

STATE OF MICHIGAN
COURT OF APPEALS

ABDUL VIRK, MANZOOR HUSSAIN VIRK and
IRSHAD VIRK,

UNPUBLISHED
October 25, 1996

Plaintiff-Appellants,

v

No. 180621
LC No. 93-333085

DETROIT RECEIVING HOSPITAL and
UNIVERSITY HEALTH CENTER,

Defendants-Appellees.

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Plaintiffs, the husband and parents of a patient whose life-support was removed by defendant,¹ appeal as of right from orders granting summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10) with respect to their contract and tort claims. We affirm.

After her admission to Hutzel Hospital on October 16, 1983, Shahida Virk was placed on life-support when she slipped into a coma due to complications with her pregnancy. On November 10, she was transferred to defendant hospital, where she was determined to be “brain dead.” In response to plaintiffs’ objections to the removal of life-support, defendant forwarded Virk’s medical records to a consulting physician for review of its determination regarding her condition. The physician opined that defendant failed to follow proper protocol in determining “brain death,” and on November 18, defendant performed additional tests which confirmed that Virk was brain dead.

The next day, plaintiffs’ attorney met with defendant’s representatives to discuss Virk’s condition. During the meeting, plaintiff Abdul Virk and his religious leader explained to defendant’s representatives that the removal of life-support would constitute murder in the Islamic faith, and requested that Virk be moved to a “step down” bed to allow the family additional time to consult with their religious leaders. After some discussion, defendant’s representatives denied the request and indicated that life-support would be withdrawn. Life-support was removed prior to defendant receiving

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

notice that the Wayne County Probate Court had issued an injunction barring the act. Plaintiffs thereafter commenced this litigation, asserting contract and tort claims premised on defendant's conduct during the process that culminated in the removal life-support.

Plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition with respect to their claim for promissory estoppel on the ground that it was barred by the statute of frauds. We disagree. We review a trial court's decision to grant a motion for summary disposition de novo. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993). In reviewing a motion brought pursuant to MCR 2.116(C)(7), such as one premised on the statute of frauds, the court must consider all affidavits, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(3), (G)(5). In addition, the contents of the complaint must be accepted as true unless specifically contradicted by the documentation. *Patterson v Kleiman*, 447 Mich 429, 434 n 6; 526 NW2d 879 (1994). Summary disposition should not be granted if factual development could provide a basis for finding that recovery is not barred. *Harrison v Dept of Corrections*, 194 Mich App 446; 487 NW2d 799 (1992).

The applicable statute of frauds, MCL 566.132(1)(g); MSA 26.922(1)(g), requires that an "agreement, promise, contract, or warranty of cure relating to medical care or treatment" be in writing. Here, plaintiffs' claim is premised on an oral promise that life-support would not be withdrawn prior to their obtaining independent review of Virk's medical records. Consequently, the claim is barred by the statute of frauds.² *Powers v Peoples Community Hosp Authority*, 183 Mich App 550, 554; 455 NW2d 371 (1990); *Malik v Beaumont Hosp*, 168 Mich App 159, 172-173; 423 NW2d 920 (1988).

Plaintiffs next contend that the trial court erroneously granted summary disposition pursuant to MCR 2.116(C)(8) with respect to their claim for intentional infliction of emotional distress. We disagree. A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. Summary disposition is appropriate only when the claim is so clearly unenforceable as a matter of law that no factual development could justify a right to recovery. *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357, 360; 466 NW2d 404 (1991). Liability will not flow from conduct that may otherwise form the basis of a claim for intentional infliction of emotional distress where one does no more than insist upon his legal rights in a permissible way, even though it is certain to cause emotional distress. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985); *Ledl v Quick Pik Food Stores, Inc*, 133 Mich App 583, 591; 349 NW2d 529 (1984).

In this case, defendant had a legal right to withdraw life support. The Determination of Death Act, MCL 333.1031 *et seq.*; MSA 14.15(1031) *et seq.*, sets forth standards for ascertaining when a person is dead. MCL 333.1033; MSA 14.15(1033). The statute establishes guidelines for determining when a person receiving life-sustaining treatment has died so that life-support can be disconnected without fear of liability. *In re Rosebush*, 195 Mich App 675, 690-691; 491 NW2d 633 (1992)(interpreting the predecessor of the current statute). Accordingly, defendant is generally shielded

from a claim of intentional infliction of emotional distress because it had a legal right to disconnect Virk's life-support.

Plaintiffs argue that their claim is nonetheless valid because it is premised on defendant's assertion of a legal right in an impermissible way. Although the manner in which a person asserts a legal right may elevate the conduct to a level that supports a claim for intentional infliction of emotional distress, see *Hall v May Dept Stores Co*, 292 Or 131; 637 P2d 126 (1981), we find that factual development could not provide a basis for recovery in this case. Defendant delayed removing life-support out of respect for plaintiffs' religious beliefs, but ultimately exercised its legal right without plaintiffs' full support when it became apparent that plaintiffs' acquiescence in the decision would not be forthcoming in a timely manner.

Plaintiffs next contend that the trial court erred when it granted summary disposition pursuant to MCR 2.116(C)(8) with respect to their claim for violations of the Equal Accommodations Act, MCL 750.147; MSA 28.344. Again, we disagree. The act "prohibits a public establishment from denying accommodations, advantages, facilities and privileges on account of race, color, religion, national origin, sex or blindness." *Ferrell v Vic Tanny Internat'l, Inc*, 137 Mich App 238, 246; 357 NW2d 669 (1984). An actual denial or refusal of accommodations is necessary in order to state a claim under the statute. *Clarke v Kmart Corp*, 197 Mich App 541, 544; 495 NW2d 820 (1992). In the instant case, plaintiffs do not contend that defendant denied them the use of its facilities or withheld privileges thereof, but rather allege that defendant failed to adjust its procedure for withdrawing life-support to take into account their religious beliefs. The statute, however, prohibits discrimination in entering and using public establishments. It does not impose an affirmative obligation on an establishment to treat members of a certain class differently than members of other classes. *Riegler v Holiday Skating Rink, Inc*, 393 Mich 607, 612-613; 227 NW2d 759 (1975); *Bolden v Grand Rapids Operating Corp*, 239 Mich 318, 323; 214 NW 241 (1927). Accordingly, because the only service provided by defendant was to Shahida Virk and plaintiffs do not allege that they were denied the use of defendant's facilities or privileges thereof, the trial court properly granted summary disposition in favor of defendant.

Lastly, plaintiffs contend that the trial court erroneously granted summary disposition with respect to their claim for discrimination under the Elliott-Larsen Civil Rights Act, MCL 37.2102 *et seq.*; MSA 3.548(101) *et seq.* We disagree. The trial court granted defendant's motion under MCR 2.116(C)(10). When considering a motion brought pursuant to MCR 2.116(C)(10), the nonmoving party must be given the benefit of any reasonable doubt and the court must be liberal in finding a genuine issue of material fact. *Buczkowski v Allstate Ins Co*, 198 Mich App 276, 278; 502 NW2d 343 (1993). To grant the motion the court must find that the record which might be developed will leave open no issues upon which reasonable minds may differ. *Wolfe v Employers Health Ins Co (On Remand)*, 194 Mich App 172, 175; 486 NW2d 319 (1992).

The Elliott-Larsen Civil Rights Act creates a cause of action to recover for the denial of "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion." MCL 37.2302(a); MSA 3.548(302)(a). Here, other than plaintiff Abdul Virk's subjective belief, there is no evidence supporting

his assertion that defendant's conduct was influenced by plaintiffs' religion. Accordingly, summary disposition was properly granted because there was no factual issue regarding whether plaintiffs' were treated differently than members of other religious groups or whether defendant was predisposed to discriminate and acted on that predisposition. *Clarke, supra* at 545. Given the absence of any evidence of discrimination, plaintiffs' claim amounts to a request for special treatment that cannot form the basis of a claim under the statute because there is no duty to accommodate or give preferential treatment.³ *Koester v City of Novi*, 213 Mich App 653, 665; 540 NW2d 765 (1995).

Affirmed.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello

¹ Our use of the term "defendant" refers only to Detroit Receiving Hospital, which is the only defendant referred to in plaintiffs' brief.

² In light of our resolution of this issue, we need not address defendant's argument that summary disposition was proper under MCR 2.116(C)(8). We also note that plaintiffs do not challenge the trial court's decision with respect to their breach of contract claim--a claim that is also barred by the statute of frauds. MCL 566.132(1)(g); MSA 26.922(1)(g).

³ In light of our determination that summary disposition was properly granted, we need not address defendant's argument that plaintiffs' claim is barred because it is premised on a contract.