaintiff followed up on the neurologist referral and was diagnosed as having a cervical myelopathy. Although the neurologist and other specialists recommended a cervical laminectomy, plaintiff has not had the surgery.

Plaintiff filed this medical malpractice action, alleging that defendants were negligent in failing to timely refer him to a neurologist. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The trial court granted the motion, finding that plaintiff failed to show that defendants breached a duty to him.

In medical malpractice actions, a plaintiff must allege, with reasonable definiteness and certainty, every fact necessary to constitute a cause of action. For medical malpractice, a plaintiff must establish four elements: (1) the applicable standard of care, (2) breach of that standard, (3) injury, and (4) proximate causation between the alleged breach and the injury. *Weymers v Khera*, 454 Mich 639, 655; 563 NW2d 647 (1997).

Plaintiff failed to allege facts that would show defendants breached the standard of care. Plaintiff admitted that he ignored defendants' initial referral to a rheumatologist. Evidence showed that Dr. Appel usually made referrals to the rheumatologist, then relied on his determination whether the patient should see another specialist. Where plaintiff failed to follow the initial referral, he can only speculate that defendants breached the standard of care. Plaintiff failed to present substantial evidence from which a trier of fact could find that more likely than not, but for defendants' conduct, plaintiff's injuries would not have occurred. *Id.*, 648.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Janet T. Neff
/s/ Michael R. Smolenski