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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UNPUBLISHED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.

BOONSTRA, J. (*dissenting*).

I respectfully dissent and would affirm the trial court's grant of summary disposition to defendant Hurley Medical Center (the hospital)[1] because the hospital took sufficient action to dispel the decedent's (Bernie Leynell Nelson) belief that her treating physicians were hospital employees. I write separately to reiterate and expand on my interpretation of *Markel v William Beaumont Hosp*, 510 Mich 1071 (2022) (*Markel II*), as previously expressed in *Stempniak v Prime*

[1] The hospital is a public safety-net hospital owned by the city of Flint. It is operated by defendant Board of Hospital Managers for the City of Flint, pursuant to the Flint City Charter.

Healthcare Servs – Garden City, LLC, unpublished opinion of the Court of Appeals, issued July 27, 2023 (Docket No. 361018).

As the majority acknowledges, when Nelson was admitted to the hospital on January 30, 2018, she 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.

A week later, after her initial treatment in the emergency room and by other medical professionals, defendant Gul Raj Sachwani-Daswani, D.O. (Dr. Sachwani) performed a percutaneous tracheostomy on Nelson. It is undisputed that Dr. Sachwani was not employed by the hospital but rather was an employee of The Hurley Clinics[2] and had privileges at the hospital. Plaintiffs now seek to hold the hospital accountable, under a theory of ostensible agency, for Dr. Sachwani's alleged negligence.[3]

Generally, a hospital is not liable for the alleged negligence of an independent contractor using the hospital's facilities to provide medical treatment. *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240, 250; 273 NW2d 429 (1978). But an exception exists under a theory of ostensible agency when the hospital "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). A "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.[4] However,

> [n]othing in *Grewe* indicates that a hospital is liable for the malpractice of independent contractors merely because the patient "looked to" the hospital at the time of admission or even was treated briefly by an actual nonnegligent agent of

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[2] The Hurley Clinics is a Domestic Nonprofit Corporation that was incorporated in Michigan in 1995. It does business as The Hurley Clinic.

[3] In opposing the hospital's motion for summary disposition, plaintiffs admitted that Dr. Sachwani was not a hospital employee, but was instead an independent contractor, and plaintiffs then pursued their claim against the hospital (relative to Dr. Sachwani) under a theory of ostensible agency.

[4] The majority seizes upon the "critical question" language from *Grewe* to support its conclusion that the consent form in this case could not dispel a patient's reasonable belief regarding whether a doctor is an agent of a hospital. However, "this Court has clarified that [*Grewe*'s 'critical question'] is not the only question." *Wiegand v Yamasaki, MD*, unpublished per curiam opinion of the Court of Appeals, issued December 19, 2017 (Docket No. 334598), p 2, citing *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 33; 480 NW2d 590 (1992) (citing *Grewe*, 404 Mich at 252-253).

> the hospital. Such a holding would not only be illogical, but also would not comport with fundamental agency principles noted in *Grewe* and subsequent cases. Those principles have been distilled into the following three elements[5] that are necessary to establish the creation of an ostensible agency: (1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's apparent authority must not be guilty of negligence." [*Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 33; 480 NW2d 590 (1992), citing *Grewe*, 404 Mich at 252-253.][6]

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[5] As the majority notes, our Supreme Court reiterated these three elements in *Markel II*, yet it is apparent from *Grewe* and the various opinions in *Markel*, including *Markel II*'s "put another way" juxtaposition of the first two elements, *Markel II*, 510 Mich at 1071-1072, that our Supreme Court has addressed the requirements for proving ostensible agency not as distinct elements, but rather as interrelated ones. 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*, 22 NW3d 545, 547 (Mich, 2025) (*Markel IV*).

[6] I note that plaintiffs mis-cite *Chapa* as supposedly standing for the proposition that "consent forms alone are insufficient to defeat ostensible agency claims if other factors indicate that the patient looked to the hospital, not the individual physician, for treatment." But *Chapa* says no such thing; indeed, in affirming the dismissal of the plaintiff's claim, *Chapa* nowhere mentioned consent forms or other disclaimers. Plaintiffs similarly misrepresent this Court's holding in *VanStelle v Macaskill*, 255 Mich App 1; 662 NW2d 41 (2003), overruled in part by *Markel II*, 510 Mich 1071. Like *Chapa*, *VanStelle* did not address consent forms or disclaimers (contrary to plaintiffs' representation that the Court in that case "emphasized that a mere disclaimer in a consent form is not determinative where there are other factors indicating that the patient believed the doctor was acting on behalf of the hospital"). Nor did the Court in *Howard v Park*, 37 Mich App 496; 195 NW2d 39 (1972), again notwithstanding plaintiffs' representation to the contrary. Finally, plaintiffs misrepresent the Supreme Court's decision in *Markel II* as "reject[ing] the notion that a consent form alone was enough to defeat a claim of ostensible agency." Once again, the Court in *Markel II* did not discuss consent forms (or other disclaimers) and instead held that a hospital need only do "something to dispel," "in some manner," a patient's belief. *Markel II*, 510 Mich at 1071-1072. *Markel II* only briefly mentioned Judge Hoekstra's dissenting opinion in *Reeves v MidMich Health*, unpublished per curiam opinion of the Court of Appeals, issued September 30, 2010 (Docket No. 291855), in which he stated that "the hospital did not affirmatively act to create a belief of ostensible agency through its consent forms and lab coat insignia." *Markel II*, 510 Mich at 1073. But the consent form in *Reeves*, unpub op at 3, did not include any disclaimers about the doctors' employment status. Instead, the form was admitted as evidence that the hospital affirmatively represented the patient's doctor to be its agent. *Id*. at 3-4. *Markel II*'s criticism of the *Reeves* dissent only means that a consent form is not needed to *create* an ostensible agency if a patient presents to the emergency room with no prior relationship to the doctor, not that a consent form cannot *dispel* a belief regarding agency.

In *VanStelle v Macaskill*, 255 Mich App 1, 11; 662 NW2d 41 (2003), overruled in part by *Markel II*, 510 Mich 1071, this Court summarized the law regarding a doctor's ostensible agency as follows:

> Agency "does not arise merely because one goes to a hospital for medical care. There must be some action or representation by the principal (hospital) to lead the third person (plaintiff) to reasonably believe an agency in fact existed." *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986). Further, the fact that a doctor used a hospital's facilities to treat a patient is not sufficient to give the patient a reasonable belief that the doctor was an agent of the hospital. *Heins v Synkonis*, 58 Mich App 119, 124; 227 NW2d 247 (1975).

This Court then decided several ostensible-agency cases in which the plaintiff had signed a consent form that included a notice that some or all doctors providing services were independent contractors. See, e.g., *Wiegand v Yamasaki, MD*, unpublished per curiam opinion of the Court of Appeals, issued December 19, 2017 (Docket No. 334598), p 3-4 (some doctors); *Purcell v Sturgis Hosp*, unpublished per curiam opinion of the Court of Appeals, issued December 11, 2008 (Docket No. 277793), p 3-4 (all doctors); *Tansil v Sherrod*, unpublished per curiam opinion of the Court of Appeals, issued November 26, 2002 (Docket No. 237002), p 2 (all doctors).[7] In each case, this Court held that the consent form detracted from any reasonable belief that the doctor was an agent of the hospital. *Wiegand*, unpub op at 4 (holding that the record lacked evidence of some action or representation to lead the decedent to reasonably believe an agency existed); *Purcell*, unpub op at 4 (holding that "any belief" in the doctors' agency was "not reasonable" because it was "specifically negated by the plain language contained in the release and consent forms"); *Tansil*, unpub op at 2 (holding that the consent form precluded any reasonable belief that the doctors were agents).

Our Supreme Court later reiterated the elements of an ostensible agency in *Markel II*, 510 Mich at 1071, citing *Grewe*, 404 Mich at 253, and held that a 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*." (Emphasis added). In other words, "the patient's belief that a doctor is the hospital's agent is reasonable *unless dispelled in some manner* by the hospital or the treating physician." *Id*. at 1072 (emphasis added). See also *Markel v William Beaumont Hosp*, 22 NW3d 545, 545 (Mich, 2025) (*Markel IV*).

Our Supreme Court also held that *VanStelle* overlooked that under *Grewe*, either an affirmative act *or neglect* may create an ostensible agency, and it overruled *VanStelle* "to the extent that [it] requires a plaintiff to show some additional, affirmative act by the hospital in every emergency room case to prove ostensible agency." *Markel II*, 510 Mich at 1072. *Wiegand*, *Purcell*, and *Tansil* were decided before *Markel II*, and they relied in part on principles stated in

[7] Unpublished opinions are nonbinding but may be considered for their persuasive value. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

VanStelle that *Markel II* overruled (i.e., that there must be evidence of some act or neglect beyond the operation of an emergency room). But the reasoning of those cases with respect to the effect of consent forms was not overruled by *Markel II* and remains persuasive. That is, this Court has long held that a written notice of a doctor's independent-contractor status weighs against finding a patient's belief in her doctor's agency to be reasonable. *Wiegand*, unpub op at 3-4, *Purcell*, unpub op at 3-4, *Tansil*, unpub op at 2.

I agree with the majority that under *Markel II* and *Markel IV*, it would have been reasonable for Nelson to believe that Dr. Sachwani was an agent of the hospital. She presented to the hospital's emergency room, and during her hospital stay she was treated by Dr. Sachwani, with whom she had no prior relationship. However, the hospital sufficiently acted to dispel any belief that Nelson may have held that Dr. Sachwani was an agent of the hospital. In *Markel II*, our Supreme Court recognized that it had, in *Grewe*, "acknowledged as significant that there was 'nothing in the record which should have put the plaintiff on notice that [the doctor] . . . was an independent contractor as opposed to an employee of the hospital.' " *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 253. *Markel II* thus established that an emergency-room patient's belief (that a doctor is a hospital employee) is reasonable "unless the hospital does something to dispel that belief." *Markel II*, 510 Mich at 1071. The Court explained in *Markel II* that *Grewe* held "that when a patient presents at the emergency room for treatment, the patient's belief that a doctor is the hospital's agent is reasonable *unless dispelled in some manner by the hospital or the treating physician*." *Id*. at 1072 (emphasis added). See also *Markel IV*, 22 NW3d at 545, 547. And it emphasized that "*Grewe* remains our rule." *Markel II*, 510 Mich at 1073.

In this case, the hospital presented Nelson with a General Consent for Services form—which she signed—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.

The hospital thereby did "something to dispel [any] belief" that Nelson may have had that Dr. Sachwani was an agent of the hospital. *Markel II*, 510 Mich at 1071. The majority holds that the consent form was insufficient to negate that belief because it only stated that *some* physicians—not Dr. Sachwani specifically—were independent contractors. But such specific notice is not required—*Markel II* merely requires that the hospital do *something* to dispel the reasonable assumption that any doctor working out of the hospital is its agent. *Id*. To hold that a hospital must inform patients about the employment status of each person involved in their treatment would be extremely impractical, especially when the patient requires immediate medical attention. See *Markel II*, 510 Mich at 1082 (VIVIANO, J., dissenting) ("It is not clear whether delaying treatment to provide this information would even be medically ethical let alone efficacious in helping distressed patients decide whether to seek treatment at the hospital."). The majority's position applies a nearly insurmountable standard, causing the ostensible-agency exception to swallow the rule that a hospital generally is not liable for the alleged negligence of an independent contractor using its facilities. See *Grewe*, 404 Mich at 250.

The majority follows a concerning trend in this Court's recent, unpublished opinions that have addressed whether a consent form can preclude a claim of ostensible agency after *Markel II*. For example, in *Webb v Hillsdale Hosp*, unpublished opinion of the Court of Appeals, issued November 19, 2024 (Docket No. 364728), p 2,[8] a patient presented to the emergency room at Hillsdale Hospital, where she signed a consent form that included the following: "Your doctors are not employees or agents of the hospital. They are independent contractors." The majority opinion in that case stated:

> [A] consent form is a critical piece of evidence that can negate a patient's reasonable belief that the physician is an agent of the hospital, but it does not destroy an ostensible agency claim. Cases from this Court have traditionally found a consent form as stronger evidence that an ostensible agency relationship is lacking. . . . However, this court and the Supreme Court have never held that a consent form per se precludes the existence of ostensible agency and here, the record reflects a question of fact as to whether this form could. [*Id*. at 6.]

According to the *Webb* majority, other statements in the consent form could have reinforced the belief that the doctors were agents of the hospital, so a genuine issue of material fact remained regarding whether the consent form was effective in dispelling that belief. *Id*. Judge Riordan dissented—he would have held that the consent form's statement that the patient's doctors were independent contractors, standing alone, entitled the hospital to summary disposition. *Id*. (RIORDAN, J., dissenting) at 2 (" 'A patient who has clear notice of a treating physician's employment status . . . cannot reasonably assume that the same physician is an employee of the hospital merely because treatment is provided within a hospital.' "), quoting *Markel II*, 510 Mich at 1071.

In *Stempniak*, unpub op at 2, the patient presented to the emergency room and signed a consent form that stated, "*Some* doctors and staff are not employees of Garden City Hospital. I know that Garden City Hospital is not responsible for their actions." *Id*. (emphasis added). She then received allegedly negligent care from her surgeon, Dr. Gross. *Id*. The *Stempniak* majority held that the consent form did not defeat the patient's ostensible-agency claim:

> While the [consent form] arguably informed Stempniak that "some" doctors and staff were not employees of Garden City Hospital, it did not provide her with any information regarding Dr. Gross's employment status. Further, Stempniak testified that she had no memory of signing the form, no memory of whether its contents were explained to her, and no understanding of what it meant because she was in significant pain at the time that she signed it. . . . Viewing the evidence in the light most favorable to Stempniak as the non-moving party, we find that there is a genuine issue of material fact whether Stempniak had a reasonable belief that Gross

[8] The Hillsdale Hospital's application for leave to appeal this Court's decision in *Webb* is pending in our Supreme Court. *Webb v Hillsdale Hosp*, 26 NW3d 742 (Mich, 2025).

> was an agent of the hospital and thus affirm the trial court's denial of the hospital's motion for summary disposition. [*Id*. at 4-5.]

I dissented and would have held that the "some doctors" language was sufficient to defeat the patient's ostensible-agency claim:

> [T]he majority discounts or ignores the affirmative act taken by the hospital to dispel any belief that Stempniak might have had that Dr. Gross was Garden City Hospital's employee. . . . [T]he majority apparently posits that, in order for the General Consent for Treatment form to have been effective, it must have specifically named Dr. Gross. This is simply not the law, nor is it required by *Grewe* or *Markel*. [*Id*. (BOONSTRA, J., dissenting) at 2-3.]

See also *Wiegand*, unpub op at 3-4 (addressing a consent form stating that *some* doctors were independent contractors).

My position has not changed. Indeed, as in *Stempniak*, it would be preposterous to suggest that the General Consent for Services form in this case was advising Nelson that some *other* patient's doctors were not agents of the hospital. It *of course* was advising Nelson that her *own* doctors— including Dr. Sachwani—were not (or at least may not be) employees of the hospital, and that the hospital was therefore not responsible for their actions. By signing the form, Nelson affirmed her agreement to those terms, and she unmistakably did so in relation to her own provider, Dr. Sachwani, not someone else's provider. See *Stempniak* (BOONSTRA, J., dissenting), unpub op at 3. And because "parties are bound by the documents they sign, as they are presumed to be aware of the contents of those documents; the failure to read a document is no excuse." *Id*., citing *Galea v FCA US LLC*, 323 Mich App 360, 369; 917 NW2d 694 (2018). Nelson's actual belief regarding whether Dr. Sachwani was an independent contractor is therefore irrelevant.

The dissenting opinions in *Webb* and *Stempniak* are more persuasive than the majority opinions. The majority in those cases misapplied *Grewe* and *Markel* by requiring the hospital to affirmatively *create* the belief that the treating physician is an independent contractor. But the law only requires the hospital to do *something*, in *some manner*, to *dispel* the belief that the physician is an employee or other agent. *Markel II*, 510 Mich at 1071-1072. Putting the patient on notice that her treating physician may not be a hospital employee is sufficient to dispel a belief that the doctor is a hospital employee, to make any such belief unreasonable, and therefore to defeat a claim of ostensible agency. Consequently, a signed consent form that states that some doctors providing services to the patient are not agents or employees should defeat an ostensible agency claim unless there is evidence that the consent form is void or unenforceable or that the hospital, through some additional affirmative action, renewed the reasonable belief that the specific physician alleged to have rendered negligent services was an agent or employee. This interpretation is consistent with how this Court has traditionally viewed consent forms in *Wiegand*, *Purcell*, and *Tansil*, as well as with *Markel II*'s restatement of the rule in *Grewe* that a belief by a patient (who presents to the emergency room for treatment by a doctor with whom she has no prior existing relationship) that her doctor is the hospital's agent is reasonable unless the hospital does something to dispel that belief. *Markel II*, 510 Mich at 1071-1072.

In this case, plaintiffs do not allege that Nelson signed the consent form under duress, that her signature was obtained through fraud, or that the form was otherwise invalid. The disclaimer that some physicians were not agents or employees gave Nelson "clear notice" that her treating physician may not be an employee and that she should inquire about the employment status of a particular physician if that status was of significance to her in relation to her consent for medical treatment. See *Markel II*, 510 Mich at 1071. In other words, she could not have reasonably believed, in light of the consent form, that Dr. Sachwani was the hospital's agent or employee. Under these circumstances, and because the record does not indicate that the hospital took any additional action to represent that Dr. Sachwani was its agent or employee, the trial court properly granted summary disposition to the hospital under MCR 2.116(C)(10).[9] For these reasons, I respectfully dissent.

/s/ Mark T. Boonstra

[9] I note that neither my interpretation of the law nor the trial court's decision (granting summary disposition to the hospital) would leave plaintiffs without a remedy. When it granted the hospital's motion for summary disposition, the trial court only dismissed plaintiffs' claims against defendants Hurley Medical Center and the Board of Hospital Managers for the City of Flint (as well as those against defendant Dr. Tareq Ismail Maraqa, which aspect of the order is not at issue in this appeal). But plaintiffs still have pending claims against defendants Dr. Sachwani, Dr. Leo Mercer, Jr., and Physician Coverage Services, P.C. And if they prevail, plaintiffs' damages may be covered by any liable party's medical-malpractice insurer. See *Welke v Kuzilla*, 144 Mich App 245, 254; 375 NW2d 403 (1985) ("In the typical malpractice action, the doctor is able to insure against the risk of liability through the required malpractice insurance.") (quotation marks and citation omitted).