

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY CALL, Personal Representative of
the Estate of BRUCE CALL, Deceased,

UNPUBLISHED
February 16, 2001

Plaintiff-Appellee,

v

No. 218865
Genesee Circuit Court
LC No. 96-052320-NH

JAMES L. CHAMBERS, D.O.,

Defendant,

and

MCLAREN REGIONAL MEDICAL CENTER,

Defendant-Appellant.

Before: Markey, P.J., and McDonald and K. F. Kelly, JJ.

PER CURIAM.

Defendants appeals by leave granted the trial court's interlocutory order denying their motions in limine to preclude the admission of evidence and the court's denial of defendants' motion for summary disposition. We affirm in part and reverse in part.

In this medical malpractice wrongful death action, plaintiff seeks to show that defendant McLaren Regional Medical Center (McLaren) negligently credentialed and extended staff privileges to defendant Dr. James L. Chambers (Chambers). Plaintiff sought certain documents through discovery: McLaren's credentialing, peer review, and personnel files regarding Chambers, and McLaren's bylaws, guidelines, rules, and regulations regarding the credentialing and extension of staff privileges to physicians. McLaren claimed the documents were privileged pursuant to MCL 333.21515; MSA 14.15(21515) and MCL 333.20175(8); MSA 14.15(20175)(8).

We first examine the admissibility of the peer review and credentialing files regarding Chambers. While we agree that certain documents may be privileged, we find no error in the trial court's denial of defendant's motion to preclude the admission of all the documents contained in these files.

In general, a trial court's decision to admit evidence is reviewed for an abuse of discretion. *LeGendre v Monroe Co*, 234 Mich App 708, 721; 600 NW2d 78 (1999). In this case the trial court's decision was based on an interpretation of the statutory privilege provisions, therefore the issue involves a question of law which we review de novo. *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 596; 608 NW2d 57 (2000).

Defendant asserts that the documents are protected from admission at trial by statutory privileges arising pursuant to MCL 333.21515; MSA 14.15(21515) and MCL 333.20175(8); MSA 14.15(20175)(8). Section 21515 provides:

The records, data, and knowledge collected for or by individuals or committees assigned a review function described in this article are confidential and shall be used only for the purposes provided in this article, shall not be public records, and shall not be available for court subpoena.

Section 20175(8) similarly provides:

The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency are confidential, shall be used only for the purposes provided in this article, are not public records and are not subject to court subpoena.

Under these statutes, where documents are collected for or by individuals or committees with review functions, they are inadmissible at trial. *Gallagher v Detroit-Macomb Hosp*, 171 Mich App 761, 768-769; 431 NW2d 90 (1988). Documents submitted to a peer review or credentials committee by or on behalf of a physician seeking staff privileges at a hospital are privileged under the statutes. *Dye v St John Hosp & Medical Center*, 230 Mich App 661, 670-671; 584 NW2d 747 (1998).

A review of pertinent portions of defendant's bylaws indicates that the credentialing and membership committee has a review function: it reviews recommendations and comments regarding an applicant for staff membership. The committee may also make its own inquiries regarding an applicant. Thus, documents collected by or for this committee may be subject to the privilege.

The *Dye* Court noted that the relevant question is whether the physician's file contains information collected by or for individuals or committees with a professional review function, not merely whether the documents themselves are peer review material. *Id.* at 665 n 2. In *Monty v Warren Hosp Corp*, 422 Mich 138; 366 NW2d 198 (1985), our Supreme Court endorsed the use of an in camera review by trial courts to examine documents a defendant hospital claims are protected by the statutory privilege. *Id.* at 146. The Court explained:

In determining whether any of the information requested is protected by the statutory privilege, the trial court should bear in mind that mere submission of information to a peer review committee does not satisfy the collection requirement so as to bring the information within the protection of the statute. Also, in deciding whether a particular committee was assigned a review function so that

information it collected is protected, the court may wish to consider the hospital's bylaws and internal regulations, and whether the committee's function is one of current patient care or retrospective review. [*Id.* at 147, citations omitted.]

Therefore, application of the privilege must be considered on a document-by-document and case-by-case basis. McLaren's motion was to preclude the use of *any* of the credentialing, peer review, or personnel files at trial. McLaren has not identified specific documents it claims are subject to the privilege. Because we cannot conclude that the privilege applies to *all* documents contained in these files, we hold that the trial court did not err in denying defendant's motion.

Next, McLaren argues that its bylaws, guidelines, rules, and regulations regarding the credentialing and extension of privileges to physicians are inadmissible because they are not mandated by statute. We agree.

In general, an institution's internal rules cannot be used as evidence of negligence. *McKernan v Detroit Citizens' Street-Railway Co*, 138 Mich 519, 524; 101 NW 812 (1904). The *McKernan* Court explained that railroad companies may lawfully make their own rules to reduce danger to a risk lower than that "attained by ordinarily prudent management," but that the rules should not be used to increase the responsibility imposed by law. *Id.* at 527.

In *Gallagher, supra*, the Court interpreted *McKernan* as distinguishing "between private regulations which assist in the orderly and prudent conduct of business and the law which fixes obligations and liabilities." *Gallagher, supra* at 765. It noted that a hospital's internal rules and regulations do not establish the applicable standard of care in medical malpractice actions, but rather that the standard of care is established by community standard. *Id.* However, where an institution is required by law to promulgate certain rules and regulations, those rules and regulations are admissible. *Id.* at 766. "Violations of administrative rules and regulations are evidence of negligence." *Beals v Walker*, 416 Mich 469, 481; 331 NW2d 700 (1982).

Therefore, if McLaren's bylaws, rules, regulations and procedures were promulgated pursuant to statutory authority, they are admissible. If they are simply internal rules and regulations not mandated by law, they are inadmissible.

MCL 333.21513; MSA 14.15(21513) provides in part:

The owner, operator, and governing body of a hospital licensed under this article:

(a) Are responsible for all phases of the operation of the hospital, selection of the medical staff, and quality of care rendered in the hospital.

* * *

(c) Shall assure that physicians and dentists admitted to practice in the hospital are granted hospital privileges consistent with their individual training, experience, and other qualifications.

(d) Shall assure that physicians and dentists admitted to practice in the hospital are organized into a medical staff to enable an effective review of the professional practices in the hospital for the purpose of reducing morbidity and mortality and improving the care provided in the hospital for patients. This review shall include the quality and necessity of the care provided and the preventability of complications and deaths occurring in the hospital.

While this provision sets forth the general responsibility of hospitals, it does not direct the promulgation of rules and regulations. Plaintiff points to no statute that empowers hospitals to promulgate rules and regulations or to any administrative rule that requires hospitals to set forth specific rules for the credentialing of physicians. Therefore, because McLaren's bylaws, rules, regulations, and procedures with regard to credentialing have not been promulgated pursuant to law, they are inadmissible at trial.

Finally, we review de novo the trial court's denial of McLaren's motion for summary disposition, and find no error in that decision. *Singerman v Municipal Serv Bureau, Inc*, 455 Mich 135, 139; 565 NW2d 383 (1997). When a motion is brought pursuant to MCR 2.116(C)(10) (no genuine issue of material fact) the trial court must consider the pleadings, affidavits, depositions and all other documentary evidence submitted by the parties. MCR 2.116(G); *Singerman, supra*. The court must view the evidence and all reasonable inferences drawn from the evidence in favor of the nonmoving party, giving the nonmoving party the benefit of any reasonable doubt. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The reviewing court must "determine whether any genuine issue of material fact exists in order to prevent entering a judgment for the moving party as a matter of law." *Id*.

Pursuant to section 21521, hospitals must "meet the minimum standards and rules authorized by this article." Subsection 21513(c) requires hospitals to assure that the physician they allow to practice in their facilities "are granted hospital privileges consistent with their individual training, experience, and other qualifications." Together these statutes require plaintiff to demonstrate that the privileges McLaren granted to Chambers were inconsistent with his training, experience, and other qualifications.

Although plaintiff may not admit McLaren's bylaws, rules, regulations and procedures to show negligence in credentialing Chambers, McLaren has not demonstrated that it is entitled to judgment as a matter of law on the issue. In his deposition, plaintiff's expert testified that he believed McLaren had violated its own standards in extending privileges to Chambers even after it learned that he had failed to meet certain requirements. McLaren did not refute this evidence to the extent of demonstrating that there is no genuine issue of material fact on this issue. Therefore, it is not entitled to summary disposition.

Affirmed in part and reversed in part.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Kirsten Frank Kelly