

STATE OF MICHIGAN
COURT OF APPEALS

VALERIE E. SFREDDO and JOSEPH
SFREDDO,

UNPUBLISHED
August 19, 2004

Plaintiffs-Appellants,

v

No. 249912
Court of Claims
LC No. 02-000179-MH

UNIVERSITY OF MICHIGAN REGENTS and
UNIVERSITY OF MICHIGAN HEALTH
SYSTEMS,

Defendants-Appellees.

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

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

I disagree with the majority's conclusion that plaintiffs' claims of ordinary negligence in fact sounded in medical malpractice.

In determining whether the nature of a claim is ordinary negligence or medical malpractice, a court does so under MCR 2.116(C)(7). Such claims are reviewed de novo. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

In *Bryant v Oakpointe Villa Nursing Centre*, ___ Mich ___; ___ NW2d ___ (Docket Nos. 121723, 121724, decided July 30, 2004), the Court stated:

A medical malpractice claim is distinguished by two defining characteristics. First, medical malpractice can occur only “within the course of a professional relationship.” *Dorris, supra* at 45, 594 NW2d 455 (citation omitted). Second, claims of medical malpractice necessarily “raise questions involving medical judgment.” *Id.* at 46, 594 NW2d 455. Claims of ordinary negligence, by contrast, “raise issues that are within the common knowledge and experience of the [fact-finder].” *Id.* Therefore, a court must ask two fundamental questions in determining whether claims sound in ordinary negligence or medical malpractice: (1) Whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both of these questions are answered in the affirmative, the action is subject to the

procedural and substantive requirements that govern medical malpractice actions.
[*Bryant, supra* at slip op pp 11-12.]

The answer to the first question is clear; that is, the claim pertains to an action that occurred within the course of a professional relationship. The next step is determining whether the claim raises questions of medical judgment requiring expert testimony or, on the other hand, whether it alleged facts within the realm of a jury's common knowledge and experience. *Bryant, supra* at slip op pp 13-14. "The determination whether a claim will be held to the standards of proof and procedural requirements of a medical malpractice claim as opposed to an ordinary negligence claim depends on whether the facts allegedly raise issues that are within the common knowledge and experience of the jury or, alternatively, raise questions of medical judgment." *Bryant, supra* at slip op p 14.

Here, plaintiffs alleged, in part, that defendants ignored plaintiff Valerie Sfreddo's complaint during the MRI that she was "burning" and her request to "get me out of here," and that by doing so they also failed to provide a safe environment. Valerie testified in her deposition that the MRI technician informed her that her only means of communicating with him was via an intercom. Within the first minute or two of the second test sequence, she tried to communicate with the technician by "screaming for him to get me out of there; I was burning; I was on fire – but He didn't respond. He wasn't there." Plaintiffs alleged that the failure to listen to Valerie's complaints and terminate the test caused Valerie physical injuries.

In my opinion, no expert testimony is necessary to show that defendants acted negligently by ignoring Valerie's complaints or to determine whether defendants' employees should have taken some sort of corrective action to determine the cause of her burning sensation. Indeed, the MRI technician testified in his deposition that he turned down the volume on the intercom. He also testified that:

1. He required no special medical knowledge or expertise to understand how to work the MRI machine's intercom system.
2. He required no special medical knowledge or expertise to recognize that, once plaintiff was placed into the MRI bore, she would be unable to remove herself without assistance and/or difficulty.
3. He required no special medical knowledge or expertise to understand what a patient means when making the complaints, "I'm burning" or "I'm on fire."
4. He required no special medical knowledge or expertise to roll the table holding Plaintiff out of the bore.

The claims do not involve the breach of a medical standard of care but, rather, they involve simple neglect or ordinary negligence. A factfinder relying only on common knowledge and experience can readily determine whether the MRI technician's response to Valerie's complaints

was sufficient. I would reverse the grant of summary disposition in favor of defendants on the claim of ordinary negligence and remand to the trial court for trial on this claim.

/s/ E. Thomas Fitzgerald