Order

Michigan Supreme Court
Lansing, Michigan

July 9, 2025

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

166702

MARY ANNE MARKEL,
Plaintiff-Appellant,

v

SC: 166702
COA: 350655
Oakland CC: 2018-164979-NH

WILLIAM BEAUMONT HOSPITAL,
Defendant-Appellee,
and

HOSPITAL CONSULTANTS, PC, LINET LONAPPAN, M.D., and IOANA MORARIU,
Defendants.

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On April 10, 2025, the Court heard oral argument on the application for leave to appeal the January 4, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order.

This case returns to this Court after our remand to the Court of Appeals to apply the appropriate test under *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240 (1978). *Markel v William Beaumont Hosp*, 510 Mich 1071, 1073 (2022) (*Markel II*). In *Markel II*, we rejected the holding that because plaintiff " 'did not recall' " her treating physician, Dr. Linet Lonappan, who was employed by Hospital Consultants, she could not have formed a reasonable belief that Dr. Lonappan was an agent of defendant William Beaumont Hospital (Beaumont). *Id*. at 1072-1073, quoting *Markel v William Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2021 (Docket No. 350655) (*Markel I*), pp 6-7. We clarified that

> [t]he rule from *Grewe* is that when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship, a belief that the doctor is the hospital's agent is reasonable unless the hospital does something to dispel that belief. Put another way, the "act or neglect" of the hospital is operating

> an emergency room staffed with doctors with whom the patient, presenting themselves for treatment, has no prior relationship. [*Markel II*, 510 Mich at 1071-1072, quoting *Grewe*, 404 Mich at 253.]

This explanation served to clarify the scope of a "reasonable belief" under the *Grewe* test.

But in its opinion on remand, the Court of Appeals determined that for plaintiff to prevail under *Grewe*, plaintiff must also show that she relied upon a representation from Beaumont that Dr. Lonappan was Beaumont's agent. The Court of Appeals further concluded that plaintiff had failed to show such reliance. *Markel v William Beaumont Hosp (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 350655) (*Markel III*), p 8. That is, the panel reasoned that "because *Grewe* was decided on the basis of agency by estoppel, and because agency by estoppel requires reliance on the apparent authority of the purported agent, a plaintiff invoking *Grewe* and agency by estoppel must establish that reliance." *Id*.

The Court of Appeals erred by distinguishing between ostensible agency and agency by estoppel. While the panel accurately recognized that some secondary sources support the conclusion that there is a meaningful distinction between ostensible agency and agency by estoppel, see 1 Restatement Agency, 3d, § 2.03, comment *e*, pp 122-124, other secondary sources do not. See *Black's Law Dictionary* (12th ed) (noting that agency by estoppel is "[a]lso termed . . . ostensible agency").

Michigan law also has not distinguished between the terms. Our courts have used "ostensible agency" and "agency by estoppel" interchangeably. See *Grewe*, 404 Mich at 250-251 ("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."); cf. *id*. at 255 ("It is abundantly clear on the strength of this record that the plaintiff looked to defendant hospital for his treatment and was treated by medical personnel who were the ostensible agents of defendant hospital."); see also *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 30-32 (1991), quoting *Grewe*, 404 Mich at 250-251 (characterizing *Grewe* as the leading authority on ostensible agency but quoting the portion of *Grewe* that states that " 'an agency by estoppel can be found' ") (emphasis omitted).

In keeping with the above authorities, the Court of Appeals cited *Wilson v Stilwill*, 411 Mich 587, 609 (1981), which explained that "[i]n [*Grewe*], we held that, under the doctrine of *agency by estoppel, or ostensible agency*, a hospital may be held liable for the acts of medical personnel who were its ostensible agents although the named defendant physician is not found liable." However, rather than recognize these authorities as using "ostensible agency" and "agency by estoppel" interchangeably, the Court of Appeals in the instant case latched onto the phrase "agency by estoppel" to hold that "for plaintiff to prevail under *Grewe* at the summary-disposition stage, she must show that she relied upon

Beaumont's representation, through its operation of an emergency department, that Dr. Lonappan was its agent." *Markel III*, unpub op at 8.

The panel majority is correct that reliance is relevant under the *Grewe* test, i.e., the test for ostensible agency or agency by estoppel. In *Markel II*, we explained that to establish liability a plaintiff must show, in addition to a reasonable belief in the agent's authority that is generated by the act or neglect of the principal, that "the third person *relying on* the agent's apparent authority must not be guilty of negligence." *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 253 (quotation marks omitted; emphasis added).[1] *Grewe* therefore recognized that the plaintiff must rely on the agent's apparent authority.

The Court of Appeals erred, however, in its analysis of plaintiff's reliance. Reliance may be found where the patient presents to the hospital and is " 'looking to the hospital for treatment.' " *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 251. Under *Grewe*, the " 'critical question' " in determining whether ostensible agency exists " '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.' " *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 251. We agree with Judge SHAPIRO that

> when a person enters a hospital through the emergency room and is assigned an attending physician by the hospital, those actions alone are sufficient to create reliance by the patient and to create a question of fact as to ostensible agency unless it is shown that the patient was advised and understood that the physician was not the hospital's agent. [*Markel III* (SHAPIRO, J., dissenting), unpub op at 6.[2]]

No additional act of reliance on a plaintiff's part is necessary.

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[1] In this case, the "third person" is the patient. *Grewe* distinguished between the principal (the hospital), its agent, and a "third person" who receives communication of the principal's authority through the agent. See *Markel II*, 510 Mich at 1071-1072, citing *Grewe*, 404 Mich at 253-255.

[2] This construction of the rule finds support both in secondary sources, see, e.g., 40A Am Jur 2d, Hosps & Asylums, § 36, and in caselaw from other jurisdictions applying our *Grewe* framework, see, e.g., *Clark v Southview Hosp & Family Health Ctr*, 68 Ohio St 3d 435, 444 (1994); *Pamperin v Trinity Mem Hosp*, 144 Wis 2d 188, 211 (1988); cf. *Gilbert v Sycamore Muni Hosp*, 156 Ill 2d 511, 525 (1993) (adopting the same rule without looking to *Grewe*).

Applying the appropriate test, we hold that plaintiff has demonstrated a genuine issue of material fact as to Beaumont's liability for medical malpractice under the theory of ostensible agency. Plaintiff presented for treatment at the hospital emergency room and was treated at the hospital by a doctor with whom she had no prior relationship. See *Markel II*, 510 Mich at 1071. Beaumont has not set forth facts establishing as a matter of law that it dispelled plaintiff's reasonable belief that Dr. Lonappan was the hospital's agent. See *id*. We disagree with the Court of Appeals majority that the existence of an agreement between plaintiff's primary care physician and Hospital Consultants, Dr. Lonappan's employer, without more, establishes that plaintiff did not rely on Beaumont for care. *Markel III* (opinion of the court), unpub op at 9. As an initial matter, the agreement goes not to reliance, but to whether plaintiff's belief that Dr. Lonappan was Beaumont's agent was reasonable, as the agreement pertains to whether plaintiff had a preexisting relationship with Dr. Lonappan. See *Markel II*, 510 Mich at 1071. But even if the agreement could pertain to reliance, there is no evidence that plaintiff had any knowledge of the agreement at the time that she was admitted. Therefore, the mere existence of the agreement does not, as a matter of law, rebut plaintiff's reasonable belief that Dr. Lonappan was Beaumont's agent, or dispel plaintiff's reliance on that belief when she was treated by Dr. Lonappan.[3] Because the Court of Appeals erred by affirming the trial court's order granting summary disposition in favor of Beaumont, we reverse and remand this case to the Oakland Circuit Court for proceedings not inconsistent with this order.

We do not retain jurisdiction.

ZAHRA, J. (*dissenting*).

I dissent from this Court's order that again reverses the lower courts' decisions in this case. In the previous appeal before this Court, *Markel II*,[4] a majority of this Court held that *Grewe v Mt Clemens Gen Hosp*[5] is good law and supports an ostensible-agency claim "when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship[.]"[6] Under such circumstances, a majority of this Court observed, "a belief that the doctor is the hospital's

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[3] The dissent does not argue that, in so holding, we are misapplying *Markel II*. Instead, the dissent's chief concern seems to be with our order in *Markel II*. We emphasize, however, that *Markel II* is both settled law and the law of the case. See *Rott v Rott*, 508 Mich 274, 286-288 (2021).

[4] *Markel v William Beaumont Hosp*, 510 Mich 1071 (2022) (*Markel II*).

[5] *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240 (1978).

[6] *Markel II*, 510 Mich at 1071, 1073.

agent is reasonable unless the hospital does something to dispel that belief."[7] The Court's majority reached this conclusion although "for decades the Court of Appeals and this Court have indicated that the act-or-neglect requirement demands something more than the emergency room's mere existence."[8] The majority also ignored that *Grewe* itself at times stated that ostensible agency must be proven in part by " 'some act or neglect of the principal sought to be charged' "[9] or by " 'a *representation* by the hospital that medical treatment would be afforded by physicians working therein . . . .' "[10] Despite making these acknowledgments of law, *Grewe* oddly pivoted and "asked only whether the plaintiff, when admitted to the hospital, sought treatment from the hospital or merely viewed it as the location where his or her physician would provide treatment."[11] This question suggests that the determination of liability for ostensible agency relates to a plaintiff's beliefs and not the principal's conduct. *Markel II* represents a significant departure in this state's jurisprudence. As noted in former Justice Viviano's dissenting statement, "[t]he majority has essentially made hospital liability in these cases the default rule unless a patient's belief in an agency relationship 'is . . . dispelled in some manner by the hospital . . . .' "[12]

The Court's majority in *Markel II* concluded that the trial court and the Court of Appeals misinterpreted and misapplied *Grewe* and remanded "this case for reconsideration under the appropriate standard."[13] According to the majority in this case, the *Markel II* majority "explained that to establish liability by way of ostensible agency, a plaintiff must show, in addition to a reasonable belief in the agent's authority that is generated by the act or neglect of the principal, that 'the third person relying on the agent's apparent authority must not be guilty of negligence.' "[14]

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[7] *Id*. at 1071.

[8] *Id*. at 1076 (VIVIANO, J., dissenting).

[9] *Id*. at 1075, quoting *Grewe*, 404 Mich at 253.

[10] *Markel II*, 510 Mich at 1075, quoting *Grewe*, 404 Mich at 250-251 (ellipsis in *Markel II*).

[11] *Markel II*, 510 Mich at 1075, citing *Grewe*, 404 Mich at 251.

[12] *Markel II*, 510 Mich at 1082 (ellipses in *Markel II*).

[13] *Markel II*, 510 Mich at 1073 (opinion of the Court).

[14] Citing *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 253 (quotation marks, citations, and emphasis omitted).

On remand, the Court of Appeals panel explained that "because *Grewe* was decided on the basis of agency by estoppel, and because agency by estoppel requires reliance on the apparent authority of the purported agent, a plaintiff invoking *Grewe* and agency by estoppel must establish that reliance."[15]

This Court again reverses the Court of Appeals' decision. A majority of the Court concludes that "[t]he Court of Appeals erred . . . in its analysis of plaintiff's reliance. Reliance may be found where the patient presents to the hospital and is looking to the hospital for treatment."[16] The majority agrees with former Judge SHAPIRO that,

> when a person enters a hospital through the emergency room and is assigned an attending physician by the hospital, those actions alone are sufficient to create reliance by the patient and to create a question of fact as to ostensible agency unless it is shown that the patient was advised and understood that the physician was not the hospital's agent.[17]

Essentially, the majority improperly assumes a patient's reliance based solely on their arrival at the hospital, which invariably results in being assigned an attending physician by the hospital, particularly in an emergency setting. Since the majority has continued down the clear path toward making hospital liability in these cases the default rule unless a patient's belief in an agency relationship " 'is . . . dispelled in some manner by the hospital,' " I dissent.

HOOD, J., did not participate because the Court considered this case before he assumed office.

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[15] *Markel v William Beaumont Hosp (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 350655) (*Markel III*), p 8.

[16] Quoting *Grewe*, 404 Mich at 251 (quotation marks omitted).

[17] Quoting *Markel III* (SHAPIRO, J., dissenting), unpub op at 6.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 9, 2025

Clerk