

STATE OF MICHIGAN
COURT OF APPEALS

LAUREL D. STOUGHTON and GREG L.
STOUGHTON,

UNPUBLISHED
November 25, 2003

Plaintiffs-Appellants,

v

BORGESS MEDICAL CENTER, doing business
as PIPP MEDICAL CENTER,

No. 242781
Allegan Circuit Court
LC No. 02-031019-NM

Defendant-Appellee.

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), on grounds that the statute of limitations applicable to plaintiffs' claim had expired. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following surgery, plaintiff Laurel Stoughton was allegedly advised that hospital personnel had failed to properly sterilize the surgical instruments and that as a result she might have been infected with the AIDS virus or hepatitis. She underwent periodic testing and has so far tested negative.

The trial court dismissed plaintiffs' complaint because it was not filed within the two-year period of limitations applicable to medical malpractice claims. See MCL 600.5805(6). Plaintiffs claim that this was error with respect to Count I, entitled general negligence, in which plaintiffs alleged that defendant "[n]egligently performed the sterilization of surgical instruments." Plaintiffs aver that this was ordinary negligence, not medical malpractice.

In *Dorris v Detroit Osteopathic Hospital*, 460 Mich 26, 45-46; 594 NW2d 455 (1999), the Court held:

"The key to a medical malpractice claim is whether it is alleged that the negligence occurred within the course of a professional relationship. . . . [Bronson v Sisters of Mercy Health Corp, 175 Mich App 647, 652-653; 438 NW2d 276 (1989).]

The determination whether a claim will be held to the standards of proof and procedural requirements of a medical malpractice claim as opposed to an ordinary negligence claim depends on whether the facts allegedly raise issues that are within the common knowledge and experience of the jury or, alternatively, raise questions involving medical judgment. [Citations omitted.]

Few would disagree that ordinary laypersons would be capable of concluding that instruments should be properly sterilized before surgery. However, whether instruments were properly sterilized or negligently sterilized is a different question. The hospital defendant in this case was responsible for the sterilization of instruments and/or for checking to ensure proper sterilization. This service would be part of the professional relationship between the hospital and the patient. Moreover, the manner of sterilization and the determination of when sterilization is compromised, or sufficiently compromised to raise a medical concern, would be questions that someone other than a layperson would have to answer. Since there is at least some degree of medical judgment involved in this determination, we conclude that the trial court properly granted summary disposition.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter