

STATE OF MICHIGAN
COURT OF APPEALS

RUBY LEE BUCKNER, a/k/a RUBY LEE
NEWTON,

UNPUBLISHED
September 20, 1996

Plaintiff-Appellant,

v

No. 179409
LC No. 93-305260-NH

NRIPEN C. NANDI, M.D., and NRIPEN C.
NANDI, M.D., P.C.,

Defendants-Appellees.

and

DETROIT RIVERVIEW HOSPITAL, a/k/a
DETROIT MACOMB HOSPITAL, DR.
GLOWACKI and NARSIMHA GOTTAM, M.D.,

Defendants.

Before: Gribbs, P.J., and Young and W.J. Caprathe,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants pursuant to MCR 2.116(C)(7). We reverse and remand.

Plaintiff sued Detroit Riverview Hospital, Drs. Nandi, Glowacki and Gottam, alleging malpractice for failure to properly diagnose and treat a leg condition. At the hospital, plaintiff signed an agreement to arbitrate any potential malpractice claim, which, by the terms of the agreement, “applies to my care during THIS hospital stay and/or emergency room visit . . .” [Emphasis in original.]

Detroit Riverview Hospital, joined by Drs. Nandi, Glowacki, and Dr. Gottam, moved for summary disposition or an order compelling arbitration based on the arbitration agreement. After

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

conducting an evidentiary hearing, the lower court held that the arbitration agreement was validly executed, dismissing plaintiff's complaint in its entirety. Plaintiff moved for reconsideration, arguing, as she does on appeal, that the arbitration agreement does not apply to her claim that Dr. Nandi's pre-hospitalization treatment of her leg constituted malpractice. The court denied the motion, concluding that the interests of justice were best served by including the non-arbitrable claims with the arbitrable claims in the arbitration proceedings, as both involved the same damages.

This reasoning was rejected by this Court in *Villarreal v Chun*, 199 Mich App 120; 501 NW2d 227 (1993). In *Villareal*, this Court resolved a split of authority and held that malpractice occurring outside a hospital is not covered by an arbitration agreement which unambiguously limits itself to in-hospital care. *Id.*, 122. The scope of the arbitration agreement in this case is clearly limited to "THIS hospital stay." Thus, in light of *Villarreal*, the trial court erred when dismissing plaintiff's action against Dr. Nandi and Dr. Nandi's professional corporation based on plaintiff's allegations of malpractice that occurred prior to her stay at the hospital.¹

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Robert P. Young, Jr.
/s/ William J. Caprathe

¹ We also note that this case is distinguishable from *Grazia v Sanchez*, 199 Mich App 582; 502 NW2d 751 (1993). In *Grazia*, the plaintiff sued for malpractice that allegedly occurred three days after she signed an arbitration agreement with language similar to the agreement in this case. The plaintiff signed the agreement during a preadmission visit to the hospital, three days before scheduled surgery. *Id.*, 583. Plaintiff argued that the language "THIS hospital stay" limited the scope of the agreement to the first date, but not the subsequent date of the surgery. This Court rejected that reasoning based on the following facts: (1) there was no evidence that plaintiff was "admitted" or "discharged" on the date of the preadmission visit such that this date was a "stay" within the meaning of the agreement; (2) the plaintiff had not alleged that she understood the agreement to be limited to the date of preoperative testing; and (3) and the hospital manager attested in an affidavit that patients who sign the agreement during the preadmission procedure are advised that the agreement pertains to the upcoming hospital admission. *Id.*, 586-587.

By contrast, in this case, no reasonable construction of the language "THIS hospital stay" could contemplate malpractice which allegedly occurred *prior to* signing the arbitration agreement. Moreover, defendants have not cited any evidence which would warrant a different interpretation.