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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1445**

Laila Jama,
Appellant,

vs.

Mayo Clinic,
Respondent,

and

J. Does 1-10, Mayo Clinic Employees, Whose
true legal names are presently unknown to
Plaintiff, individually and as employees of
Mayo Clinic,
Defendants.

**Filed May 8, 2017
Affirmed
Hooten, Judge**

Olmsted County District Court
File No. 55-CV-15-7771

Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

Gregory E. Karpenko, Timothy W. Billion, Matthew J. Hanzel (of counsel), Fredrikson &
Byron, P.A., Minneapolis, Minnesota; and

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Kalitowski,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal from the summary judgment dismissal of her negligence claims, appellant patient argues that the district court erred by: (1) concluding that she failed to raise genuine issues of material fact regarding whether she suffered compensable damages as a result of respondent medical clinic's inclusion of inaccurate entries in her medical records and (2) determining that respondent did not violate a statutory or regulatory duty by failing to maintain accurate medical records. We affirm.

FACTS

Appellant Laila Jama is a former patient of respondent Mayo Clinic. Jama alleges that in January 2014, she received calls from a pharmacy asking her to pick up a medication that was never prescribed to her. Suspecting that her medical records may have been compromised, Jama reviewed her records on file with Mayo Clinic and learned that they contained incorrect entries regarding illnesses she never had, medications she never took, and appointments she never made. The disputed entries referred to influenza, cold symptoms, and abdominal pain, and included a list of "current medications" consisting of cough medications, antibiotics, and an antacid.

On multiple occasions over a period of several months, Jama asked Mayo Clinic employees to investigate and correct her record. In May 2014, a Mayo Clinic employee informed Jama that her medical record may have been confused with the records of another patient with a similar name. A different employee told Jama that Mayo Clinic would remove some of the allegedly incorrect entries from her medical records, but that some of

them could not be removed, allegedly because Mayo Clinic was not able to verify that those entries were incorrect.

Jama filed a lawsuit against Mayo Clinic and ten unnamed Mayo Clinic employees alleging that they had negligently failed to maintain accurate medical records in violation of an administrative rule and a common law duty of care. Jama asserted that the existence of inaccurate medical records is a compensable injury in and of itself and sought declaratory and injunctive relief as well as compensation for past and future medical expenses and for emotional distress.

The district court granted Mayo Clinic's motion for summary judgment. Regarding Jama's common law negligence claim, the district court granted summary judgment in Mayo Clinic's favor because Jama failed to show that "the erroneous records . . . caused her any recoverable damage." The district court rejected Jama's negligence per se claim because it concluded that Minn. R. 4640.1000 (2015), which applies only to hospitals, does not establish a duty on the part of Mayo Clinic with respect to the clinic records at issue. This appeal followed.

D E C I S I O N

A district court shall grant summary judgment if "there is no genuine issue as to any material fact" and "either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A "genuine issue" is one that a reasonable factfinder could resolve in favor of either party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). To defeat a summary judgment motion, the nonmoving party must "present specific facts showing that there is a genuine issue for trial." *Id.* (quoting Minn. R. Civ. P. 56.05). There is no genuine issue of

material fact “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *Id.* at 71.

We review a grant of summary judgment de novo to determine “whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In determining whether summary judgment was properly granted, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007).

I. Jama’s negligence claims fail as a matter of law.

A negligence claim consists of four elements: “(1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury.” *Id.* “Summary judgment is appropriate when the record lacks proof of any of the four elements.” *Kellogg v. Finnegan*, 823 N.W.2d 454, 458 (Minn. App. 2012). Jama argues that Mayo Clinic breached a common law duty to exercise reasonable care in maintaining accurate records, giving rise to a common law negligence claim, and breached a duty under Minn. R. 4640.1000, subp. 3, giving rise to a negligence per se claim.

A. Common Law Negligence

Although Jama asserts that Mayo Clinic has a common law duty to its patients to exercise reasonable care in maintaining accurate medical records, we need not decide this issue because we agree with the district court that Jama’s failure to allege a compensable

injury precludes recovery on her common law negligence claim even if Mayo Clinic had a duty.

Jama alleges the following injuries: (1) “[p]ast and future medical expenses” because she delayed seeking dental care and establishing routine medical care due to not wanting to transfer her inaccurate Mayo Clinic records to a new healthcare provider; (2) emotional damages from “tremendous amounts of stress and worry”; and (3) the existence of inaccurate medical records.

Physical injury

Jama requests nonspecific medical expense damages resulting from her alleged physical injury. The only physical injury Jama alleges is the prolonged pain she experienced as a result of delaying dental treatment.¹ This injury is compensable only if Mayo Clinic’s alleged breach of duty proximately caused it.

“Consequences which follow in unbroken sequence, without an intervening efficient cause, from the original negligent act, are natural and proximate” *Dellwo v. Pearson*, 259 Minn. 452, 455, 107 N.W.2d 859, 861 (Minn. 1961) (quotation omitted).

“Generally, proximate cause is a question of fact for the jury; however, where reasonable minds can arrive at only one conclusion, proximate cause is a question of law.” *Lubbers v. Anderson*, 539 N.W.2d 398, 402 (Minn. 1995).

Although Jama claims that she did not feel comfortable providing the inaccurate records to a new provider or continuing treatment with Mayo Clinic, she does not present

¹ Jama also contends that her decision to delay establishing routine medical care with a new healthcare provider is a physical injury, but she presents no evidence of any actual physical consequence resulting from that delay.

evidence that the inaccuracies in her medical record related to dental treatment or would have interfered with her needed treatment. The allegedly inaccurate entries—discussing a cold, a flu, cough medications, antibiotics, and an antacid—were not a proximate cause of Jama’s delayed dental treatment.

Emotional damages

Jama alleges that she suffered emotional distress from worrying about the possibility of identity theft and worrying that having inaccurate medical records might lead to receiving inadequate medical care. Emotional damages are available only in certain types of negligence cases, including when there has been “a direct invasion of the plaintiff’s rights such as that constituting slander, libel, malicious prosecution, seduction, or other like willful, wanton, or malicious conduct” or when a plaintiff suffers a physical injury as a result of another’s negligence. *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 560 (Minn. 1996) (quotation omitted).

Although Jama argues that having inaccurate entries in her medical records is within the first category, that type of case requires that the distress “aris[e] from an intentional tort.”² *Id.* Jama does not allege that Mayo Clinic committed an intentional tort, so recovery based on the first category is not available here.

Jama also alleges that her emotional distress falls within the second category because it accompanies a physical injury caused by Mayo Clinic’s negligence. *See id.* The alleged “physical injury” is that Jama delayed having a wisdom tooth extracted, prolonging

² This is not the same as intentional infliction of emotional distress, which is a separate cause of action and is not alleged in this case. *See id.*

the toothaches she was already experiencing, because she did not want to transfer inaccurate records to a new provider and did not feel comfortable going to Mayo Clinic. But because Mayo Clinic's alleged breach of duty was not a proximate cause of Jama's alleged physical injury, we conclude that emotional distress damages are not recoverable here. *See id.*

Inaccurate medical records

Jama argues that the existence of inaccuracies in her medical records is a compensable injury in and of itself, but does not cite to any caselaw supporting this argument. Instead, Jama asserts that the existence of Minn. R. 4640.1000, the licensing rule that directs hospitals to keep accurate records, establishes that a healthcare facility's failure to keep accurate records gives rise to a compensable injury. But, even if chapter 4640 gave rise to a compensable injury resulting from failure to comply with rule 4640.1000, as discussed below, the rule does not apply to the records at issue here. Based on this record, we conclude that the district court properly determined that Jama failed to raise a genuine issue of material fact regarding whether she suffered compensable damages.

B. Negligence Per Se

Jama asserts that Mayo Clinic was negligent per se because it violated its obligation under Minn. R. 4640.1000, subp. 3, to keep adequate medical records. "A per se negligence rule substitutes a statutory standard of care for the ordinary prudent person standard of care, such that a violation of the statute . . . is conclusive evidence of duty and breach." *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 189–90 (Minn. 2005). In addition to statutory violations, "[r]egulatory violations may constitute negligence per se if the

plaintiff belongs to the class of persons that the regulation is intended to protect.” *Femrite v. Abbott Nw. Hosp.*, 568 N.W.2d 535, 539 (Minn. App. 1997).

Rule 4640.1000 is within the chapter that regulates hospitals. That chapter’s definition of “hospital” explicitly excludes “physicians’ offices or clinics.” Minn. R. 4640.0100, subp. 5 (2015). The records at issue in this case discuss office visits, not hospital admissions, and therefore are not subject to rule 4640.1000. Jama nevertheless argues that the hospital licensing requirements apply here because, although Mayo Clinic includes physicians’ offices and clinics, it “also provides all of the other services defining a ‘hospital’ under the Rule,” and therefore is obligated to follow the hospital recordkeeping requirements for all of its records. But the provision that Jama asserts was violated is that “[a]ccurate and complete medical records shall be maintained on all patients *from the time of admission to the time of discharge.*” Minn. R. 4640.1000, subp. 3 (emphasis added). All of Jama’s disputed entries are labeled “Primary Care Internal Medicine” and involve office visits or phone calls with a healthcare provider. None of these entries describe hospital admissions, so there is no “time of admission” to trigger the requirement. *See id.* Therefore, as a matter of law, Jama cannot prevail on her negligence per se claim because Mayo Clinic did not breach a statutory or regulatory duty.

II. Jama is not entitled to declaratory or injunctive relief.

In addition to her negligence claims, Jama purports to allege a separate claim for “declaratory and injunctive relief” based on Mayo Clinic’s alleged failure to keep accurate medical records. Declaratory relief and injunctive relief are remedies, not causes of action, so they may not be granted unless the plaintiff prevails on a cause of action. *See*

Weavewood, Inc. v. S & P Home Inv., LLC, 821 N.W.2d 576, 579 (Minn. 2012) (stating that fact that party requests declaratory relief does not change nature of lawsuit and “a complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a nondeclaratory suit” (quotation omitted)); *Ryan v. Hennepin Cty.*, 224 Minn. 444, 448, 29 N.W.2d 385, 387 (1947) (“Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted.” (quotation omitted)). Because we conclude that the district court properly determined that Mayo Clinic is entitled to summary judgment on Jama’s negligence claims, Jama is not entitled to declaratory or injunctive relief.

Affirmed.