

STATE OF MICHIGAN
COURT OF APPEALS

MAUREEN McDONNELL,

Plaintiff-Appellee,

v

AMERICAN NATIONAL RED CROSS, and
WASHTENAW COUNTY BRANCH OF THE
AMERICAN RED CROSS,

Defendants-Appellants.

UNPUBLISHED

June 7, 2005

Nos. 243320; 245043

Washtenaw Circuit Court

LC No. 01-000073-NO

ON REMAND

Before: Kelly, P.J., and Murphy and Neff, JJ.

PER CURIAM.

These cases are before us on remand from the Supreme Court for reconsideration in light of the Court's decision in *Bryant v Oakpointe Villa Nursing Center*, 471 Mich 411; 684 NW2d 864 (2004). The Supreme Court vacated in part our earlier opinion¹ and directed that we reconsider whether plaintiff stated a cause of action in ordinary negligence. On reconsideration, we again conclude that plaintiff stated a claim of ordinary negligence. We again affirm the trial court's denial of defendant's motion for summary disposition of plaintiff's negligence claim and remand this case for further proceedings.

After reviewing the decision and analysis in *Bryant*, we are satisfied that our original conclusion is consistent with *Bryant*. If anything, the analysis in *Bryant* further supports our conclusion, as discussed below in § I. However, we add one additional point of clarification in light of the discussion in *Bryant, supra* at 432-433, concerning the statute of limitations, which we find applicable to the circumstances of this case.

I

As discussed in § III A of our earlier opinion, plaintiff stated a cause of action for ordinary negligence with respect to defendants' overall conduct in carrying out the blood drive.

¹ *McDonnell v American Nat'l Red Cross*, unpublished opinion per curiam of the Court of Appeals (Docket Nos. 243320 and 245043, issued June 29, 2004).

In this regard, plaintiff's claim is analogous to the "failure to take steps" claim in *Bryant, supra* at 430-432, which the Court found was a claim of ordinary negligence under the standards articulated in *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26; 594 NW2d 455 (1999). A factfinder relying only on common knowledge and experience, e.g., fainting may occur in the course of blood donations, can readily determine whether defendants' conduct in organizing and staffing the blood drive was sufficient. *Bryant, supra* at 431.

Moreover, under the two-part analysis set forth in *Bryant*, our conclusion is further supported by the allegation that defendants are not proper defendants with respect to a medical malpractice claim. *Id.* at 422-423. Pursuant to *Bryant*, the first question in distinguishing between ordinary negligence and medical malpractice claims is whether there has been a professional relationship between the plaintiff and the defendant. *Id.* at 422.

A professional relationship sufficient to support a claim of medical malpractice exists in those cases in which a licensed health care professional, licensed health care facility, or the agents or employees of a licensed health care facility, were subject to a contractual duty that required that professional, that facility, or the agents or employees of that facility, to render professional health care services to the plaintiff. [*Id.*]

The question, then, is whether defendant was subject to a contractual duty as a licensed health care professional, licensed health care facility, or the agent or employee of a licensed health care facility.

As noted in our earlier opinion, § III C, defendants asserted that plaintiff cannot maintain her medical malpractice claim because defendants are not state licensed health care professionals or licensed health care facilities. Accordingly, under the analysis in *Bryant*, it would appear that the professional relationship test is not met, and therefore the claim is not "subject to the procedural and substantive requirements that govern medical malpractice actions." *Id.* at 422. However, because this case was not argued or decided under the two-part test set forth in *Bryant*, we leave the final analysis of this question to the trial court on remand should the court find it relevant to the proceedings.

II

We add one point of clarification concerning our earlier opinion, given the holding in *Bryant, supra* at 432, that pending cases involving similar procedural circumstances may proceed despite the fact that the medical malpractice claim would ordinarily be time-barred. In our earlier opinion, § III B, we concluded that defendants were entitled to summary disposition of plaintiff's medical malpractice claim because plaintiff failed to meet the statutory requirements for timely filing her claim. However, under the holding in *Bryant*, it now appears that plaintiff's medical malpractice claim may not be barred given the confusion over the legal nature of plaintiff's claims and the procedural circumstances leading to the dismissal of her medical malpractice claim.

Were we permitted to do so, we would remand this case for further consideration of the statute of limitations issue under the holding in *Bryant*. Because the order remanding this case permits us to reconsider only whether plaintiff stated a claim of ordinary negligence and leaves intact the remainder of our earlier opinion, we are unable to revisit the statute of limitations issue.

Affirmed and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ William B. Murphy

/s/ Janet T. Neff