

STATE OF MICHIGAN
COURT OF APPEALS

ODESSA HALLMAN, Personal Representative of
the Estate of LEONARD HALLMAN, JR.,
Deceased,

UNPUBLISHED
October 25, 2005

Plaintiff-Appellant/Cross-Appellee,

v

HOLY CROSS HOSPITAL OF DETROIT, d/b/a
ST. JOHN NORTHEAST COMMUNITY
HOSPITAL,

No. 262527
Wayne Circuit Court
LC No. 03-310847-NH

Defendant-Appellee/Cross-
Appellant,

and

NADIMPALLI RAJU, M.D., COMMUNITY
CASE MANAGEMENT, and ESSIE L. MOORE,
MSW,

Defendants-Appellees,

and

LATHAM ADULT FOSTER CARE HOME,
LLC,

Defendant.

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

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants¹ in this medical malpractice and negligence action.² We affirm.

Plaintiff's twenty-five year old son, Leonard Hallman, Jr., was admitted to defendant Holy Cross Hospital pursuant to an order of the Probate Court entered as a result of a petition for psychiatric hospitalization signed by plaintiff and a physician. Hallman was admitted to Holy Cross after complaining of experiencing hallucinations and hearing voices telling him to kill himself. Plaintiff was assigned to the care and treatment of a psychiatrist, defendant Nadimpalli Raju, M.D.

Dr. Raju made an initial assessment of Hallman's psychotic functioning and diagnosis and initiated an involuntary hospitalization because of Hallman's refusal to receive treatment. Dr. Raju noted that Hallman was overtly paranoid and psychotic and made statements to the effect that he felt that other people wanted to harm him. Hallman was also very angry and irritated about his hospitalization. Dr. Raju did not feel at that time that defendant posed a risk of harm to himself, but that he might post a risk of harm to others.

During his hospitalization Hallman was treated with the psychiatric medication Haldol and was involved in individual and group therapies. Hallman benefited from taking Haldol in that he "showed improvement to the point that he was more cooperative and compliant, agreed to take the medication, took the medication without any resistance." Dr. Raju indicated that Hallman never exhibited any behaviors to indicate that he was a suicidal threat during the hospital stay of May 19 to June 8.

During Hallman's admission to the hospital he signed a consent form accepting the home-finding services of defendant Community Case Management Services, Inc. (CCMS) because his mother apparently was no longer willing to allow Hallman to reside with her. Dr. Raju indicated that he was the primary person to make suggestions or recommendations as to what level of care and what type of treatment Hallman would require. As of June 4, Hallman was "much more compliant with the medications, . . . attending some of the groups . . . and not exhibiting any irritated and angry and hostile behaviors toward others." Dr. Raju monitored Hallman for an additional seventy-two hours to verify that Hallman was maintaining the improvement so that he could be satisfied that Hallman was able to follow directions. Dr. Raju testified that as of June 8, 1998, Hallman no longer met the criteria to be involuntarily hospitalized. Dr. Raju recommended that Hallman be placed into an adult foster care home because that institution was the least restrictive alternative available for Hallman and because Hallman agreed to the placement, agreed to continued treatment, and was no longer an immediate danger to himself or others. Dr. Raju determined that Hallman needed supervision

¹The use of the term "defendants" does not include defendant Latham Adult Foster Care Home, LLC, as an order of dismissal was entered with regard to this defendant after a settlement was reached in the amount of \$450,000.

² Although defendant Holy Cross Hospital of Detroit filed a cross-appeal, the cross-appeal merely raises alternative grounds for affirmance and does not raise any new substantive issues.

because he had a history of not complying with his treatments. An adult foster care referral sheet signed by Dr. Raju on June 5, 1998, and directed to CCMS indicates that Hallman should be placed in a "Contract IIA" adult foster care home "due to suicidal ideation and violent behavioral tendencies." Dr. Raju explained that the reference to "suicidal ideation" was included on the referral sheet as "historical information." Dr. Raju explained that he recommended twenty-four hour supervision, meaning that supervision would be provided with respect to giving medication, monitoring eating and sleeping, attending to ADL's and self-care. He also explained that this level of supervision required the AFC home to be aware of the patient's whereabouts, but not that a staff member be with the patient twenty-four hours a day. Dr. Raju would expect that the patient would be permitted to leave the home alone without someone accompanying him.

On June 5, 1998, defendant Essie Moore, the adult foster care placement worker for CCMS, made the decision to place Hallman with defendant Latham Adult Foster Care Home, LLC (Latham). On June 8, 1998, Dr. Raju discharged Hallman from the hospital. Hallman was discharged and prescribed 10 milligrams of Haldol in the morning and 10 milligrams in the evening to control his psychotic symptoms. Hallman was never adjudged mentally incompetent or subjected to any finding that deprived him of freedom of contract or freedom of movement.

Hallman was taken to the Latham home by Latham staff. Within twenty or thirty minutes of arriving at the Latham home, Hallman insisted that he wanted cigarettes. Mrs. Latham phoned Hallman's mother, who instructed Latham to give Hallman money for cigarettes and who stated that she would repay Latham the following day. Latham gave Hallman the money and offered to send an escort with him to the store "around the corner." Hallman declined the offer, indicating that he was familiar with the neighborhood. Hallman never returned to the Latham home. Several days later, Hallman's body was found in the Detroit River.

The Wayne County Medical Examiner's report indicated that Hallman "died of drowning," but that the autopsy and toxicological examination "failed to reveal trauma or a definite cause of death" and that the manner of death is "undeterminable." The death certificate signed by the medical examiner indicates that the body was found in the Detroit River, that the date and time of injury are "unknown," and that with regard to whether the death was a suicide, homicide, or natural death, the death is "indeterminate." The certificate lists the cause of death as "pending-drowning." The medical examiner also signed an affidavit attesting that "there was no evidence, at the time of autopsy, that Leonard Hallman died as the result of homicide or suicide." He also attested that "there was nothing found at autopsy to independently confirm drowning as the cause of death" and that the "sole reasons for listing this case was due to the circumstances surrounding where the body was found, i.e. the water, and not medical certainty."

Plaintiff filed suit against Holy Cross, Dr. Raju, CCMS, Moore, and Latham. Plaintiff alleged that Holy Cross and/or Dr. Raju were negligent in discharging Hallman from the hospital and/or failing to ensure that he continued medication and/or that he would be provided with twenty-four hour supervision after discharge. Plaintiff also alleged that the hospital was negligent in selection or retention of medical personnel or failing to maintain adequate procedures. Plaintiff alleged that defendants CCMS and Moore were negligent in failing to place Hallman in an appropriate foster care setting where he would receive twenty-four hour supervision, failing to ensure that Hallman received psychiatric medications upon transfer, and failing to supervise Hallman.

After the close of discovery, defendant Latham filed a motion for summary disposition, arguing that plaintiff would be unable to establish that Latham proximately caused Hallman's death or even that death was the result of suicide. Latham argued that none of the evidence, including the Medical Examiner's report and the deposition testimony of plaintiff's expert, Dr. Shiener, established, more likely than not, that Hallman's death was a suicide. Latham asserted that since the cause of death was unknown, plaintiff could present only possibilities, or mere speculation and conjecture, that a different result would have occurred had Hallman been kept in the foster care home. All of the remaining defendants filed written concurrences in Latham's motion. In a supplemental brief, Latham submitted an affidavit from another forensic pathologist, Dr. Werner Spitz, attesting that there was no evidence at the time of autopsy that Hallman died as a result of suicide or homicide, nothing in the autopsy protocol to support drowning as a cause of death, and that more likely than not Hallman died as a result of a sudden cardiac event and could have died at any place and at any time.

Plaintiff responded that the medical examiner's report and certificate of death both indicated that Hallman died of drowning, and that plaintiff's expert opined that Hallman either committed suicide or was so disorganized that he accidentally fell and drowned.

Following a hearing on the motion, the trial court denied Latham's motion, finding that there was a question of fact as to whether the home was negligent. The court stated:

The deceased, Mr. Hallman, was a resident and in the custody of the Latham Foster Care Home. He left the home, it is a question of fact whether there was negligence on the part of the home where he resided, so the court will deny that motion for summary disposition.

The court also stated that a question of fact existed with regard to whether Hallman "died at drowning."

The court also heard arguments from defendants CCMS and Moore, as well as from Dr. Raju and Holy Cross Hospital, with regard to the motion. Counsel for Dr. Raju argued that Hallman "was not in Dr. Raju's or the hospital's custody and control at the time of the injury" and that "there is not only no duty because he wasn't in our custody and control, but there is no causation as well." The court granted summary disposition to Moore and CCMS on the ground that once Hallman was at the Latham home, those defendants "no longer had any involvement with the deceased, nor did they have any control over him." The court granted summary disposition as to the hospital and Dr. Raju on the ground that they had no further duty to Hallman once he became a resident of the Latham home because Hallman was in the "custody and care" of Latham.

Plaintiff first argues that the only issue addressed and briefed by Latham, and concurred in by all defendants, pertained to proximate cause and, therefore, the trial court erred by granting summary disposition to the remaining defendants on the ground that they did not have "custody and control" of Hallman and therefore no longer owed any duty to him. Plaintiff contends that it is manifestly unjust for the trial court to sua sponte dispose of issues not raised by the parties without affording the plaintiff a fair opportunity to be heard. The sole authority cited by plaintiff is the concurring opinion of former Judge Corrigan in *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84, 88-90; 492 NW2d 460 (1992).

In *Haji*, the plaintiff brought an action seeking damages resulting from the defendants' failure to procure workers' compensation insurance coverage requested by the plaintiff and to so notify the plaintiff. The plaintiff alleged negligence and breach of contract. The trial court, on the day set for trial, reopened the defendants' motion for summary disposition, which had been denied a year earlier, raised new issues, and granted summary disposition for the defendants. On appeal, this Court noted that "The procedure followed in this case was, at best, questionable. We do not address the procedural irregularities, however, because each of the court's conclusions on the merits was erroneous, and we reverse on that ground." *Id.* at 87.

In her concurrence Judge Corrigan opined that the trial court committed procedural error in dismissing, on its own motion, on the date set for trial, the plaintiffs' contract and negligence claims without prior notice to the plaintiff or a fair opportunity to be heard. *Id.* at 88-90. She opined that a court that fails to afford a plaintiff such notice and an opportunity to respond has no authority to grant summary disposition.

Judge Corrigan's concurring opinion in *Haji* is neither binding nor based on facts similar to those in the present case. First, in *Haji*, a motion for summary disposition was not pending before the court; rather, the court granted summary disposition on its own motion. Here, the record clearly reveals that a motion for summary disposition, concurred in by all defendants, was before the court. Second, in *Haji*, the court raised issues on grounds that were never raised in the pleadings or in the defendants' previously denied motion for summary disposition. Here, duty is clearly an element of plaintiff's causes of action and was disputed by defendants in their answers to the complaint. The concerns in *Haji*, primarily the lack of notice and resulting lack of an opportunity to prepare a response to an issue not previously identified by the parties in their pleadings, are not implicated in the present case. Plaintiff has failed to demonstrate that the trial court had no authority to grant summary disposition under the circumstances presented in this case. Indeed, under MCR 2.116(I)(1), "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."

Plaintiff also argues that summary disposition was improperly granted in favor of CCMS and Moore (collectively referred to as CCMS) because CCMS owed Hallman a duty to place him in an adult foster care home qualified for "Contract IIA" residents as well as a duty to provide the home with information regarding Hallman's background. Plaintiff also argues that CCMS' breach of duty was the proximate cause of Hallman's death. Existence of duty is a question of law to be decided by the court, and summary disposition is appropriate under MCR 2.116(C)(8) if as a matter of law defendant owed no duty to plaintiff under the alleged facts. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). The nature of any duty owed by a defendant is a question of the general standard of care which, like the existence of a duty, is a question of law to be decided by the court and reviewed de novo by this Court. *Moning v Alfonso*, 400 Mich 425, 438; 254 NW2d 759 (1977).

Here, Hallman was not adjudged mentally incompetent nor was his freedom of movement restricted upon his release from the hospital. Rather, Dr. Raju released Hallman from the hospital to be placed in an adult foster care facility because Hallman "needed supervision because he had a history of not complying with his treatments." Dr. Raju explained that Hallman needed supervision "with respect to giving medication, monitoring eating and sleeping, attending to ADL's and self-care." CCMS' duty was therefore to place Hallman with a facility that would

provide assistance with daily living needs. CCMS fulfilled this duty by placing Hallman at an approved adult foster care facility.

Plaintiff contends that CCMS breached its duty to place Hallman as a “Contract IIA” resident and that Hallman would not have wandered away from the facility if he had been designated a “Contract IIA” resident. The record is not clear with regard to whether CCMS was aware of Dr. Raju’s recommendation for “Contract IIA” placement before the decision was made to place Hallman at the Latham facility. But evidence was presented that the distinction between a “general” resident and a “Contract IIA” resident is one of degree, not kind. A “Contract IIA” placement involves a higher level of care than a “general” placement. A “Contract IIA” designation does not permit a facility to restrain a resident’s freedom of movement. Indeed, Dr. Raju explained that the level of supervision for a “Contract IIA” placement would require the facility to be aware of the resident’s whereabouts, but not that a staff member be with the resident twenty-four hours a day. He further explained that he would expect that a “Contract IIA” resident would be permitted to leave the facility alone and without being accompanied. Thus, even if CCMS breached a duty to place Hallman as a “Contract IIA” resident, CCMS’ action in placing Hallman as a “general” resident was not the cause in fact of Hallman’s injury. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994) (in determining whether injury to a plaintiff was proximately caused by a defendant’s action, a court first considers whether the defendant’s action was the cause in fact of the injury, so that “but for” defendant’s conduct the injury would not have occurred).

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Bill Schuette