

STATE OF MICHIGAN
COURT OF APPEALS

MAY R. SEDELMAIER and JOHN SEDELMAIER,

UNPUBLISHED

Plaintiffs-Appellants,

and

BLUE CROSS & BLUE SHIELD,

Intervening Plaintiff,

v

No. 191717

Ingham Circuit Court

RAFAEL DE LOS SANTOS, M.D.,

LC No. 94-077971-NH

Defendant-Appellee,

and

INGHAM MEDICAL CENTER, d/b/a
MICHIGAN AFFILIATED HEALTH CARE
SYSTEM, INC.,

Defendant.

Before: Fitzgerald, P.J., and MacKenzie and Taylor, JJ.

FITZGERALD, P.J. (concurring in part and dissenting in part.)

I respectfully dissent from the majority's conclusion that plaintiff's claims do not take this case outside of *Vargo*. Unlike the defendant in *Vargo*, defendant was not called upon to render assistance to plaintiff in his capacity as a professor.¹ Plaintiff went to defendant's office at a private hospital based on a referral from her private physician. She did not enter into a physician-patient relationship with defendant based on his professorship with MSU. She was unaware of defendant's status as a MSU professor and did not know that he was going to unilaterally decide to allow residents to participate in her surgery. Plaintiff presented a factual question regarding whether defendant was acting in his

professional capacity as a professor, and therefore in the exercise of a governmental function, when the alleged malpractice occurred. Accordingly, I believe that summary disposition on the basis of governmental immunity was improperly granted.

In all other respects, I concur with the majority opinion.²

Reversed.

/s/ E. Thomas Fitzgerald

¹ In *Vargo*, the patient presented herself to St. Lawrence and was treated by MSU residents. The defendant, who was on call to help MSU residents, was telephoned and went to the hospital to assist the residents and to aid them in formulating a treatment plan for the patient. The defendant was called upon specifically in his capacity as a professor to teach and assist.

² I note, however, that a bill (House Bill 4629) has been introduced in the Legislature to remove malpractice immunity for Michigan State University doctors. The bill includes all lawsuits dating to July 16, 1986, now pending against MSU doctors.