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STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF BERNIE LEYNELL NELSON by SHOYNEESE CHILES, Personal Representative, and EUGENE NELSON, SR.,

Plaintiffs-Appellants,

v

HURLEY MEDICAL CENTER,

Defendant-Appellee,

and

BOARD OF HOSPITAL MANAGERS FOR THE CITY OF FLINT, PHYSICIAN COVERAGE SERVICES, PC, doing business as MICHIGAN HEALTH SPECIALISTS, GUL RAJ SACHWANI-DASWANI, DO, TAREQ ISMAIL MARAQA, M.D., AND LEO C. MERCER, JR.,

Defendants.

UNPUBLISHED
August 28, 2026
3:10 PM

No. 373551
Genesee Circuit Court
LC No. 21-115525-NH

Before: GADOLA, C.J., and BOONSTRA and CAMERON, JJ.

PER CURIAM.

Plaintiffs, the Estate of Bernie Leynell Nelson, by its personal representative, Shoyneese Chiles, and Eugene Nelson, Sr., appeal by leave granted the trial court's order granting summary disposition to defendant, Hurley Medical Center (Hurley), under MCR 2.116(C)(10). We vacate the trial court's order and remand.

I. FACTS

This is a case alleging medical malpractice. Plaintiffs allege that Hurley is vicariously liable for the negligence of defendant Gul Raj Sachwani-Daswani, D.O. (Dr. Sachwani) that

allegedly led to the death of Bernie Leynell Nelson on February 10, 2018. Specifically, plaintiffs allege that Bernie Nelson was injured in an automobile collision on January 30, 2018. She sustained a head injury and was brought to Hurley's emergency department. Upon admission to Hurley, Bernie signed a consent for services form that stated, in relevant part:

> I understand that my healthcare services are directed by my physician(s), and that facility personnel provide services according to the physicians' instructions. . . . I also understand that some physicians directing my services are not agents or employees of the facility, but are independent physicians who have been granted the privilege of using its facilities for the care and treatment of their patients.

Shortly thereafter, she underwent a craniotomy and evacuation of a hematoma. After surgery, Bernie was intubated and sedated, and was unable to communicate. On February 3, 2018, the tube was removed, but Bernie was re-intubated six hours later and remained on a ventilator. On February 6, 2018, Dr. Sachwani performed a percutaneous tracheostomy on Bernie. Dr. Sachwani later testified that he was not employed by Hurley but rather was an employee of Hurley Clinic. He testified that "how we get hired as physicians into Hurley Hospital is through the Hurley clinic." He further testified that he had worked exclusively at Hurley since 2015 and had privileges only at Hurley.

On February 10, 2018, medical staff observed that Bernie was coughing, secretions were coming from the tracheostomy, and she was bleeding externally around the tracheostomy site. Despite efforts by personnel in the neurotrauma unit, Bernie died a half hour later. The autopsy revealed tracheal perforation with communication from tracheal lumen to arterial lumen.[1]

Plaintiffs initiated this lawsuit against Dr. Sachwani, Hurley, and others, alleging in part that Hurley was vicariously liable for the negligence of Dr. Sachwani under a theory of ostensible agency. Hurley moved for summary disposition under MCR 2.116(C)(10), asserting that it could not be liable under a theory of ostensible agency because Dr. Sachwani was not an employee or agent of Hurley and was not represented to be an employee or agent of Hurley. Hurley argued that plaintiffs failed to establish that Bernie held a reasonable belief that Dr. Sachwani was acting on behalf of Hurley, and that the signed consent form demonstrated that any reliance by Bernie was not the result of an act or omission by Hurley.

Plaintiffs opposed Hurley's motion, arguing that questions of fact remained regarding whether Hurley could be held liable under a theory of ostensible agency. Plaintiffs argued that Bernie did not have a preexisting relationship with Dr. Sachwani, and that in the context of the emergency nature of her admission to Hurley, even considering the language of the consent form, Bernie held a reasonable belief that Dr. Sachwani was an agent of Hurley. The trial court granted Hurley's motion for summary disposition, and thereafter denied plaintiffs' motion for reconsideration. Plaintiffs now appeal.

[1] Tracheal perforation with communication from tracheal lumen to arterial lumen can cause blood to flood from the artery into the windpipe. See National Library of Medicine, Tracheoinnominate Fistula, http://ncbi.nlm.nih.gov/books/NBK482505 (accessed June 30, 2026).

II. DISCUSSION

Plaintiffs contend that the trial court erred by granting Hurley's motion for summary disposition. Plaintiffs argue that Hurley can be held liable for the actions of Dr. Sachwani under a theory of ostensible agency because a genuine issue of material fact exists regarding whether Bernie reasonably believed that Dr. Sachwani was Hurley's agent. We agree.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Jostock v Mayfield Twp*, 513 Mich 360, 368; 15 NW3d 552 (2024). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim and is warranted when no genuine issue of material fact exists. When considering the trial court's grant or denial of summary disposition under MCR 2.116(C)(10), we consider the documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). We will find a genuine issue of material fact if the record leaves open an issue on which reasonable minds might disagree. *Id*.

A hospital may be directly liable for malpractice through the negligent supervision of its staff physicians and also may be vicariously liable for the negligence of its agents. *Cox v Bd of Hosp Mangers for the City of Flint*, 467 Mich 1, 11; 651 NW2d 356 (2002). But generally, a hospital is not liable for the alleged negligence of an independent contractor using the hospital facilities to provide medical treatment to his or her patients. *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). In certain circumstances, however, a hospital may be liable for the actions of an independent contractor under a theory of ostensible agency, which is created when the principal "causes a third person to believe another to be his agent who is not really employed by him." *Id*. at 252 (quotation marks and citation omitted). "[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." *Id*. at 251.

To establish a claim of ostensible agency, a plaintiff must demonstrate that (1) the person dealing with the agent did so with the belief in the agent's authority and the belief must be a reasonable one, (2) the belief was generated by some act or neglect by the alleged principal, and (3) the person relying on the agent's apparent authority is not negligent in that reliance. *Markel v William Beaumont Hosp*, 510 Mich 1071 (2022) (*Markel II*), citing *Grewe*, 404 Mich at 253. The third element was a recognition by the Court in *Grewe* that "the plaintiff must rely on the agent's apparent authority." *Markel v William Beaumont Hosp*, ___ Mich ___; 22 NW3d 545, 547 (2025) (*Markel IV*). In *Markel II*, our Supreme Court 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.]

Although agency "cannot arise 'merely because one goes to the hospital for medical care,' " the primary distinction is whether there was a preexisting physician-patient relationship. *Markel II*, 510 Mich at 1072, quoting *Sasseen v Comm Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1987). Again, plaintiff has a "reasonable belief" that a doctor is the agent of the hospital when the plaintiff "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, . . . unless the hospital does something to dispel that belief." *Markel IV*, 22 NW3d at 545. "Reliance may be found where the patient presents to the hospital and is 'looking to the hospital for treatment.' " *Id.* at 547, quoting *Markel II*, 510 Mich at 1071. The Court in *Markel IV* further explained that it agreed with the statement 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 IV*, 22 NW3d at 547, quoting *Markel v Williams Beaumont Hosp (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 350655) (*Markel III*) (SHAPIRO, J., dissenting) at 6, rev'd 22 NW3d 545 (2025).]

In this case, plaintiffs established a question of fact regarding the first factor of the test, which is that the person dealing with the agent did so with the reasonable belief in the agent's authority. It is undisputed that Bernie entered Hurley through the emergency room. Days later, when she was having difficulty breathing postoperatively, Dr. Sachwani was assigned to treat her. Applying the reasoning of *Markel IV*, those actions were sufficient to create reliance by Bernie that Dr. Sachwani was Hurley's agent, unless Hurley demonstrates that Bernie was advised and understood that Dr. Sachwani was not the hospital's agent, thereby creating a question of fact regarding ostensible agency. Hurley suggests[2] that Bernie was advised by the consent form that stated that the patient signing the form understands that "some physicians directing my services are not agents or employees of the facility but are independent physicians who have been granted the privilege of using its facility for the care and treatment of their patients." A question of fact exists, however, whether this language demonstrates that Bernie was advised and understood that *Dr. Sachwani* was not the hospital's agent. While the language advised Bernie that *some* doctors practicing medicine at Hurley were not employed by Hurley, the language equally suggests that some doctors practicing medicine at Hurley *were* employed by Hurley. The language did not identify which doctors were agents and which doctors were not agents of Hurley.[3] A question thus exists regarding whether Bernie reasonably understood that Dr. Sachwani was not Hurley's agent.

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[2] Hurley also argues that plaintiffs are unable to prove whether Bernie believed Dr. Sachwani to be an agent of the hospital because Bernie is now deceased and unable to testify regarding her belief. We do not limit plaintiffs' proofs, however, to whether the injured patient is able to testify.

[3] Nor is the patient given the option to choose between doctors who are Hurley employees and those who are not. The consent form suggests that Hurley retains control over which doctor is

Regarding the second factor, whether the belief was generated by some act or neglect by the alleged principal, the Supreme Court has stated that 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. Here, there is no dispute that Hurley was operating an emergency room and Bernie presented herself for treatment with no prior relationship to the doctors who treated her. Similarly, concerning whether the person relying on the agent's apparent authority was not negligent in that reliance (the third factor), plaintiffs have alleged that Bernie's reliance upon Hurley was reasonable because she entered through the emergency room and did not have a prior relationship with the doctor who treated her.

To avoid summary disposition of their claim under MCR 2.116(C)(10), plaintiffs were required to present sufficient evidence from which a reasonable jury could conclude that Bernie believed that Dr. Sachwani was an agent of Hurley, that the belief was reasonable, that the belief was based on an action of Hurley, and that Bernie was not negligent in that belief. Applying the test set forth in *Markel IV*, plaintiffs in this case presented sufficient evidence to demonstrate a genuine issue of material fact regarding whether Hurley can be held liable for Dr. Sachwani's actions under a theory of ostensible agency. Again, the parties agree that Bernie did not have a preexisting physician-patient relationship with Dr. Sachwani. Bernie presented for treatment at Hurley's emergency room with a head injury requiring emergency medical care. She signed a consent form that stated that she understood that some of the doctors directing patient care at Hurley were not agents or employees of Hurley but instead were independent contractors who were permitted to use Hurley to care for their own patients. A few days after undergoing surgery, Bernie was having trouble breathing and a doctor working at Hurley who had no prior relationship

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assigned to a patient regardless of whether the doctor is an employee or an independent contractor. Indeed, a patient reading the consent form likely would deduce that Hurley controls who is on the list of doctors authorized to treat a patient at Hurley. Viewing the consent form as dispelling an emergency room patient's reasonable belief that the doctor about to treat him or her is an agent of the hospital requires an analysis that departs from the directive in *Grewe* that "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*, 404 Mich at 251.

with Bernie undertook her emergency care and performed the tracheostomy. Viewing the evidence in the light most favorable to plaintiffs, a question of fact exists whether Hurley's general statement in the consent form that "some physicians directing my services are not agents or employees of the facility, but are independent physicians who have been granted the privilege of using its facility for the care and treatment of their patients" was sufficient to inform Bernie that *Dr. Sachwani* was an independent contractor using Hurley's facility for *his* patients, or whether Bernie reasonably believed Dr. Sachwani to be an agent of Hurley.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.[4]

/s/ Michael F. Gadola
/s/ Thomas C. Cameron

[4] Because we remand this matter to the trial court for further proceedings as set forth above, we decline to reach plaintiffs' additional contention that the trial court erred by denying their motion for reconsideration.