

STATE OF MICHIGAN
COURT OF APPEALS

RASHEEDAH PEARSON,

Plaintiff-Appellant,

v

JEFFREY A. JANOWICZ, M.D., VINCENT
BORLA, D.O., DETROIT RECEIVING
HOSPITAL AND UNIVERSITY HEALTH
CENTER, REGINALD D. SHARPE, D.O., and
SHARPE FAMILY PLANNING,

Defendants-Appellees.

UNPUBLISHED

August 16, 2011

No. 298371

Wayne Circuit Court

LC No. 09-000273-NH

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendants Dr. Jeffrey Janowicz, Dr. Vincent Borla, and Detroit Receiving Hospital (collectively “the hospital defendants”), pursuant to MCR 2.116(C)(10). Plaintiff also challenges an earlier order that granted summary disposition to defendants Dr. Reginald Sharpe and Sharpe Family Planning (collectively “the Sharpe defendants”), also pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff’s complaint alleges that she obtained an unnecessary abortion after she was inaccurately advised by someone at defendant hospital that Depo-Provera causes birth defects, and that Dr. Sharpe failed to correct that misinformation before performing the procedure. The trial court granted summary disposition to the hospital defendants because plaintiff could not identify who gave her the purportedly inaccurate advice concerning Depo-Provera. The court granted summary disposition to the Sharpe defendants because plaintiff did not show that she told him about the Depo-Provera, that he gave her bad advice, or that she told him that she had been warned of birth defects and that he failed to correct the misinformation.

This Court reviews a trial court’s decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.”

To establish medical malpractice, “a plaintiff must establish four elements: (1) the appropriate standard of care governing the defendant’s conduct at the time of the purported negligence, (2) that the defendant breached that standard of care, (3) that the plaintiff was injured, and (4) that the plaintiff’s injuries were the proximate result of the defendant’s breach of the applicable standard of care.” *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). Regarding the fourth prong, “the plaintiff has the burden of proving that he or she suffered an injury that more probably than not was proximately caused by the negligence of the defendant or defendants.” MCL 600.2912a(2).

Plaintiff’s claims against the hospital defendants were premised on inaccurate information that she allegedly received from a male in the emergency room at the hospital. However, plaintiff was unable to identify who made the statements concerning Depo-Provera and we agree with the trial court that plaintiff failed to show that there was a genuine issue of material fact whether either Dr. Janowicz or Dr. Borla was the person who gave her the allegedly inaccurate advice.

Plaintiff’s medical records indicate that, while at the hospital, she encountered two male nurses, the resident physician Dr. Borla, and the attending physician Dr. Janowicz. Both physicians denied making the statements that plaintiff claimed. Further, plaintiff admitted that she did not know if the person who gave her the inaccurate advice was a nurse or a doctor. However, plaintiff stated that the person was not the doctor who performed her pelvic examination and initially diagnosed cervicitis, and the medical records indicate that Dr. Borla performed the pelvic examination. Plaintiff’s testimony is insufficient to establish an issue of fact whether Dr. Borla made the questionable statements.

With respect to Dr. Janowicz, plaintiff referred to the male who made the statements as the “first guy” with whom she spoke in the back. However, she also drew a distinction between the “first guy” and the doctor who was supervising the others, which the evidence showed was Dr. Janowicz. Plaintiff stated:

[I told e]veryone I seen. The nurse, the first guy I talked to, the doctor – what’s he called? You know, the doctor that was over him came in, because he let me know, Well you know, the guy that’s over us is going to come in and talk to you and let you know what’s going on. . . .

This testimony negates any inference that Dr. Janowicz was the “first guy” who allegedly gave the erroneous information.

Plaintiff’s claims against the two physicians were premised on a person giving her inaccurate information about Depo-Provera and birth defects. Because plaintiff was unable to identify who made the questionable statements, the physicians presented evidence that they did not make the statements, and plaintiff’s testimony otherwise provided a basis for excluding each physician as the person who made the statements, the trial court did not err in finding that plaintiff failed to establish a genuine issue of material fact with respect to whether either physician gave her the allegedly inaccurate advice. Plaintiff’s claim against the hospital was based on respondeat superior liability arising from the purported breach of the standard of care by the individual physicians. Therefore, that claim fails with the claims against the individual

physicians. Accordingly, the trial court did not err in granting summary disposition to the hospital defendants.

With respect to the Sharpe defendants, plaintiff provided the following testimony concerning her conversations at the Sharpe Clinic about Depo-Provera:

Q. When you got there, what do you recall telling him?

A. Not too much of anything, because we really didn't have a conversation. They were just prepping me for the termination.

Q. Okay. Did you tell them anything about being on Depo-Provera?

A. Do -- I think I did mention to him that I had been on the Depo shot, and I didn't know why I was pregnant. But his response was -- I can't remember what his response was. It was like him and two other women in there, they were talking. We really didn't talk about it.

Q. So you told him you had taken Depo-Provera and got pregnant or not?

A. Yes, I did. I recall telling him that, because I was telling everybody, because I couldn't understand how did I get pregnant off this shot.

Q. Okay. Then what do you recall this doctor telling you on the 24th about -- did he tell you anything about what would happen with the pregnancy if you were on Depo-Provera?

A. No, I can't recall.

Q. Did you tell him that you were at the emergency room that day?

A. No. I probably did, but I doubt it.

Q. So do you recall telling them that somebody told you that if you were on Depo-Provera or on birth control and you got pregnant, your child would be born with abnormalities?

A. Yes, I remember speaking about it, but him responding -- his response to me, I don't remember.

* * *

Q. You weren't there for a discussion of the pregnancy or what could or couldn't happen about the pregnancy?

A. No.

Q. And you didn't have any such discussion about the pregnancy with anybody --

A. No.

Q. -- there at the clinic. . . .

* * *

Q. The only person, am I correct, that told you you needed to terminate the pregnancy was somebody that you saw in the emergency room?

A. Yes, sir.

Plaintiff's claim is based on Dr. Sharpe failing to correct the misinformation that she allegedly received at the hospital. However, her testimony is unclear what she told him. Further, even if one accepts that plaintiff told him that she had taken the Depo-Provera shot, plaintiff was unable to recall what his response was. In the absence of evidence showing what Dr. Sharpe said or did not say, plaintiff cannot establish that his actions breached the standard of care. Accordingly, the trial court did not err in granting summary disposition to the Sharpe defendants.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder
/s/ Donald S. Owens