STATE OF MICHIGAN

COURT OF APPEALS

JOHN HOLLOMAN, M.D.,

Plaintiff-Appellant,

v

JOHN LONDON, M.D., and KELSEY MEMORIAL HOSPITAL, INC.,

Defendants-Appellees.

UNPUBLISHED
February 22, 2002

No. 227422
Montcalm Circuit Court
LC No. 99-000826-NZ

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants. We affirm.

Plaintiff first argues that Michigan's doctrine of nonreviewability of private hospital staffing decisions is limited to contract claims, and thus the trial court erred in granting summary disposition on his tortious interference claims. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In *Hoffman v Garden City Hospital-Osteopathic*, 115 Mich App 773, 778-779; 321 NW2d 810 (1982), this Court adopted the majority viewpoint that a private hospital has the power to appoint and remove members of the staff at will without judicial intervention. See also *Long v Chelsea Community Hospital*, 219 Mich App 578; 557 NW2d 157 (1996); *Sarin v Samaritan Health Center*, 176 Mich App 790; 440 NW2d 80 (1989). In support of his position that this nonreviewability doctrine does not apply to tort actions, plaintiff relies on dicta in *Long, supra* at 586-587. Although this Court has stated that not all claims are barred by the doctrine of nonreviewability, *Long, supra*; *Sarin, supra* at 795, plaintiff presents no persuasive argument why the present case is of that sort.[1] Plaintiff's tort claims would necessarily invoke a review of

[1] See *Samuel v Herrick Memorial Hospital*, 201 F3d 830, 835 (CA 6, 2000) (the district court "was without jurisdiction to review plaintiff's claim of tortious interference with contractual relations and business relationships, as are we, because it would necessarily involve a review of the decision to suspend plaintiff and the methods or reasons behind that action, which is clearly prohibited under Michigan law as improper interference with the hospital's decisions and the (continued…)

the hospital's staffing decision, and thus review of such claims is barred because it would intervene in the hospital's decisions and would interfere with the peer review process. *Long, supra* at 588; *Sarin, supra* at 794.

Regardless, in order to survive a motion for summary disposition, plaintiff had to allege facts justifying the application of an exception to immunity. See *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001) ("To survive . . . a motion [under MCR 2.116(C)(7)], the plaintiff must allege facts justifying the application of an exception to governmental immunity."). Although plaintiff argues that by claiming malice, he pleaded in avoidance of immunity under MCL 331.531, his pleadings are insufficient, and he offered no evidence in support of his claim, arguing rather that this claim would be developed through discovery. See *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) ("A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence."). MCL 331.531 offers immunity to persons or entities for their actions involving the peer review process. *Long, supra* at 584. However, the immunity afforded in MCL 331.531(3) may be avoided if the person or entity acts with malice. MCL 331.531(4). "[T]he statutory immunity does not apply only if the person supplying information or data does so with knowledge of its falsity or with reckless disregard of its truth or falsity." *Veldhuis v Allan*, 164 Mich App 131, 136; 416 NW2d 347 (1987). Although plaintiff uses the word "malice" and makes the conclusion that defendant acted maliciously, he does not provide factual allegations showing malice. *Veldhuis, supra* at 136-137; see *Fane, supra*; Cf *Regualos v Community Hospital*, 140 Mich App 455, 462-463; 364 NW2d 723 (1985). Thus, summary disposition was proper.[2]

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra

(…continued)

peer review process").

[2] To the extent that plaintiff argues that his complaint states a cause of action under the Michigan Antitrust Reform Act, MCL 445.771 *et seq.*, we decline to reach this issue because plaintiff cites no law in support of his position, *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 116; 593 NW2d 595 (1999), and because plaintiff conceded at oral argument that if defendants have immunity, that immunity applies to his entire cause of action. Under these circumstances, we need not address plaintiff's final argument.