

STATE OF MICHIGAN  
COURT OF APPEALS

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MAUREEN McDONNELL,

Plaintiff-Appellee,

v

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

Defendants-Appellants.

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UNPUBLISHED

June 29, 2004

Nos. 243320; 245043

Washtenaw Circuit Court

LC No. 01-000073-NO

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

KELLY, J. (*Concurring in part and dissenting in part.*)

I respectfully dissent from the majority's opinion that plaintiff's amended complaint alleges ordinary negligence. The trial court erred in failing to dismiss plaintiff's claim because (1) it is a medical malpractice claim that is barred by the statute of limitations and (2) plaintiff failed to meet the statutory requirements for filing a malpractice claim, i.e., sending a notice of intent and filing an affidavit of merit.<sup>1</sup> In all other respects, I concur in the majority opinion.

I agree with the majority that not every claim against an employee or agent assisting in medical care or treatment is governed by the statutory requirements particular to medical malpractice litigation. But "[A] complaint cannot avoid the applications of the procedural requirements of a malpractice action by couching its cause of action in terms of ordinary negligence." *Wiley v Fort Cottage Hospital*, 257 Mich App 488, 509; 668 NW2d 602 (2003), quoting *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 43; 594 NW2d 455 (1999). Whether a claim alleges medical malpractice depends on whether the facts alleged raise issues that are within the common knowledge and experience of the jury or raise questions involving

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<sup>1</sup> I also agree with defendants that plaintiff's failure to individually name the medical personnel involved in drawing plaintiff's blood is fatal because plaintiff fails to establish that defendants are a state "licensed health facility or agency." MCL 600.5838a(1). But, as the majority notes, it is unnecessary to address this argument in light of the result reached.

medical judgment. *Dorris, supra* at 46-47; *Regalski v Cardiology Associates, PC*, 459 Mich 891; 587 NW2d 502 (1998).<sup>2</sup>

Because the facts alleged in plaintiff's complaint raise issues involving medical judgment, the claim alleges medical malpractice. Plaintiff's complaint alleges in relevant part:

103. Defendants Red Cross and Washtenaw County Branch of the Red Cross knew, or should have known, that it is common for a person who has donated blood to experience a period of dizziness, "wobbliness," on their feet or lightheadedness during and/or after the blood donation process.

104. Defendants breached their duty to Plaintiff in the following ways:

A. Its workers were more concerned about their lunch hour being delayed than they were about Plaintiff's safety and well-being.

B. They did not escort Plaintiff from the blood donation table to the snack table.

C. They did not provide any device or other support to assist Plaintiff in moving from the blood donation table to the snack table.

D. They did not tell Plaintiff to not walk from the blood donation table to the snack table by herself.

E. They specifically instructed Plaintiff to walk from the blood donation table to the snack table by herself.

F. They failed to respect Plaintiff's right to have the procedure done carefully.

I disagree with the majority's conclusion that:

Reading the claim as a whole, plaintiff's complaint does not allege negligence in the medical procedures undertaken, but rather with the general safety and operation procedures surrounding the blood donations. For example, plaintiff does not claim that an escort was warranted because of her particular medical circumstances. Nor does she allege that the attending nurse failed to properly assess plaintiff's medical condition. The gravamen of the complaint is that defendants were negligent in the operation and oversight of the blood drive.

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<sup>2</sup> In *Regalski*, the complaint alleged that the decedent was injured when the defendant's technician transferred her from a wheelchair to an examining table. Our Supreme Court held that the complaint alleged medical malpractice because the technician was "engaging in or otherwise assisting in medical care and treatment" in performing the act that formed the basis of the lawsuit. MCL 600.5838a(1); *Regalski, supra*.

Plaintiff claims that defendants' knew or should have known that a donor could experience dizziness and that defendants' agents or employees did not exercise proper medical judgment to prevent plaintiff from falling when she fainted after giving blood. These allegations attack defendants' judgments in treating and monitoring blood donors during the entire blood draw procedure. Judgments such as these are not within the common knowledge and experience of juries, and fall within the realm of medical malpractice claims as discussed in *Regalski* and *Wiley*. Although Dr. Bruce Newman opined that professional judgment is not required to "ask a person how she feels," the determination of whether a person is about to faint and the care required in those circumstances clearly involve medical judgment. Accordingly, expert testimony is required to challenge defendants' medical judgment.

Read as a whole, the complaint alleges that defendants' medical personnel were negligent in failing to properly monitor plaintiff's condition and provide appropriate medical care or treatment. The collection of blood, in and of itself, is a medical procedure. From the initial assessment of a potential donor, through the actual draw, to the assessment and care of the donor after the draw, medically trained personnel must exercise medical judgment. Because plaintiff's claim involves questions of medical judgment it alleges medical malpractice, not ordinary negligence.

Accordingly, I would reverse on this issue.

/s/Kirsten Frank Kelly