

STATE OF MICHIGAN
COURT OF APPEALS

ZIARA FITZGERALD, a Minor, by her Next
Friend, GEAMILL GIBSON,

UNPUBLISHED
December 30, 2008

Plaintiff-Appellant,

v

BOARD OF HOSPITAL MANAGERS FOR THE
CITY OF FLINT, d/b/a HURLEY MEDICAL
CENTER,

No. 280032
Genesee Circuit Court
LC No. 04-080012-NH

Defendant-Appellee,

and

LARRY D. YOUNG and NORTHPOINTE
COMMUNITY AND EDUCATION CENTER,
a/k/a HAMILTON COMMUNITY HEALTH
NETWORK, INC.,

Defendants.

Before: Servitto, P.J. and Donofrio and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant Hurley Medical Center's motion for summary disposition. Because the trial court did not err in concluding that the evidence did not establish an ostensible agency relationship between defendant Young and the hospital, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007).

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). However, a hospital is not vicariously liable for the acts of "a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients." *Grewe v Mount Clemens Gen Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). An ostensible agency relationship can arise if the

patient “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[.]” *Id.* at 250-251. An ostensible agency relationship will be found where (1) the patient deals with the doctor with a reasonable belief in the doctor’s authority as an agent of the hospital, (2) the belief must be generated by some act or neglect on the part of the hospital sought to be held liable, and (3) the patient relying on the doctor’s authority is not guilty of negligence. *Zdrojewski v Murphy*, 254 Mich App 50, 66; 657 NW2d 721 (2002); *Chapa v St Mary’s Hosp of Saginaw*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

[T]he critical question is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems. A relevant factor in this determination involves resolution of the question of whether the hospital provided the plaintiff with [the doctor] or whether the plaintiff and [the doctor] has a patient-physician relationship independent of the hospital setting. [*Grewe, supra* at 251.]

The existence of an agency relationship is a question of fact when there is some direct or inferential evidence tending to establish such a relationship. *St Clair Intermediate School Dist v Intermediate Ed Ass’n/Michigan Ed Ass’n*, 458 Mich 540, 556; 581 NW2d 707 (1998).

In this case, plaintiff had a long-term relationship with Hurley’s Northpointe clinic because that was where her family doctor practiced. When she became pregnant, her mother took her to the clinic and her family doctor suggested that she return to the clinic for prenatal care. When her treating obstetrician left the clinic, she began a physician-patient relationship with Dr. Young. By that time, the clinic had changed hands and was owned and operated by defendant Hamilton Community Health Network, Inc., independently of Hurley, and Dr. Young was employed directly by Hamilton. Separate corporate entities will be respected absent evidence of some abuse of the corporate form that would warrant piercing the corporate veil, *VanStelle v Macaskill*, 255 Mich App 1, 12; 662 NW2d 41 (2003), and there is no such evidence here. When plaintiff went into labor, her mother chose to take her to Hurley and Dr. Young was called in because plaintiff was his patient.

Plaintiff’s only basis for concluding that Young was Hurley’s agent was that Hurley’s name was allegedly on some signs in and around the clinic and that Hurley’s website still indicated an affiliation with Northpointe. However, no evidence was presented that plaintiff herself saw and relied on the website. *VanStelle, supra* at 15. As for the signs, plaintiff did not present any evidence of the signs or their content. Further, there is no evidence that plaintiff looked to Dr. Young for treatment because she believed, in reliance on the signs, that he was affiliated with Hurley. To the contrary, the evidence showed that plaintiff accepted Dr. Young as her physician because he was the doctor assigned to her case by Hamilton. Therefore, the trial court did not err in granting Hurley’s motion for summary disposition.

Affirmed.

/s/ Deborah A. Servitto
/s/ Pat M. Donofrio