

STATE OF MICHIGAN
COURT OF APPEALS

BOBBY MARTIN, Individually, and ESSIE
MARTIN, Individually and as Personal
Representative of the Estate of TIMOTHY
MARTIN, Deceased,

UNPUBLISHED
December 9, 2004

Plaintiffs-Appellants,

v

No. 249651
Wayne Circuit Court
LC No. 03-300221-NO

RENAISSANCE WEST COMMUNITY
HEALTH SERVICES and DR. HYUN CHAN
SHIN,

Defendants-Appellees.

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs commenced this action after their son, Terry Martin, fatally shot plaintiffs' other son, Timothy Martin, and wounded plaintiff Bobby Martin. Earlier on the day of the shooting, Bobby Martin had taken Terry to see defendant Dr. Hyun Shin, a psychiatrist. Plaintiffs claim that Dr. Shin and his employer, defendant Renaissance West Community Health Services, Inc, breached their duty to protect plaintiffs by failing to either hospitalize Terry or warn plaintiffs and the police that Terry posed a threat of violence to plaintiffs. The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10), concluding that defendants had no duty to plaintiffs because Terry had not communicated a threat of violence as described in MCL 330.1946.

We review a trial court's summary disposition decision de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Summary disposition may be granted under MCR 2.116(C)(10) if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Kraft v Detroit Entertainment, LLC*, 261 Mich App 534, 539-540; 683 NW2d 200 (2004); MCR 2.116(C)(10) and (G)(4).

The trial court determined that MCL 330.1946 governed the question of defendants' duty to plaintiffs. That statute provides, in pertinent part:

(1) If a patient communicates to a mental health professional who is treating the patient a threat of physical violence against a reasonably identifiable third person and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to take action as prescribed in subsection (2). Except as provided in this section, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

(2) A mental health professional has discharged the duty created under subsection (1) if the mental health professional, subsequent to the threat, does 1 or more of the following in a timely manner:

(a) Hospitalizes the patient or initiates proceedings to hospitalize the patient under chapter 4 or 4a.

(b) Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the patient resides, or to the state police.

Plaintiffs challenge the trial court's determination that there was no evidence of a communicated threat of violence within the meaning of this statute and, therefore, defendants had no duty to plaintiffs. We agree.

Where a statute is unambiguous, it must be applied as written; we may not read anything into the statute that is not within the manifest intent of the Legislature as indicated by the plain and ordinary language of the act itself. *People v Lange*, 251 Mich App 247, 253-254; 650 NW2d 691 (2002); *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997). Here, the plain language of MCL 330.1946 provides that a mental health professional's duty to take action to protect third parties is triggered "[i]f a *patient* communicates . . . a *threat of physical violence* against a reasonably identifiable third person." (Emphasis added.) The submitted evidence indicated that Bobby Martin, not Terry, was the only party who communicated any information to Dr. Shin during the visit. Although plaintiffs argue that the communication requirement was satisfied because "the affidavit of Bobby Martin clearly shows that Terry had communicated the threat to him, and he in turn told defendant Shin," the statutory language clearly provides that a duty is triggered only when "a *patient* communicates [a threat] to a mental health professional." Thus, third-party communications are not sufficient to give rise to a duty under MCL 333.1946.

Furthermore, assuming arguendo that a third-party communication may satisfy MCL 330.1946, here Bobby Martin's affidavit does not factually demonstrate that a third-party communication meeting the requirements of the statute was made. Bobby Martin's affidavit only states that he told Dr. Shin that he felt threatened by Terry. Bobby Martin's subjective perception of a threat does not establish that Terry actually communicated a threat. Similarly, Bobby Martin's conclusory statement that he "presented" Terry with "suicidal and homicidal

ideation symptoms” does not establish that Terry said or did anything that would have alerted Dr. Shin to the impending danger. The trial court correctly determined that plaintiffs failed to establish a duty under MCL 330.1946.

Plaintiffs argue, in the alternative, that defendants owed a common-law duty to protect plaintiffs, even if no threat was made pursuant to MCL 330.1946. The final sentence in MCL 330.1946(1) states, “[e]xcept as provided in this section, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.” The statute thus provides that a mental health professional’s duty to warn third persons of threats or to protect third persons arises solely from the statute.

In *Swan v Wedgwood Christian Youth & Family Services*, 230 Mich App 190, 195; 583 NW2d 719 (1998), this Court suggested in dicta that a common-law duty might survive where a foreseeable danger is made known to the practitioner during the course of the patient’s treatment. We need not resolve that question, however, because plaintiffs failed to show that Terry exhibited a foreseeable danger during his contact with Dr. Shin. As previously indicated, Bobby Martin’s subjective perception of a threat, standing alone, is insufficient to establish that Dr. Shin should have or could have predicted Terry’s violent spree.

Accordingly, the trial court properly granted defendants summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens