STATE OF MICHIGAN

COURT OF APPEALS

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

Plaintiff-Appellant,

v

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

Defendant-Appellee,

and

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

Defendants.

UNPUBLISHED
December 30, 2008

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

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

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FORT HOOD, J. (*dissenting*).

I respectfully dissent.

A trial court's decision regarding a motion for summary disposition is reviewed de novo. *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006). When reviewing a summary disposition decision, the evidence is viewed in the light most favorable to the nonmoving party. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of material fact exists for trial. *Id*. Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Summary disposition is suspect where motive and intent are at issue or where the credibility of the witness is crucial. *Vanguard Ins Co v Bolt*, 204 Mich App

271, 276; 514 NW2d 525 (1994). The trial court may not make factual findings or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). When the evidence conflicts, summary disposition is improper. *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

> Generally speaking, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients. 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.
>
> In our view, the 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. [*Grewe v Mt Clemens Gen Hosp*, 404 Mich 240, 250-251; 273 NW2d 429 (1978) (citations omitted).]

To obtain recovery against a principal for the alleged acts of an ostensible agent, the plaintiff must prove that: (1) the person dealing with the agent believed in the agent's authority and this belief was reasonable; (2) the belief was generated by some act or neglect of the principal sought to be charged; and (3) the person relying on the agent's apparent authority must not be guilty of negligence. *Id.* at 252-253. "Agency is always a question of fact for the jury." *Id*. at 253 quoting *Stanhope v Los Angeles College of Chiropractic*, 54 Cal App 2d 141, 146; 128 P2d 705 (1942).

Review of the testimony reveals that the acting plaintiff, Geamill Gibson, suffered from some degree of disability. Plaintiff's mother suspected that she was pregnant and took her to the Northpointe Clinic. There, plaintiff saw the person characterized as her "family doctor." After confirming the pregnancy, this doctor, Dr Syed, prescribed pre-natal vitamins and advised her to return for pre-natal care. Plaintiff was unaware that Dr. Syed would no longer be treating her. Rather, the next time she returned to "Hurley's Northpointe Clinic," Dr. Pyatt was "in the room." Plaintiff testified that, toward the end of her pregnancy, Dr. Pyatt introduced her to Dr. Young, defendant's alleged ostensible agent, at the clinic. However, plaintiff testified that Dr. Pyatt indicated that Dr. Young would be treating her temporarily. Although Dr. Young had a private practice elsewhere, plaintiff never met with him at his practice; all visits were at the clinic. Plaintiff testified that the sign in front of the building identified the clinic as the "Hurley Northpointe" clinic, and she further opined that the clinic door indicated that it was a "Hurley" facility. When plaintiff was admitted to the hospital, Dr. Young was "on call" that day which was why he delivered plaintiff's baby.

Defendant asserted that plaintiff failed to present any reasonable evidence regarding the association or representation of Dr. Young by defendant as its agent. It was alleged that plaintiff failed to present any evidence regarding the signs, and the pre-existing relationship between plaintiff and Dr. Young precluded any claim of ostensible agency. However, the burden of demonstrating entitlement to summary disposition rests with the moving party, and the burden does not shift to the nonmoving party until that burden is satisfied. *Quinto, supra*. Although

defendant presented a contractual agreement to evidence a change in ownership of the clinic, defendant failed to present any evidence of the signs and when, and if, the signs were changed to reflect the ownership change. Plaintiff testified regarding her experience when visiting the clinic, and her recollection of the representation that the clinic was a Hurley facility. Additionally, although both Dr. Pyatt and Dr. Young had private practices, plaintiff did not receive treatment at either office. Indeed, Dr. Young took over plaintiff's care at the clinic, she was not advised to transfer to Dr. Pyatt's private practice. There is evidence from the testimony that plaintiff received treatment at the clinic by the doctors who were provided because Medicaid was accepted there. Further, Dr. Young delivered the baby because he was on call at the time of admission. In light of the conflicting evidence, I would conclude that a factual issue is presented that must be resolved by the trier of fact. Therefore, I would reverse.

/s/ Karen M. Fort Hood