

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

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ALENE FARBER,

Plaintiff-Appellant,

v

SEYMOUR ZIEGELMAN,

Defendant-Appellee.

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UNPUBLISHED

January 10, 1997

No. 187365

Oakland County

LC No. 94 473449 NH

Before: Cavanagh, P.J., and Reilly, and C.D. Corwin,\* JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this medical malpractice action. We reverse.

The alleged act of negligence was committed by a medical assistant, Gloria Overman, who worked in the office where plaintiff went for a routine gynecological examination by defendant. Both defendant and Overman were employees of Sinai Hospital. Defendant filed a motion for summary disposition under MCR 2.116(C)(10) asserting that the undisputed facts established that he was not vicariously liable for Overman's actions. Plaintiff asserted that there was a genuine issue of material fact whether Overman was acting as defendant's apparent or ostensible agent at the time Overman performed the alleged negligent act.

The trial court granted the motion and explained its reasoning in pertinent part as follows:

The question is whether [defendant] can be held vicariously liable for Overman's alleged negligence.

Ziegelman, who had been in private practice, sold his practice to Sinai Hospital and became an employee of Sinai in December, 1986. He remained at his old office for six months, during which time plaintiff became his patient.

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

He then relocated to Suite 245 of the Sinai Hechtman Medical Center, where he and several other doctors maintained offices. The offices were staffed by several medical assistants, including Overman, who were Sinai employees as well.

Because Sinai's name was not on the office door, plaintiff assumed that Ziegelman was in private practice and that Overman was his employee. She argued that at the very least, an ostensible agency arose between Ziegelman and Overman such that the former can be held liable for the latter's alleged negligence.

An ostensible agency may arise where (1) the person dealing with the agent must do so with the belief in the agent's authority and this belief must be a reasonable one; (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence. *Chapa v St Mary's Hosp*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991).

At all times plaintiff treated with Ziegelman, he and Overman were employees of Sinai. Plaintiff simply assumed that defendant was in private practice because Sinai's name was not on his office door, and further assumed that anyone in his office must be his employee.

Plaintiff has not identified any affirmative act by defendant that caused her to believe that Overman was his agent, other than the fact that defendant called for an assistant to draw a blood sample and Overman answered the call.

Given that plaintiff's belief was due in part to her own unreasonable assumptions about the relationship between defendant and Overman, plus the fact that plaintiff has not cited any case law authorizing the creation of an ostensible agency between two employees of a single employer, the Court finds that the evidence does not permit the imputation of an ostensible agency in this case.

We agree with plaintiff that defendant was not entitled to summary disposition. "Where there is a disputed question of agency, any testimony, either direct or inferential, tending to establish agency creates a question of fact for the jury to determine." *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). In this case, defendant's summoning of the medical assistant to draw blood and the lack of any indication that the doctor or the medical assistant were employees of Sinai Hospital created a question of fact for the jury as to whether an ostensible agency was created. Accordingly, summary disposition was inappropriate.

Reversed.

/s/ Mark J. Cavanagh  
/s/ Maureen Pulte Reilly  
/s/ Charles D. Corwin