

STATE OF MICHIGAN
COURT OF APPEALS

THERESA ELLIOTT,

Plaintiff/Appellant,

v

DETROIT RECEIVING HOSPITAL and
UNIVERSITY HEALTH CENTER, d.b.a.
DETROIT RECEIVING HOSPITAL,

Defendant/Appellee,

and

JANE DOE, R.N.,

Defendant,

and

SHEILA L. WOOLFORK, L.P.N.,

Defendant.

THERESA ELLIOTT,

Plaintiff/Counter-
Defendant,

v

DETROIT RECEIVING HOSPITAL,

Defendant/Cross-Defendant/

UNPUBLISHED

July 12, 1996

No. 179789

LC No. 93-333527 NO

No. 182741

LC No. 93-333527 NO

Appellee,
and

JANE DOE, R.N.,

Defendant,

and

SHEILA L. WOOLFORK, L.P.N.,

Defendant/Counter-Plaintiff/
Cross-Plaintiff/Appellant,

v

DETROIT RECEIVING HOSPITAL SECURITY
and EILEEN HOWARD,

Cross-Defendants/Appellees.

Before: Gribbs, P.J., and Saad and J. P. Adair,* JJ.

PER CURIAM.

This case arises out of a fight between two women in the emergency room of Detroit Receiving Hospital. In No. 179789, Theresa Elliott appeals as of right from an order granting Detroit Receiving Hospital's motion for summary disposition pursuant to MCR 2.116(C)(10). In No. 182741, Sheila Woolfork appeals as of right from an order granting Detroit Receiving Hospital, Detroit Receiving Hospital Security, and Officer Eileen Howard's motion for summary disposition pursuant to MCR 2.116(C)(10). The lower court also denied Woolfork's motion for reconsideration. We affirm.

No. 179789

Elliott's sole contention on appeal is that the trial court erred in dismissing her negligence claim because the Hospital owed a duty to protect her from the foreseeable criminal attack by Woolfork because there was a special relationship between her and the Hospital or because she gave the Hospital actual notice that the criminal attack was likely to happen. We reject this contention.

In order to establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's

breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages. *Rasmussen v Louisville Ladder Co*, 211 Mich App 541, 545; ___ NW2d ___ (1995). As a general rule, there is no duty that obligates one person to aid or protect another. *Williams v Cunningham Drug*, 429 Mich 495, 499; 418 NW2d 381 (1988). However, a limited exception to this general rule arises where a special relationship exists between a plaintiff and a defendant where the plaintiff entrusted himself to the control and protection of the defendant, with a consequent loss of control to protect himself. *Id.*; *Hammack v Lutheran Soc Services*, 211 Mich App 1, 4; 535 NW2d 215 (1995). Here, both appellants admitted themselves to the hospital on a voluntary basis and therefore the Hospital had no control over Woolfork and thus, had no duty to protect Elliott from her attacks. See *Hinkleman v Borgess Med Cen*, 157 Mich App 314, 324-325; 403 NW2d 547 (1987). Also, the attack upon Elliott was unforeseeable to the Hospital because Elliott did not provide any means of identifying Woolfork. See *Dykema v Gus Macker*, 196 Mich App 6, 9; 492 NW2d 472 (1992).

No. 182741

Woolfork first argues that there was no probable cause to arrest her. We disagree.

The facts available to Officer Howard at the moment of appellant Woolfork's arrest, that Elliott bleeding and injured and that Woolfork had caused the injuries, would have justified a fair minded person of average intelligence and judgment in believing that she had committed a felony. *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984). Whether Woolfork could have ultimately been convicted is irrelevant because actual innocence is not an element of the tort of false arrest or false imprisonment. *Flores v Dalman*, 199 Mich App 396, 404-405; 502 NW2d 725 (1993); *Brewer, supra*.

Woolfork next argues that the lower court abused its discretion when it denied her motion for reconsideration because the Hospital deliberately misstated the facts as to who was the aggressor in the fight between her and Elliott. We find no merit to this argument.

Because the lower court knew that there were inconsistencies between Officer Howard's deposition testimony and her incident report when it concluded that Officer Howard had probable cause to arrest, Woolfork could not show that the court had been misled nor that a different disposition of the motion might result from the correction of the error. MCR 2.119(F)(3); *Brown v Libbey-Owens-Ford Complainant*, 166 Mich App 213, 216-217; 420 NW2d 106 (1987). Therefore, the trial court did not abuse its discretion in denying the motion for reconsideration. *Mich Nat'l Bank v Mudgett*, 178 Mich App 677, 681; 444 NW2d 534 (1989).

Appellant Woolfork also argues that her claim of intentional infliction of emotional distress was supported by the evidence. We disagree.

In reviewing the circumstances under which appellant Woolfork was admitted into the hospital and arrested, we conclude that the Hospital's conduct in restraining her and in briefly delaying her

medical treatment was not so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. *Doe v Mills*, 212 Mich App 73, 91; ___ NW2d ___ (1995).

Appellant Woolfork lastly argues that her civil rights were violated. We reject this argument. Because Woolfork received medical treatment while she was detained, including xrays and other medical care for her injuries, the Hospital was not deliberately indifferent to Woolfork's medical needs. *Jackson v Detroit*, 449 Mich 420, 430; ___ NW2d ___ (1995). Therefore, Woolfork cannot show a violation of her constitutional rights. *Payton v Detroit*, 211 Mich App 375, 398; ___ NW2d ___ (1995); *Davis v Wayne County Sheriff*, 201 Mich App 572, 576; 507 NW2d 751 (1993). Similarly, Woolfork may not recover for a violation of her civil rights arising out of an arrest where, as here, probable cause is established. *Tope v Howe*, 179 Mich App 91, 107; 445 NW2d 452 (1989).

Affirmed.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ James P. Adair