

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CYNTHIA BLACKWELL and DONALD  
BLACKWELL,

UNPUBLISHED

Plaintiffs-Appellees,

v

No. 169023

LC No. 91-131120-CZ

CITIZENS INSURANCE COMPANY OF  
AMERICA,

Defendant-Appellant,

and

DETROIT INDUSTRIAL CLINIC and SEID  
MOOSSAVI,

Defendants.

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Before: O’Connell, P.J., and Reilly and D. E. Shelton,\* JJ.

SHELTON, J. (dissenting).

I dissent.

While there was no duty imposed by statute in this case, it appears that CICA may have, for its own reasons, undertaken to provide medical care for the plaintiff. According to her complaint, plaintiff was injured on August 21, 1989. After seeking treatment at Garden City Hospital, plaintiff was referred by defendant to Detroit Industrial Clinic on August 23, 1989. That clinic in turn referred plaintiff to Dr. Moossavi on August 24. Defendant later referred plaintiff to Dr. Leonard Sahn for an independent medical examination that was done on January 10, 1990. Plaintiff then asserts that defendant referred her to Dr. Sperl “for care and treatment.” If these facts are true, it could be inferred that defendant had assumed an active participation in the course of plaintiff’s treatment, rather than merely assuming the role of paying the expenses of that treatment.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

In relation to a motion for summary disposition pursuant to MCR 2.116(C)(10), all reasonable inferences must be drawn in the nonmoving party's favor. The Supreme Court has recognized that "in certain circumstances, one who undertakes to render services to another which he should recognize as necessary for the protection of a third person is subject to liability if his 'failure to exercise reasonable care to perform this undertaking' results in physical harm to a third person." *Smith v Allendale Mutual Ins Co*, 410 Mich 685; 303 NW2d 702 (1981), citing § 324A of the Restatement of Torts, 2d. The trial court thus properly denied the defendant's motion for summary disposition and I would affirm that decision.

/s/ Donald E. Shelton