

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AARON BROWN,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEMS, d/b/a  
HENRY FORD HOSPITAL,

Defendant-Appellee.

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UNPUBLISHED

May 3, 2007

No. 273441

Wayne Circuit Court

LC No. 06-618488-NO

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7). We affirm. This appeal was decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedure

On June 30, 2004, plaintiff sought treatment at defendant hospital in Detroit. After conducting both physical and psychological examinations, plaintiff's doctors determined that he was at risk of committing suicide and should be restrained. Because plaintiff refused to cooperate with nurses or security guards, the hospital employees forcibly strapped him to a gurney. On June 28, 2006, plaintiff filed suit alleging that defendant, through its agents, servants or employees, committed false imprisonment, assault, and battery. The trial court, finding that the action sounded in medical malpractice, dismissed the complaint on the ground that plaintiff failed to comply with the procedural requirements set forth in MCL 600.2912b and MCL 600.2912d.

II. Analysis

On appeal, plaintiff asserts that the trial court erred in determining that his complaint alleged a cause of action for medical malpractice.

A. Standard of Review

This Court reviews de novo a trial court's decision to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Summary

disposition under MCR 2.116(C)(7) is appropriate where the claim is barred by an applicable statute of limitations. See *Geralds v Munson Healthcare*, 259 Mich App 225, 229-230; 673 NW2d 792 (2003). In making a decision under this subrule, courts must “consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it.” *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich 411, 419; 684 NW2d 864 (2004).

### B. Medical Malpractice

In *Bryant, supra*, at 422, our Supreme Court determined that a “*claim* sounds in medical malpractice” if two conditions are met. [Emphasis added]

A medical malpractice claim is distinguished by two defining characteristics. First, medical malpractice can occur only within the course of a professional relationship. Second, claims of medical malpractice necessarily raise questions involving medical judgment. Claims of ordinary negligence, by contrast, raise issues that are within the common knowledge and experience of the fact-finder. Therefore, a court must ask two fundamental questions in determining whether a claim sounds 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 these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions. [Citations omitted.]

Further, under MCL 600.2912b(1), a person may not commence an action alleging medical malpractice against a health professional or health facility unless he has given the professional or facility written notice not less than 182 days before commencement of the action. *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 43-44; 594 NW2d 455 (1999). Additionally, under MCL 600.2912d(1), a plaintiff in medical malpractice case must submit an affidavit of merit signed by a health professional along with his complaint. *Id.*, 44. Dismissal without prejudice is the appropriate remedy for noncompliance with either of these provisions. *Id.* 47-48; *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 714-715; 575 NW2d 68 (1997). Although a plaintiff may re-file a claim dismissed in this manner, he must still comply with the applicable statute of limitations. *Scarsella v Pollak*, 461 Mich 547, 551-552; 607 NW2d 711 (2000). The two-year period of limitations set forth in MCL 600.5805(6) generally applies in medical malpractice actions. *Bryant, supra*, 432.

### C. Intentional Torts In Medical Malpractice

In the instant case plaintiff asserts that the statutory prescriptions for filing a medical malpractice claim are inapplicable here because his claim alleges intentional torts, i.e., false imprisonment, assault, and battery, not medical malpractice or ordinary negligence. However,

our Supreme Court’s statutory analysis in *Bryant, supra*, created the two-prong test based upon the facts alleged in the plaintiff’s *claim* – rather than cause of action alleged therein<sup>1</sup> – to determine whether the claim fit into the statutory scheme of medical malpractice. Therefore, it is appropriate to analyze the alleged facts within plaintiff’s claim to determine whether it falls within Michigan’s medical malpractice scheme.

Regarding plaintiff’s relationship with defendant, it is undisputed that plaintiff sought treatment at defendant’s hospital for maladies other than depression; however, we are not persuaded that treatment for a subsequently discovered malady (depression) terminated the “course of the professional relationship.” By comparison, it would be illogical for a physician to perform surgery on a patient but claim the “course of the professional relationship” with the patient did not encompass subsequent treatment of a previously undiagnosed malady discovered during the course of the surgery. This Court defined medical malpractice as “the negligent performance by a physician or surgeon of the *duties devolved and incumbent upon him* on account of his contractual relations with his patient.” *Tierney v University of Michigan Regents*, 257 Mich App 681, 686; 669 NW2d 575 (2003). [Emphasis added.] Further, medical malpractice may lie if a medical professional fails to “fulfill the duty to exercise that degree of skill, care and diligence exercised by members of the same profession, practicing in the same or similar locality.” *Id.*, 686-687. Thus, Michigan law places the responsibility of continuing the course of the professional relationship upon medical care providers, based upon their assessment of a patient’s needs. In this case, plaintiff’s professional relationship arose when he entered defendant’s hospital seeking treatment, and it continued when he was diagnosed as being a danger to himself.

As to the second prong, the question is whether the circumstances underlying plaintiff’s claim – not his chosen cause of action – implicate or raise questions of medical judgment “beyond the realm of common knowledge and experience.” *Bryant, supra*. In *Dorris, supra*, at 46, our Supreme Court cited with approval this Court’s decision in *Waatti v Marquette Gen’l Hosp*, 122 Mich App 44, 49; 329 NW2d 526 (1982), which determined that restraining a patient is a question of “medical management” to be established by expert testimony. False imprisonment involves “an *unlawful* restraint on a person’s liberty or freedom of movement.” *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 17; 672 NW2d 351 (2003).<sup>2</sup> [Emphasis added.] However, “an affirmative defense is a matter that accepts the plaintiff’s allegations as true and even admits the establishment of the plaintiff’s prima facie case, but that denies that the plaintiff is entitled to recover on the claim for some reason not disclosed in the plaintiff’s pleadings.” *Cole v Ladbroke Racing*, 241 Mich App 1, 9; 614 NW2d 169 (2000). Defendant here raised the affirmative defense<sup>3</sup> that its restraint of plaintiff was lawful based on

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<sup>1</sup> The fact that the Supreme Court decided to compare medical malpractice to ordinary negligence does not preclude application of the test to alleged intentional torts.

<sup>2</sup> The elements of this tort consist of “(1) an act committed with the intention of confining another, (2) the act directly or indirectly results in such confinement, and (3) the person confined is conscious of his confinement.” *Moore v Detroit*, 252 Mich App 384, 387; 652 NW2d 688 (2002), quoting *Adams v Nat’l Bank of Detroit*, 444 Mich 329, 341; 508 NW2d 464 (1993).

<sup>3</sup> See Defendant’s Answer to Complaint, Affirmative Defenses and Jury Demand, p 5.

the medical diagnosis at the time. Therefore, assuming the facts below suffice to meet all the elements of false imprisonment, plaintiff cannot avoid implicating whether such confinement was medically necessary because the facts of his claim – specifically, those going to the lawfulness of the restraint – raise “questions of medical judgment beyond the realm of common knowledge and experience.” *Bryant, supra*, at 422. Thus implicated, the second part of the test is met.<sup>4</sup>

#### D. Dismissal Appropriate

In the instant case, the medical records submitted by defendant show that the incident complained of occurred during a professional relationship in which plaintiff sought medical treatment. Additionally, the decision to restrain plaintiff to prevent him from hurting himself appears to have been the result of the exercise of medical judgment. Thus, under the facts alleged by plaintiff, the trial court correctly determined that his claim sounded in medical malpractice rather than ordinary negligence. Therefore, dismissal for failure to comply with the requirements of MCL 600.2912b and MCL 600.2912d was appropriate.

Affirmed.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens

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<sup>4</sup> Because plaintiff’s claims for assault and battery arise out of defendant’s attempt to restrain him, are based on the same set of facts as his claim for false imprisonment, and because defendant’s affirmative defenses apply to these claims as well, we reach the same conclusion.