STATE OF MICHIGAN

COURT OF APPEALS

LISA L. GROAT, as next friend of KATHY MOOREHEAD,

Plaintiff-Appellant,

v

CHARLOTTE COULSTON and BATTLE CREEK CHILD GUIDANCE CENTER, INC.,

Defendants-Appellees.

UNPUBLISHED
October 10, 1997

No. 196206
Calhoun Circuit Court
LC No. 95-002816-NM

Before: O'Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's grant of summary disposition to defendants. We affirm.

Plaintiff, on her adolescent daughter's behalf, sued defendant Coulston and her employer for malicious prosecution, professional malpractice, and negligent and intentional infliction of emotional distress after Coulston provided to police a report in which she concluded that plaintiff's daughter had sexually molested a four-year-old boy. As a result of Coulston's report, the police renewed a previously abandoned investigation concerning plaintiff's daughter. The renewed investigation, in turn, resulted in an amended petition against plaintiff's daughter charging criminal sexual conduct. Several months later, the probate court dismissed the amended petition.

Plaintiff first argues that the circuit court erred in holding that plaintiff failed to state a cause of action for malpractice because defendants owed no duty to plaintiff or her daughter. We review a lower court's decision regarding a motion for summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). A motion for summary disposition brought under MCR 2.116(C)(8) should be granted "only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Peters v Dep't of Corrections*. 215 Mich App 485, 487; 546 NW2d 668 (1996).

In arguing to this Court, plaintiff relies on the following three-part test announced in *Welke v Kuzilla*, 144 Mich App 245, 253; 375 NW2d 403 (1985):

> [I]n order for plaintiff to prove his claim against defendant, whether under negligence or malpractice, plaintiff must demonstrate: (1) the existence of a physician-patient relationship between defendant doctor and the third person who was a cause-in-fact of plaintiff's injuries; (2) breach of the applicable standard of care required by the doctor in the treatment of the patient; and (3) that the negligent treatment of the patient was a proximate cause of plaintiff's injuries.

Plaintiff asserts that this three-part test is to be used in holding "professionals accountable to foreseeable third parties." However, plaintiff provides no authority for her assertion that this test applies to "professionals" in general. In setting forth the elements of the *Welke* test, this Court spoke only in terms of physicians, with one of the prongs of the test expressly requiring the existence of a "physician-patient" relationship. Defendant Coulston in the present case is a social worker, not a physician. Accordingly, we find that plaintiff fails to satisfy the requirements of the *Welke* test. Moreover, plaintiff's comparison of this case to *Shepard v Redford Community Hospital*, 151 Mich App 242; 390 NW2d 239 (1986), also fails because there is no physician-patient relationship in the present case.

Plaintiff next argues that the circuit court erred in finding that defendants enjoy immunity pursuant to the Child Protection Law, MCL 722.621 *et seq*.; MSA 25.248(1) *et seq*. The Child Protection Law establishes an affirmative duty in certain persons, including social workers, who have reasonable cause to suspect child abuse or neglect to report it to the appropriate authorities. A portion of the law, MCL 722.625; MSA 25.248(5), provides in pertinent part:

> A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil and criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil and criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

Plaintiff observes that under the cited statute immunity "extends only to acts done pursuant to" the Child Protection Law. She contends that defendant Coulston was not acting "pursuant to" the Child Protection Law when she filed her report with the police department because she did not strictly adhere to MCL 722.623(1); MSA 25.248(3)(1), which requires that the reporter submit an immediate oral report and then submit a written report within 72 hours of reasonable cause to suspect child abuse or neglect. We disagree with plaintiff's position.

To rephrase the issue, the question which plaintiff presents is whether the immunity granted under the Child Protection Law is lost if the reporter fails to satisfy the letter of the law in every respect, i.e., reports late, in the wrong manner, or to the wrong agency. We find that the statutory immunity is not lost under these circumstances. The purpose of the act is "to encourage reporting of suspected

child abuse." *Warner v Mitts*, 211 Mich App 557, 559; 536 NW2d 564 (1995). If plaintiff's interpretation of the statute were correct, potential reports of child abuse or neglect might not be submitted because a potential reporter's willingness to report would be chilled knowing that the immunity has been lost by a failure to strictly follow the statute's time requirements. Consistent with the purpose of the statute, late reporting of suspected child abuse or neglect is preferable to no reporting at all.

In short, plaintiff's argument -- that immunity is lost if the strict letter of the statue is not followed -- fails because it frustrates the purpose behind the Child Protection Law. As a matter of public policy, we have previously rejected arguments that frustrate the purpose of the Child Protection Law, and we continue to reject such arguments. See, e.g., *Awkerman v Tri-County Orthopedic Group, PC*, 143 Mich App 722, 728; 373 NW2d 204 (1985).

Affirmed.

/s/ Peter D. O'Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage