

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER PURCELL,

Plaintiff-Appellee,

v

STURGIS HOSPITAL,

Defendant-Appellant,

and

EDWARD GRIFFIN, M.D., EDWARD GRIFFIN,
M.D., P.C., JOHN COLIN KIRKPATRICK, M.D.,
JOHN COLIN KIRKPATRICK, M.D., P.C.,
ROME AHUJA, M.D., ROME AHUJA, M.D.,
P.C., YAHYA ALBEER, M.D., YAHYA
ALBEER, M.D., P.C., RAYMOND
RANDONOVICH, D.O., RAYMOND
RANDONOVICH, D.O., P.C., and THOMAS
BRENNER, M.D.,

Defendants.

UNPUBLISHED

December 11, 2008

Nos. 277793, 277794, and
277795

St. Joseph Circuit Court

LC No. 03-000617-NH

Before: Hoekstra, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

In this medical malpractice action, defendant Sturgis Hospital appeals as on leave granted three lower court orders: (1) an order denying Sturgis Hospital's motion for summary disposition on plaintiff's vicarious liability claims (Docket No. 277795); (2) an order granting plaintiff's motion to strike Sturgis Hospital's answer, and entering a default as to Sturgis Hospital on claims against the radiologist defendants Dr. Rome Ahuja, Dr. Yahya Albeer, Dr. John Kirkpatrick, and Dr. Raymond Randonovich (Docket No. 277793); and (3) an order partially denying Sturgis Hospital's motion for summary disposition regarding plaintiff's claims

of vicarious liability for the alleged negligence of Ahuja, Albeer, and Randonovich (Docket No. 277794).¹ Because plaintiff failed to establish the existence of a genuine issue of fact to support his claim of ostensible agency, we reverse and remand.

Defendant hospital argues that plaintiff failed to establish that these nonparty radiologist defendants were ostensible agents of the hospital, and the trial court should have dismissed plaintiff's complaint against Sturgis Hospital in its entirety.

Sturgis Hospital moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that plaintiff failed to establish the existence of a genuine issue of fact to support his claim of ostensible agency. The trial court disagreed and denied that motion. We review de novo a trial court's ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10), considering the pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 41-42; 672 NW2d 884 (2003). If the evidence fails to demonstrate a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Franchino v Franchino*, 263 Mich App 172, 181; 687 NW2d 620 (2004). The moving party has the burden of supporting its position with documentary evidence with respect to a motion under MCR 2.116(C)(10), and, if so supported, the burden then shifts to the opposing party to establish the existence of a genuine issue of disputed fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id.*

A hospital may be held vicariously liable for the acts of its agents. *Nippa v Botsford Gen Hosp (On Remand)*, 257 Mich App 387, 390; 668 NW2d 628 (2003). "For all practical purposes the hospital stands in the shoes of its agents (the doctors)." *Id.* at 391. Nevertheless, a hospital is generally not vicariously liable for the negligence of an independent contractor, who merely uses the hospital's facilities to render treatment to patients. *Grewe v Mount Clemens Gen Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). "However, if the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found." *Id.* at 250-251. To prove that the radiologists in the instant case were the ostensible agents of Sturgis Hospital, plaintiff must demonstrate that (1) he dealt with the radiologists with a reasonable belief in the radiologists' authority as agents of Sturgis Hospital, (2) his belief was generated by some act or neglect on the part of Sturgis Hospital, and (3) he was not guilty of

¹ Plaintiff has settled all claims with respect to Dr. Edward Griffin, Dr. John Kirkpatrick, and their professional corporations, and dismissed the ostensible agency claims against Sturgis Hospital with respect to these doctors' alleged liabilities. Dr. Thomas Brenner has been dismissed from the action. Similarly, Dr. Ahuja, Dr. Albeer, and Dr. Randonovich and their respective professional corporations have been dismissed for want of service. All that remains are the ostensible agency claims against Sturgis Hospital concerning three subsequent treating radiologists, Dr. Ahuja, Dr. Albeer, and Dr. Randonovich.

negligence. *Zdrojewski v Murphy*, 254 Mich App 50, 66; 657 NW2d 721 (2002). Plaintiff has failed to create a justiciable question of fact on the three factors.

Regarding the first element, our review of the record reveals that plaintiff was taken to Sturgis Hospital following a sledding accident without any input regarding his medical care preference. Plaintiff specifically averred that he did not choose Sturgis Hospital. Plaintiff did not have a patient-physician relationship with the emergency room physicians, the orthopedic surgeon, or the initial radiologist, independent of the hospital setting. Plaintiff did not recall having any conversations with the radiologists. At his deposition, plaintiff testified that he did not recall any statements by Sturgis Hospital staff, or by radiologists in particular, during the course of his treatment. Further, plaintiff did not recall any discussion about the x-rays with any physicians, including radiologists. In sum, plaintiff admitted that he never spoke to or dealt with any of the radiologists in any capacity.

Specifically in regard to the non-party defendants, Dr. Ahuja, Dr. Albeer, and Dr. Randonovich, the record reveals that they provided radiological services to plaintiff only after his initial hospitalization. Following plaintiff's initial hospitalization, plaintiff continued under the care of his orthopedic surgeon, Dr. Griffin, who prescribed interim x-ray evaluations. During some, but not all, of plaintiff's subsequent evaluations, Dr. Ahuja, Dr. Albeer, and Dr. Randonovich, provided radiological services. These services included reading the x-rays taken on site at the hospital as prescribed by plaintiff's treating physician and then rendering reports. During plaintiff's post-hospitalization care, prior to receiving radiology services, plaintiff executed consent and release forms, entitled "Inpatient/Outpatient/Emergency Registration Release Assignment Form[s]." Plaintiff executed the consent and release forms eleven separate times, each time before radiology services were provided. The consent and release forms were dated March 4, 2001, June 1, 2001, July 3, 2001, August 1, 2001, September 4, 2001, October 22, 2001, October 25, 2001, November 2, 2001, December 17, 2001, December 21, 2001, and January 2, 2002. These forms specified that the radiologists were not employees of the hospital and specifically identified radiologists as "independent contractors and . . . not agents of the Hospital." Thus, any belief plaintiff had regarding the radiologists' authority as agents of Sturgis Hospital was not reasonable. For these reasons, plaintiff cannot show that he dealt with the radiologists with a reasonable belief in the radiologists' authority as agents of Sturgis Hospital. *Zdrojewski*, *supra* at 66.

Next, regarding the second element, even if plaintiff somehow believed in the radiologists' authority as agents of Sturgis Hospital, this belief was not generated by some act or neglect on the part of Sturgis Hospital. The only evidence regarding the relationship between the radiologists and Sturgis Hospital contained in the record are the consent and release forms. Initially, when plaintiff was admitted to Sturgis Hospital's emergency department, because plaintiff was unable to, his mother signed the first "inpatient/outpatient/emergency registration release assignment form," included in the record that provided in part:

I recognize that the Hospital is not liable for any act or omission in following the instructions of my above designated physician, his/her assistant(s), and/or his/her designee(s) and that all physicians, physician's assistants and other specialized personnel furnishing services to me, including radiologists, pathologists, anesthesiologists, and any others who are not actual employees of

the Hospital, are independent contractors and are not agents of the Hospital and that Hospital has no responsibility for their acts or omissions.²

Again, on eleven subsequent visits, plaintiff signed a consent and release form containing the same provision. These forms specifically identify defendant radiologists as “independent contractors and . . . not agents of the Hospital.” Thus, any belief plaintiff had regarding the radiologists’ authority as agents of Sturgis Hospital was specifically negated by the plain language contained in the consent and release forms and was not generated by some act or neglect on the part of Sturgis Hospital.

Plaintiff proffered ten medical imaging reports to demonstrate his purported reasonable belief that the radiology department was apparently part of Sturgis Hospital. Indeed, these reports are marked with the Sturgis Hospital logo, provide its location at the bottom of the form, and are signed by various radiologists, including Ahuja, Albeer, and Kirkpatrick. But these medical imaging reports were generated only after plaintiff received his imaging. Thus, these reports could not have created a reasonable belief in plaintiff at the time of his imaging that the radiology service was being provided by rather than at Sturgis Hospital. This is especially true when coupled with the language in the consent and release forms plaintiff signed each and every time before receiving radiology services. Thus, the medical imaging reports are insufficient evidence to create a question of fact on the second element that plaintiff’s belief was generated by some act or neglect on the part of the hospital. *Zdrojewski, supra* at 66.

Third, it is apparent that plaintiff did not read the consent and release forms that he signed. Plaintiff was given the form and he signed it eleven times. Plaintiff thus had eleven opportunities to read the plain language of the forms. The language of the forms identifies defendant radiologists as independent contractors and not agents or employees of Sturgis Hospital. If plaintiff had read the form even one out of eleven times, he should have understood that the radiologists are independent contractors and not agents or employees of Sturgis Hospital. Because the plain language of the consent and release forms are clear, the only conclusion that can be advanced is that plaintiff did not read the forms before signing and as such, plaintiff cannot display that he was not guilty of some level of negligence in his asserted belief that the radiology services were provided by, rather than at Sturgis Hospital. *Zdrojewski, supra* at 66.

Finally, Sturgis Hospital made no representations that would lead plaintiff to reasonably believe that the radiologists were its agents. See *VanStelle v Macaskill*, 255 Mich App 1, 14; 662 NW2d 41 (2003). There is no evidence, other than plaintiff’s conclusory statements that he “believed that the radiology department of Sturgis Hospital was part of the hospital and that its staff, including technicians and radiologists, were part of the hospital.” *Quinto, supra* at 371-372 (mere conclusory allegations that are devoid of detail are insufficient to avoid summary disposition under MCR 2.116(C)(10)). Ultimately, we conclude that Sturgis Hospital was entitled to judgment as a matter of law, because the evidence failed to demonstrate a genuine issue of material fact. *Franchino, supra* at 181.

² Neither Dr. Ahuja, Dr. Albeer, nor Dr. Randonovich were attending radiologists or radiology providers to the inpatient plaintiff.

Because this issue is dispositive, we need not address Sturgis Hospital's remaining issues on appeal.

Reversed and remanded for entry of an order granting summary disposition in favor of Sturgis Hospital. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio