

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

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LANCE A. SOLOMON, Personal Representative of  
the Estate of Sharon Ann Solomon,

UNPUBLISHED  
August 2, 1996

Plaintiff-Appellant and Cross-Appellee,

v

No. 180526  
LC No. 92-001204

DONALD M. JACOBSON, M.D.,

Defendant-Appellee and Cross-Appellant.

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Before: Murphy, P.J., and O'Connell and M.J. Matuzak,\* JJ.

PER CURIAM.

This is a psychiatric malpractice case arising from the alleged suicide death of Sharon Ann Solomon, who died in her garage from an apparent self-inflicted rifle shot to the chest. She was treating with defendant at the time. Plaintiff appeals as of right from the jury verdict of no cause of action. Defendant has filed a cross appeal to preserve several issues for appellate review. We affirm.

The trial court did not abuse its discretion in denying plaintiff's motion to compel the deposition of James Johnson and, upon an *in camera* review, the production of a letter which Johnson wrote to defendant concerning his performance of an exorcism in the hospital. The trial court determined that the letter was subject to the peer review statute, MCL 333.21513(a) and (d); MSA 14.15(21513)(a) and (d), and MCL 333.21515; MSA 14.15(21515), and was hearsay. The record reveals that Johnson wrote the letter in his capacity as attorney for the hospital, at the direction of the hospital. Thus, *Marchand v Henry Ford Hospital*, 398 Mich 163, 167; 247 NW2d 280 (1976), is factually distinguishable from this case. However, the record does not show whether the information contained in the letter was collected by the peer review committee for the purposes set forth in the statute. *Gallagher v Detroit-Macomb Hosp*, 171 Mich App 761, 768-770; 431 NW2d 90 (1988). The trial court did not order an evidentiary hearing to determine how the information came to be given to Johnson. *Monty v Warren Hosp Corp*, 422 Mich 138, 144-147; 366 NW2d 198 (1985). The trial court simply made a finding that the letter was subject to the peer review statute. This Court cannot conclude, from the evidence presented by plaintiff, whether the trial court was in error in this finding. However, even if the trial court erred in determining that the information was subject to the peer review

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

privilege, the error was harmless. *Gallagher, supra*, 770. There is no evidence that Johnson had any first-hand knowledge of defendant's actions at the hospital when he wrote the letter. Because Johnson was acting in his capacity as attorney for the hospital when he wrote the letter to defendant, was provided with the information by members of the hospital and was directed by them to formally advise defendant to cease performing exorcisms there, the evidence in the letter was clearly hearsay. MRE 801.

The trial court did not abuse its discretion in prohibiting plaintiff from introducing evidence that defendant performed exorcisms. The trial court denied plaintiff's motion on the grounds that it was extrinsic evidence of collateral facts and not relevant to whether defendant committed psychiatric malpractice in his treatment of Sharon Solomon. MRE 401; *People v Mills*, 450 Mich 61, 66-67; 537 NW2d 909 (1995); *People v McKinney*, 410 Mich 413, 418-419; 301 NW2d 824 (1981). A witness may not be impeached by producing extrinsic evidence of collateral facts. MRE 608(b); *People v Vasher*, 449 Mich 494, 504; 537 NW2d 168 (1995). There is no evidence or allegation that defendant performed an exorcism on Sharon Solomon. Whether defendant performed exorcisms on other patients or non-patients, was not in issue in this case. *Mills, supra*, 67..

Nor did the trial court abuse its discretion in allowing defendant to introduce evidence to rebut the presumption that Sharon Solomon died by suicide. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). A presumption is a procedural device which places the burden of producing evidence to rebut the presumption on the opposing party. *Widmayer v Leonard*, 422 Mich 280, 289; 373 NW2d 538 (1985); *Isabella Co DSS v Thompson*, 210 Mich App 612, 615; 534 NW2d 132 (1995). Further, considering the evidence in a light most favorable to defendant and making all reasonable inferences in defendant's favor, the record reveals that defendant presented sufficient evidence to raise a factual question as to whether Sharon Solomon committed suicide. Reasonable minds could differ with regard to whether plaintiff established that Solomon committed suicide. Thus, the trial court did not err in denying plaintiff's motion for a directed verdict. *Oakland Hills Development Corp v Lueders Drainage Dist*, 212 Mich App 284, 289; 537 NW2d 258 (1995).

The trial court did not abuse its discretion in qualifying Leonard Speckin to testify as an expert. MRE 702; *Bahr v Harper-Grace Hospitals*, 448 Mich 135, 141; 528 NW2d 170 (1995). Speckin presented sufficient evidence in the area of crime scenes, firearms, and weapons to qualify as an expert to testify in those areas. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995).

In view of our holding on issues raised by plaintiff, it is unnecessary for us to address the issues raised by defendant in the cross appeal.

Affirmed.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Michael J. Matuzak