

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

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EARLINE COSTANZA, Personal Representative  
of the Estate of SAM COSTANZA,

Plaintiff-Appellant,

v

ST. JOHN HOSPITAL AND MEDICAL  
CENTER,

Defendant-Appellee,

and

MARC N. BLUM, M.D., and  
CARDIOVASCULAR SURGEONS OF  
METROPOLITAN DETROIT, P.C.,

Defendants.

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Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant St. John Hospital and Medical Center's motion for summary disposition. We affirm.

In December 1993, the decedent was treated for chest pains by Dr. Kyungsoo Kim at St. Joseph Hospital in Mount Clemens. Dr. Kim transferred the decedent to St. John Hospital and Medical Center for cardiac revascularization surgery by Dr. Douglas Lees. Dr. Lees' partner, defendant Marc Blum, M.D., performed the decedent's surgery at St. John. The decedent developed complications following the surgery, sought treatment at St. John's emergency department, and was readmitted to St. John. Dr. Blum performed additional surgery on the decedent. He did not survive the second procedure.

In December 1995, plaintiff filed this medical malpractice action against defendants, alleging that Blum's treatment of plaintiff was negligent and that St. John and Cardiovascular Surgeons were vicariously liable for Blum's negligence. In May 1997, St. John filed a motion for summary disposition arguing that it was not vicariously liable for Blum's negligence because

Blum was an independent contractor and plaintiff could not meet her burden of proving ostensible agency. At a hearing in July 1997, the trial court granted St. John's motion and subsequently entered an order dismissing plaintiff's claim against St. John. Plaintiff settled her claims against the remaining defendants and the court entered an order dismissing the case in November 1998.

Plaintiff's sole claim on appeal is that the trial court erred as a matter of law when it granted St. John's motion for summary disposition. We review de novo a trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(10). *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A motion for summary disposition under (C)(10) tests the factual support of a claim. *Id.* The reviewing court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The court should grant the motion only if the affidavits or other documentary evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff argues that St. John should not have been dismissed from the action because it was vicariously liable for the negligence of its ostensible agent, Dr. Blum. Generally, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor. *Grewe v Mt Clemens General Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). However, an agency by estoppel or ostensible agency can exist if a patient looked to the hospital for treatment and the hospital represented that it would provide the patient with a physician. *Id.* at 250-251. In order to prove that a physician was the ostensible agent of a hospital, a plaintiff must show that (1) the patient dealing with the physician did so with a reasonable belief in the physician's authority, (2) the patient's belief was generated by some act or neglect on the part of the hospital, and (3) the patient who relied on the agent's authority was not guilty of negligence. *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

In this case, plaintiff claims that there is a genuine issue of material fact regarding whether the decedent reasonably believed that Dr. Blum was an agent of St. John and whether that belief was generated by the actions or negligence of St. John Hospital. It is undisputed that in December 1993, the decedent was referred for cardiac surgery by Dr. Kim, a physician from St. Joseph Hospital, to Dr. Lees at St. John. It is also undisputed that the decedent did not receive treatment from Dr. Lees during this admission, but was treated by Dr. Lees' partner, Dr. Blum. Plaintiff argues that the decedent reasonably believed he was being transferred to the care of St. John Hospital, not to the care of an individual physician, and that Dr. Lees was an agent of the hospital. Plaintiff claims that this belief was further reinforced by the facts of the first admission that show that the decedent was treated by Dr. Blum, not Dr. Lees, he met Dr. Blum for the first time at St. John Hospital, and no one informed him of the relationship between Drs. Blum and Lees.

Contrary to plaintiff's arguments on appeal, Dr. Kim stated that he referred the decedent to Dr. Lees, not St. John. Plaintiff also admitted that she and the decedent were aware that Dr. Blum was in practice with Dr. Lees and were told that Dr. Lees was an excellent surgeon. The fact that the decedent and plaintiff decided to consent to the transfer to St. John Hospital based

on Dr. Kim's endorsement of Dr. Lees suggests that they were looking to Dr. Lees, not the hospital, for their medical treatment. *Grewe, supra* at 251. The fact that plaintiff and the decedent were aware that Dr. Lees and Dr. Blum were in practice together also indicates that they had reason to believe that the doctors were not employees of St. John. Although the decedent may have believed that Dr. Blum was an agent of St. John, we conclude that plaintiff failed to show that this belief was reasonable.

Even if plaintiff could show that there was a genuine question of fact regarding the decedent's reasonable belief in Dr. Blum's agency for St. John, plaintiff was unable to raise any question of fact regarding St. John's involvement in creating this belief. Plaintiff did not introduce any documents or testimony at the trial court establishing that the decedent's belief in Dr. Blum's agency was created by an act or neglect of St. John. Plaintiff's argument for implicating St. John appears to be that neither she nor the decedent were ever informed that Dr. Blum was not an agent of St. John. However, plaintiff did not cite any case law supporting her argument that St. John was under an affirmative duty to dispel the decedent's misunderstanding regarding Dr. Blum's agency. Rather, the case law is clear that there must be some action or representation by the hospital to lead the patient to reasonably believe an agency in fact existed. *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986).

Because plaintiff produced no evidence of an act or neglect of St. John that led the decedent to believe that Dr. Blum was its agent, she failed to prove the necessary elements of an ostensible agency. If Dr. Blum was not the ostensible agent of St. John, then the trial court properly found that St. John was not vicariously liable for Dr. Blum's alleged negligence resulting from the first admission.

Regarding the decedent's second admission to St. John in January 1994, plaintiff argues that the decedent was looking solely to St. John for his medical care because he sought treatment through its emergency department and it was St. John who involved Dr. Blum and his partners in the decedent's care. The parties do not dispute that the decedent went to St. John Hospital on his own initiative and that neither the plaintiff nor the decedent specifically requested care from Dr. Blum. However, it is also undisputed that after the first admission and before the second one, plaintiff called Dr. Blum's private office that was separate from the hospital and the decedent was treated by Dr. Blum in his office. In addition, plaintiff admitted that she informed hospital personnel in the emergency department that Dr. Blum was the decedent's doctor and she expected that the hospital would call Dr. Blum.

We agree with the trial court that there was no question of fact that at the time of his second admission, the decedent could not have had a reasonable belief that Dr. Blum was an agent of St. John because the decedent established a doctor-patient relationship with Dr. Blum independent of the hospital. Generally, where an relationship existed between the patient and the allegedly negligent physician prior to admission to the hospital, this Court and our Supreme Court have held that the patient could not have reasonably believed that the doctor was an agent of the hospital. *Sasseen, supra* at 239-240; *Revitzer v Trenton Medical Center*, 118 Mich App 169, 175; 324 NW2d 561 (1982); *Wilson v Stillwill*, 411 Mich 587, 610; 309 NW2d 898 (1981);

Plaintiff does not dispute that the decedent received treatment from Dr. Blum in his private office prior to the second admission. She argues, however, that this relationship did not

preclude a finding of ostensible agency. Plaintiff is correct that this Court has held that the acts or omissions of a hospital may override the impressions created by a previous relationship between the patient and the doctor and may create a reasonable belief that the doctor is an agent of the hospital. *Strach v St John Hosp Corp*, 160 Mich App 251, 263; 408 NW2d 441 (1987).

However, in applying the holding of *Strach* to this case, we cannot agree with plaintiff's conclusion that the decedent reasonably believed on his second admission that Dr. Blum was an agent of St. John or that the hospital acted in some way to create this belief. Plaintiff does not allege or present evidence of any act or representation of St. John that led the decedent to conclude that, in spite of his independent relationship with Dr. Blum, the hospital was providing Dr. Blum as its agent. Because plaintiff failed to present evidence to satisfy the elements of ostensible agency for either of the decedent's admissions to St. John, the trial court correctly concluded that the hospital was not vicariously liable for Dr. Blum's negligence and did not err as a matter of law when it granted St. John's motion for summary disposition.

Affirmed.

/s/ Roman S. Gribbs  
/s/ Michael J. Kelly  
/s/ David H. Sawyer