

STATE OF MICHIGAN  
COURT OF APPEALS

---

ELMA BOGUS, Personal Representative of the  
Estate of ROBERT BOGUS, Deceased,

UNPUBLISHED  
January 24, 2006

Plaintiff-Appellant,

v

MARK SAWKA, M.D. and MARK SAWKA,  
M.D., P.C.,

No. 262531  
Wayne Circuit Court  
LC No. 03-319085-NH

Defendants-Appellees.

---

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

CAVANAGH, P.J. (*dissenting*).

I respectfully dissent as to the resolution of the second issue on appeal—whether the trial court erred in dismissing plaintiff’s negligence claim against Dr. Sawka. The trial court dismissed this direct negligence claim after concluding that it was based on the negligence of the nurse practitioner. Because plaintiff did not support her claim of negligence with regard to the nurse practitioner’s actions, the claim against Dr. Sawka for failure to supervise the nurse was also dismissed. On appeal plaintiff argues that the trial court misapprehended her claim against Dr. Sawka. Plaintiff argues that Dr. Sawka, in essence, was ultimately responsible for providing competent medical care to plaintiff’s decedent and her claim of direct negligence against Dr. Sawka was not predicated on the nurse practitioner’s negligence but on his own negligence.<sup>1</sup> Plaintiff alleges that Dr. Sawka should have concluded that the decedent was experiencing a cardiac episode that required referral for testing or other treatment after reviewing the nurse practitioner’s treatment notes. The affidavit of merit submitted by plaintiff comports with this argument in that one of the allegations was that Dr. Sawka failed to “timely perform appropriate lab and diagnostic testing, including troponin levels and an EKG and/or for failing to refer her decedent to an emergency room.” In other words, this negligence claim is predicated on Dr. Sawka’s alleged failure to properly exercise his medical judgment in light of the symptoms presented by the decedent, which he was aware of after reviewing the nurse practitioner’s treatment notes. I would conclude that there is a genuine issue of material fact as to the issue of Dr. Sawka’s negligence and, thus, would reverse the trial court as to the dismissal of this claim.

---

<sup>1</sup> As our Supreme Court noted, nurses do not engage in the practice of medicine, i.e., “the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint . . . .” *Cox v Flint Bd of Hosp Mgrs*, 467 Mich 1, 19; 651 NW2d 356 (2002).

Because plaintiff did not raise the issue whether the trial court properly dismissed the claim of negligence against the health care facility, it need not be addressed.

I would reverse as to the negligence claim against Dr. Sawka.

/s/ Mark J. Cavanagh