

STATE OF MICHIGAN
COURT OF APPEALS

JOANNE GUARDIOLA, a Developmentally Disabled
Person, by her Guardian of the Estate, ERMA
GUARDIOLA,

UNPUBLISHED
June 25, 1996

Plaintiff-Appellant,

v

No. 176172
LC No. 90-017856

OAKWOOD HOSPITAL and DR. MORLEY,

Defendants-Appellees.

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting partial summary disposition in favor of defendant Oakwood Hospital (defendant) pursuant to MCR 2.116(C)(7) [claim barred because of immunity granted by law].¹ We affirm.

Joanne Guardiola was born at Oakwood Hospital in 1956. After her birth, she developed a condition which resulted in her suffering permanent mental disabilities. In 1990, plaintiff sued defendant for medical malpractice. Defendant moved for partial summary disposition, arguing that it was immune from plaintiff's vicarious liability claims on the basis of charitable immunity. The trial court held that defendant was a charitable institution and granted defendant's motion for partial summary disposition pursuant to MCR 2.116(C)(10). Plaintiff appealed, and this Court reversed and remanded. *Guardiola v Oakwood Hospital*, 200 Mich App 524; 504 NW2d 701 (1993).

In *Guardiola*, we instructed the trial court to consider the following factors on remand: whether defendant enjoyed any private gain, whether defendant was formed under a statute specifically providing for charitable organizations, whether defendant rendered services with or without the expectation of payment, and defendant's status as a tax-exempt institution. *Id.*, 532-536. We also instructed the trial court to consider the factors outlined in *Hodgson v William Beaumont Hospital*, 373 Mich 184; 128

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

NW2d 542 (1964). We stated that the trial court could consider other factors which plaintiff argued were critical to determining defendant's status as a charitable institution, but that these other factors were not dispositive. *Guardiola, supra*, 535-536. Finally, we instructed, "If, after examining the evidence presented, the court does not find the facts regarding charitable immunity to be 'conclusively persuasive,' the issue must be submitted for jury determination." *Id.*, 529.

On remand, defendant again moved for partial summary disposition based on charitable immunity. Defendant argued that summary disposition was appropriate pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10) [no genuine issue as to any material fact]. The trial court granted defendant's motion for partial summary disposition, holding that there was conclusively persuasive evidence that defendant was a charitable institution and therefore immune from plaintiff's vicarious liability claims.

When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court accepts all of the plaintiff's well-pleaded allegations as true and construes them most favorably to the plaintiff. *Skotak v Vic Tanny International, Inc.*, 203 Mich App 616, 617; 513 NW2d 428 (1994). We must consider all affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties. *Id.* The motion should be granted only if no factual development could provide a basis for recovery. *Id.*

Plaintiff argues the trial court erred in finding the evidence to be conclusively persuasive that defendant was a charitable institution in 1956 and therefore immune from plaintiff's vicarious liability claims. We disagree. On remand, the trial court complied with our directive in *Guardiola* and considered the factors we outlined in *Guardiola* as well as the factors stated in *Hodgson*. The trial court determined that defendant was a charitable institution and granted defendant's motion for partial summary disposition. After carefully reviewing the record, we conclude that the evidence was conclusively persuasive that defendant was a charitable institution in 1956 and that the trial court therefore did not err in ruling as a matter of law that defendant was a charitable institution.

Plaintiff also argues that the trial court abused its discretion in denying plaintiff's motion in limine to exclude the affidavit of Stanley H. Fulton and letters from governmental entities, agencies, and departments that tended to show that defendant was a charitable institution. Evidence submitted in support of or opposing a motion for summary disposition must be evidence that would be admissible at trial. *Cox v Dearborn Heights*, 210 Mich App 389, 398; 534 NW2d 135 (1995). Here, the trial court did not err in denying plaintiff's motion to exclude certain evidence because the evidence was admissible under the ancient documents exception to the hearsay rule, MRE 803(16), and the documents were properly authenticated pursuant to MRE 901.

Plaintiff finally argues that the trial court abused its discretion in granting defendant's motion to exclude a videotape of a television commercial regarding defendant, newspaper advertisements for defendant, and pamphlets and brochures regarding defendant. The trial court ruled that the evidence created after 1960 was irrelevant and therefore inadmissible. We agree.

Evidence that is not relevant is inadmissible. MRE 402. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. Plaintiff argues that the evidence was relevant to show how defendant held itself out to the public. According to plaintiff, the evidence would tend to show that defendant did not represent itself to the public as being a charitable institution. However, the defense of charitable immunity was abolished in 1960. *Parker v Port Huron Hospital*, 361 Mich 1; 105 NW2d 1 (1960). We agree with the trial court that such materials were irrelevant to the issue of charitable immunity because materials created after 1960 would have no probative value of how defendant held itself out to the public in 1956 when the defense of charitable immunity was still available. Accordingly, the trial court did not err in excluding such evidence on relevancy grounds.

Plaintiff argues that by ruling that this evidence was inadmissible, the trial court violated this Court’s directive in *Guardiola* to “consider all the available data, rather than confining its examination solely to the year 1956.” *Id.*, 529. Pursuant to MRE 402, “[e]vidence which is not relevant is not admissible.” Our directive in *Guardiola* only applied to relevant evidence. Because the evidence excluded by the trial court was irrelevant, the trial court’s ruling did not violate our directive in *Guardiola*.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.

¹ Although the trial court did not specifically cite the applicable subrule upon which summary disposition was appropriate, the trial court granted partial summary disposition “based upon charitable immunity.” Therefore, we find that the trial court granted summary disposition pursuant to MCR 2.116(C)(7).