

STATE OF MICHIGAN
COURT OF APPEALS

NANCY E. LEWANDOWSKI,

Plaintiff-Appellant,

v

MERCY MEMORIAL HOSPITAL
CORPORATION, d/b/a MERCY MEMORIAL
HEALTH SYSTEM,

Defendant-Appellee.

UNPUBLISHED
December 2, 2003

No. 241046
Monroe Circuit Court
LC No. 01-014019-NO

Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing the case with prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was admitted to defendant's facility for treatment of a head injury. Plaintiff alleges in her complaint that defendant's employees were assisting her in getting dressed so that she could leave the facility, and told her that she should stand. She objected to doing so on the grounds that she had not put weight on her feet for several months, and that it was against her physician's orders. Plaintiff's protests notwithstanding, defendant's employees stood her on her feet. She collapsed to the floor and fractured her left leg. Plaintiff filed suit alleging that defendant's employees acted negligently in attempting to have her stand against her physician's orders.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiff's claim was actually one for medical malpractice. In response, plaintiff argued that the claim sounded in ordinary negligence rather than medical malpractice because defendant's employees did not render medical care.

The trial court granted defendant's motion for summary disposition and dismissed the case without prejudice.¹ The trial court found that plaintiff's injury occurred during the course of her professional relationship with defendant. The court further found that the record supported a finding that plaintiff's injury occurred when she was being assisted by nurses using a specific lift technique and a walker, and that the issue of whether defendant's employees acted negligently required expert testimony. Thus, the trial court held that plaintiff was required to file the case as a medical malpractice action.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The key to whether a claim sounds in medical malpractice is whether it is alleged that the negligence occurred within the course of a professional relationship in which medical care and treatment was rendered. Whether a claim sounds in medical malpractice depends on whether the facts alleged raise issues that are within common knowledge and experience or raise questions involving medical judgment. *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 46-47; 594 NW2d 455 (1999); *Regalski v Cardiology Associates, PC*, 459 Mich 891; 587 NW2d 502 (1998).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. She contends that her claim sounded in ordinary negligence because it did not allege that defendant's employees rendered medical care or treatment when attempting to stand her on her feet. We disagree. Plaintiff's reliance on *Gold v Sinai Hosp*, 5 Mich App 368; 146 NW2d 723 (1966), *Fogel v Sinai Hosp*, 2 Mich App 99; 138 NW2d 503 (1965), and *DiGiovanni v St. John Health System*, unpublished opinion per curiam of the Court of Appeals, issued October 30, 1998 (Docket No. 200398), is misplaced. In those cases, claims of ordinary negligence were permitted to proceed against the defendant hospitals where patients were injured while being assisted in movement by a hospital employee. However, those cases did not involve health care workers acting in accordance with specific orders from a physician.

In this case, the act that formed the basis of plaintiff's complaint occurred in the context of plaintiff's professional relationship with defendant. *Dorris, supra*. Plaintiff's physician had ordered that nurses were to assist plaintiff in moving to a specialized chair and in getting some form of exercise twice per day. The act of assisting a patient in plaintiff's condition, i.e., recovering from a head injury and bedridden for a prolonged period of time, to stand or to move from a bed to a chair required training and the exercise of medical judgment both to minimize plaintiff's discomfort and to guard against further injury. The trial court correctly determined that plaintiff's complaint sounded in medical malpractice rather than in ordinary negligence, *Dorris, supra*; *Regalski, supra*, and that plaintiff was required to file suit in accordance with the

¹ The trial court's decision indicates that it granted summary disposition under MCR 2.116(C)(8); however, the court considered material beyond the pleadings in rendering its decision. Under the circumstances, we review the court's decision as having been granted under MCR 2.116(C)(10). *Detroit News, Inc v Policemen & Firemen Retirement System of Detroit*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

notice and waiting period provisions applicable to medical malpractice actions. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly