

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR EDWARD WILLIAMS,

Plaintiff-Appellant,

v

FRED STOCKINGER, M.D. and
BUTTERWORTH HOSPITAL,

Defendants-Appellees.

UNPUBLISHED

May 30, 1997

No. 191649

Kent Circuit Court

LC No. 93-81592 NM

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

After being referred to Dr. Stockinger by his regular physician, plaintiff was advised that he needed surgery, a field of medical practice in which Dr. Stockinger is a specialist. Plaintiff agreed, and Dr. Stockinger then arranged for plaintiff to be admitted to Butterworth Hospital so that the surgery could be performed. Upon admission, plaintiff signed informed consent forms which bear the logo of Butterworth Hospital.

On this basis, plaintiff claims that the hospital may be held vicariously liable for alleged malpractice by Dr. Stockinger in failing to warn plaintiff that the surgery carried a risk of paralysis which in fact befell plaintiff. As to that issue, the hospital moved for and was granted summary disposition by Kent Circuit Court. Dr. Stockinger having previously been dismissed from the lawsuit on statute of limitations grounds, no claims remained and plaintiff filed the present claim of appeal. This case is being decided without oral argument pursuant to MCR 7.214(E).

Where, as here, the plaintiff has a prior relationship with the physician whose alleged malpractice forms the basis for an assertion of vicarious liability against the hospital, the doctrine of ostensible agency on which plaintiff relies is inapposite. Both the Michigan Supreme Court, *Wilson v Stilwill*, 411 Mich 587, 609-610; 309 NW2d 898 (1981), and this Court, *Chapa v St Mary's Hospital*, 192 Mich App 29, 33-34; 480 NW2d 590 (1991), have consistently held that where, as here, the plaintiff has a prior relationship with the treating physician whose malpractice is the basis for alleged vicarious liability of a hospital, the doctrine of ostensible agency cannot be invoked as to a

physician who is otherwise not a hospital employee but merely an independent contractor with staff privileges. The circuit court correctly recognized that there is therefore no evidence in this record from which a trier of fact could conclude that an ostensible agency relationship between Dr. Stockinger and the hospital existed as to this plaintiff.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald