STATE OF MICHIGAN

COURT OF APPEALS

STEPHANIE WARNER, M.D.,

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
October 4, 1996

No. 177995
LC No. 93-333197-CZ

Before: Saad, P.J., and Corrigan and R.A. Benson,* JJ.

PER CURIAM.

In this defamation action, plaintiff appeals by right the order granting summary disposition to defendant under MCR 2.116(C)(10). We affirm.

Plaintiff Stephanie Warner participated in defendant Henry Ford Hospital's residency program from July 1989 until February 1990, when she resigned. She subsequently completed her residency at another hospital and eventually obtained a medical license in Michigan. In 1993, plaintiff applied for a medical license in Florida. As part of the application process, the Florida Board of Medicine sent defendant a request for information regarding plaintiff. Defendant responded to that request. Plaintiff subsequently commenced the present action, alleging that defendant defamed her in its response to the request for information. Defendant moved for summary disposition, which the court granted. Plaintiff appeals.

Contrary to plaintiff's assertion on appeal, the record does not indicate that the trial court granted summary disposition because it concluded that the alleged defamatory statements "were merely opinions" and, therefore, not actionable. Rather, the record indicates that the trial court granted summary disposition because the submitted documents did not create a genuine issue of material fact regarding malice. We find no error.

A motion under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In ruling on such a motion, the trial court must

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

consider not only the pleadings but also any affidavits, depositions, admissions, or other documentary evidence submitted by the parties. *Id*. The court must give the benefit of any reasonable doubt to the opposing party and may grant the motion only if no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. *Id.*

MCL 331.531; MSA 14.57(21) states, in pertinent part:

> (1) A person, organization, or entity may provide to a review entity information or data relating to the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to a person, *or the qualifications, competence, or performance of a health care provider.*
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> * * *
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> (3) A person, organization, or entity is not civilly or criminally liable:
>
> (a) For providing information or data pursuant to subsection (1).
>
> * * *
>
> (4) The immunity from liability provided under subsection (3) does not apply to a person, organization, or entity that acts with malice. [Emphasis added.]

Thus, a person, organization or entity that provides information to a review entity pursuant to subsection (1) is immune from civil liability unless the person, organization or entity acts with malice. *Regualos v Community Hospital*, 140 Mich App 455, 462; 364 NW2d 723 (1985).

In this case, defendant furnished the information to the Florida Board of Medicine because plaintiff applied for a medical license. The statute defines "review entity" to include "[a] state department or agency whose jurisdiction encompasses the information described in subsection (1)." MCL 331.531(2)(d); MSA 14.57(21). This definition encompasses the Florida Board of Medicine with respect to information pertaining to an application for a medical license. Accordingly, unless defendant acted with malice, it is immune from liability regarding information it provided pursuant to subsection (1) of the statute.

We reject plaintiff's claim that the trial court erred in finding that no genuine issue of material fact existed regarding malice. In *Veldhuis v Allan*, 164 Mich App 131, 136; 416 NW2d 347 (1987), this Court stated:

> [T]he definition of malice applicable in defamation actions also seems appropriate in the context of MCL 331.531; MSA 14.57(21). . . . Applying that definition, the statutory immunity does not apply only if the person supplying information or data does so with knowledge of its falsity or with reckless disregard of its truth or falsity. [Citations omitted.]

In the present case, defendant submitted numerous memoranda, letters, departmental communications, correspondence, and other documents from plaintiff's file that support the various statements contained in defendant's response to the Florida Board of Medicine's request for information. A review of the submitted documents reveals that reasonable minds would not be justified in concluding that defendant acted with malice.

We reject plaintiff's contention that additional documents in her file create a genuine issue of fact regarding the existence of malice. Specifically, the Florida Board of Medicine's letter of inquiry and defendant's response both reference plaintiff's participation in defendant's psychiatry residency program. Neither the February 14, 1990, nor the May 31, 1990, letters of reference relied upon by plaintiff relate to her performance in the psychiatry rotation. Rather, the letters address plaintiff's performance in the general internal medicine and neurology rotations. Accordingly, the letters do not provide factual support for plaintiff's claim that the statements concerning her participation in the psychiatry rotation were false or were made with reckless disregard of their truth or falsity. Additionally, plaintiff's reliance on the February 23, 1990, letter from Dr. Selbst is misplaced. That letter does not discuss the plaintiff's employment status when she resigned from the residency program. Thus, it fails to establish an issue of fact regarding the existence of malice with respect to defendant's statement that plaintiff "did not leave in good standing." Likewise, the February 13, 1990, departmental communication from Dr. Davis merely addresses plaintiff's then-existing suspension and the steps necessary for that suspension to be lifted. Contrary to plaintiff's representation, the document does not indicate that defendant would have offered plaintiff a position in the residency program the following year. Nor do any of the other documents that plaintiff submitted support a finding that defendant acted with malice when responding to the Florida Board of Medicine's request for information.

Apart from the issue of malice, plaintiff argues that summary disposition was improper because a question of fact exists whether defendant, in responding to the request for information, exceeded the scope of any personal consent that plaintiff provided for the release of information, thereby defeating defendant's claim of privilege. Plaintiff's argument, however, assumes that "defendant relies on a general release of information to conclude they have a privilege." As the prior discussion indicates, defendant's claim of privilege is not grounded solely on the existence of a general release; it is also grounded in MCL 331.531; MSA 14.57(21), which does not require consent. Rather, the privilege applies if the information relates to "the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to a person, or the qualifications, competence, or performance of a health care provider." MCL 331.531(1); MSA 14.57(21)(1). Here, each of the statements relate to plaintiff's qualifications, competence or performance as a health care provider. The statements are subject to the statutory privilege, notwithstanding the alleged absence of consent regarding the release of the information. Accordingly, the trial court granted summary disposition correctly in favor of defendant under MCR 2.116(C)(10).

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert A. Benson