

STATE OF MICHIGAN
COURT OF APPEALS

DENISE DABROWSKI,

Plaintiff-Appellant,

v

HOLLAND COMMUNITY HOSPITAL and
NATION WIDE SECURITY, INC., d/b/a NATION
WIDE DISSOLUTION, INC.,

Defendants-Appellees.

UNPUBLISHED

August 18, 2000

No. 219201

Ottawa Circuit Court

LC No. 97-029438-NZ

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiff Denise Dabrowski appeals as of right from the trial court order granting defendants Holland Community Hospital and Nation Wide Security, Inc.'s motions for summary disposition pursuant to MCR 2.116(C)(10) in this negligence and professional malpractice action. We affirm.

Plaintiff first argues that the trial court erred in granting defendants' motions for summary disposition on the basis of her failure to establish compensable damages. A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id.* at 119-120. A trial court may grant a motion under MCR 2.116(C)(10) if the proffered evidence shows that there is no genuine issue in respect to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 120.

In ruling on this matter, the trial court relied on the standard for establishing compensable damages announced by our Supreme Court in *Daley v LaCroix*, 384 Mich 4; 179 NW2d 390 (1970). In that case, the Court overturned the rule previously recognized in Michigan requiring some immediate physical injury or impact on the plaintiff before damages for mental distress could be recovered:

We hold that where a definite and objective physical injury is produced as a result of emotional distress proximately caused by defendant's negligent conduct, the plaintiff in a properly pleaded and proved action may recover in damages for such physical consequences to himself notwithstanding the absence of any physical impact upon plaintiff at the time of the mental shock. [*Id.* at 12-13.]

Here, plaintiff admitted during her deposition testimony that she did not sustain any bodily injury at the time of Gregory Bytner's purported examination; therefore, she could recover for emotional distress only upon a showing that a definite and objective physical injury was produced as a result of the emotional distress. While it is true that *Daley* requires a "definite and objective physical injury" to be manifested before recovery can be had, the scope and meaning of that phrase, as evidenced by the facts of that case, indicate that a plaintiff's burden of establishing an injury of this kind is slight. See *id.* at 12, 15-16; see also *Stites v Sundstrand Heat Transfer, Inc.*, 660 F Supp 1516, 1527 (WD Mich, 1987) (burden of establishing physical injury under *Daley* is "minimal"). In *Daley*, a minor plaintiff was held entitled to take his case to the jury on the issue of physical injury where the only testimony on his behalf was his own statement at trial to the effect that he was nervous. In so holding, the Court held that "even though the question [whether nervousness is an objective physical injury] is a close one, on favorable view, [plaintiff] presented facts from which . . . a jury could reasonably find or infer a causal relation between defendant's alleged negligence and the injuries alleged." *Daley, supra* at 15. Similarly, the Court held that the plaintiff mother's testimony concerning her own sudden weight loss, inability to perform her household duties, nervousness, and irritability were sufficient facts "from which a jury could find or infer a compensable physical injury." *Id.* at 15-16.

Although plaintiff's burden of establishing a definite and objective physical injury was slight, we conclude that the trial court did not err in determining that plaintiff's testimony concerning her inability to trust medical personnel after the incident with Bytner was insufficient to meet this burden. Plaintiff presented no evidence that would have enabled a reasonable jury to find that plaintiff's inability to trust could result in any sort of physical injury. Therefore, unlike the plaintiffs in *Daley*, plaintiff presented no facts from which a jury could find or infer a compensable damage. Thus, the trial court did not err in determining that plaintiff presented insufficient evidence to establish a factual issue pertaining to compensable damages.

In light of our holding that the trial court did not err in determining that plaintiff failed to establish a factual issue regarding compensable damages, we need not address the remaining issues on appeal.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh