

STATE OF MICHIGAN
COURT OF APPEALS

CINDY ROMEOS, Personal Representative of the
Estate of CHRISTOPHER KATRANIS,

UNPUBLISHED
January 23, 2014

Plaintiff-Appellant,

v

THE SALVATION ARMY,

No. 312713
Genesee Circuit Court
LC No. 11-096222-NI

Defendant-Appellee.

Before: METER, P.J., and JANSEN and WILDER, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10), on the basis that her claim was barred by Michigan's wrongful-conduct rule. We affirm.

Since 2007, Christopher Katranis had struggled with substance-abuse issues, including abusing prescription medications and using heroin. As part of a criminal sentence, Katranis was ordered to participate in defendant's residential drug and alcohol center (ARC) located in Flint, Michigan. After participating in the ARC program for only one day, Katranis was discharged due to suspected misuse of his prescription Ambien.¹ Witnesses indicated that, after the center's evening "med call," Katranis had pills in his possession, was taking pills, and was giving pills to other clients in violation of the center's rules. ARC staff found a prescription Ambien bottle in Katranis's belongings with only one pill remaining. Apparently, Katranis was somehow able to obtain the prescription bottle, rather than a single dose, during the center's supervised "med call." Around midnight, after failing to cooperate with a drug screen, Katranis and Nettell, a client with a heroin addiction who subsequently admitted that he and Katranis were under the influence of Ambien, left the center after ARC staff told them to leave due to their apparent use of drugs and noncompliance during the subsequent investigation. At the time Katranis left the center, he was clearly in a compromised state, described by witnesses as "high on something," "incoherent," "erratic," "barely able to walk," "unable to sit still," "spacey," "unable to understand" with "slobber running down his mouth," and "in rough condition."

¹ Ambien is the brand name for zolpidem, which is used to treat insomnia.

Shortly after leaving the center, Nettell's girlfriend picked Nettell up in a vehicle and offered a ride to Katranis, who had no place to go. According to Nettell's girlfriend, Katranis was asking Nettell to "go and get drugs." They went to the home of Nettell's friend, Enzor, a known heroin user. It is not entirely clear what transpired at Enzor's home, but witnesses described Katranis as "passed out on the couch," going back and forth into the bathroom, and "walking weird" and "acting messed up" when he came back from the bathroom. At some point, they decided Katranis needed medical attention and Enzor took him to the hospital, dropped him off at the emergency room entrance, and quickly left. When Katranis arrived at the hospital, he was unconscious, completely unresponsive, and in cardiac arrest. At the hospital, police officers observed needle marks on Katranis's forearm. Katranis was placed on a ventilator but, unfortunately, died approximately one week later.

Toxicology reports revealed the presence of heroin metabolites, indicating that Katranis had ingested heroin before his admission into the hospital, and zolpidem (Ambien), with his levels indicating that he more than likely took several doses. According to Michele Glinn, Ph.D., plaintiff's toxicology expert, the combination of zolpidem with heroin is potentially life-threatening and can cause cessation of respiration followed by cardiac arrest. The medical examiner identified Katranis's cause of death as heroin toxicity from the consumption of heroin. None of the witnesses at Enzor's home on the night in question observed Katranis use heroin. The witnesses also denied using heroin themselves, although Enzor and his father also had needle marks on their arms. There was no evidence of drug use in plain view at Enzor's home.

Plaintiff, Katranis's mother, as personal representative of Katranis's estate, filed this action alleging that defendant was negligent in failing to adequately secure Katranis's prescribed medication, failing to supervise the administration of his medication, and "kicking" Katranis, a drug addict, out of the center with knowledge of his "highly intoxicated" state, which ultimately led to his death. Defendant moved for summary disposition arguing that Katranis's wrongful conduct in misusing his prescribed medication and using heroin barred plaintiff's claim under Michigan's wrongful-conduct rule. The trial court agreed and granted summary disposition in favor of defendant.

On appeal, plaintiff claims that the trial court erred by granting summary disposition of her cause of action. We review de novo the trial court's grant of summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), which tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under (C)(10), a reviewing court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. MCR 2.116(G)(5); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id.* Summary disposition is properly granted if the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

Application of Michigan’s wrongful-conduct rule presents a question of law subject to de novo review. See *Brackett v Focus Hope, Inc.*, 482 Mich 269, 275; 753 NW2d 207 (2008).

Michigan has long recognized the wrongful-conduct rule, a common law doctrine that precludes a plaintiff from recovering when his claim is based in whole, or in part, on the plaintiff’s wrongful conduct. *Orzel v Scott Drug Co.*, 449 Mich 550, 558-559; 537 NW2d 208 (1995); *Hashem v Les Stanford Oldsmobile, Inc.*, 266 Mich App 61, 89; 697 NW2d 558 (2005). “To implicate the wrongful-conduct rule, the plaintiff’s conduct must be prohibited or almost entirely prohibited under a penal or criminal statute” and the wrongful conduct must be serious in nature. *Id.* at 561; see also *Hashem*, 266 Mich App at 89. Further, “for the wrongful-conduct rule to apply, a sufficient causal nexus must exist between the plaintiff’s illegal conduct and the plaintiff’s asserted damages.” *Orzel*, 449 Mich at 564.

Although it is undisputed that Katranis’s use of heroin, by itself, or in combination with Ambien, caused his injury and death, it does not necessarily follow that plaintiff’s claim is automatically barred under the wrongful-conduct rule. Instead, to implicate the wrongful-conduct rule, the conduct must be serious in nature and prohibited or almost entirely prohibited under a penal or criminal statute. We conclude that Katranis’s wrongful conduct in possessing and using controlled substances satisfied this requirement, thereby implicating the wrongful-conduct rule.

Controlled substances are regulated by the Public Health Code, MCL 333.7201 *et seq.* *Bloomfield Twp v Kane*, 302 Mich App 170, 178; 839 NW2d 505 (2013).² “Under the controlled substances act, transactions involving controlled substances are almost entirely prohibited.” *Orzel*, 449 Mich at 563. The controlled substance provisions of the health code specifically prohibit the use and possession of controlled substances and provide criminal penalties for such conduct. MCL 333.7403(1) and (2)(b)(ii); MCL 7404(1) and (2)(b); see also *People v Hardy*, 188 Mich App 305, 310; 469 NW2d 50 (1991). MCL 333.7404(1) and (2)(a) prohibit the use of a schedule 1 controlled substance classified as a “narcotic drug,” which is punishable by imprisonment for up to one year, or a fine of \$2,000, or both.

The undisputed evidence shows that, at some point during the night after defendant discharged Katranis from the ARC, Katranis used heroin. Ingestion of heroin is conduct prohibited under the controlled substances act.

Plaintiff contends that Katranis could not have formed the requisite intent to use or possess a controlled substance, considering his highly intoxicated state. There is little evidence on the record regarding the circumstances surrounding Katranis’s actual heroin use. Witnesses at Enzor’s home on the night in question denied observing Katranis using heroin and denied using

² Heroin is classified as a schedule 1 controlled substance. MCL 333.7212(1)(b); *People v Collins*, 298 Mich App 458, 462; 828 NW2d 392 (2012). Ambien, the brand name for zolpidem, is classified as a schedule 4 controlled substance pursuant to administrative rule. *Kane*, 302 Mich App at 173, 184.

heroin themselves, despite the presence of needle marks on some of their arms. Nor did police officers view any evidence of drug use in plain view in the home. The witnesses' statements clearly indicated that Katranis appeared to be in an intoxicated state after leaving defendant's center on the night in question. Despite his apparent intoxicated state, Katranis was asking to "go get drugs," from which it is reasonable to infer that he desired drugs and had the capacity to know that he was using controlled substances on the night in question. See MCL 333.7404(1). Katranis's extensive history of drug use, including heroin, also indicates that he had experience using heroin and thus knew that he was using a controlled substance at the time he used it. Further, witness accounts indicated that Katranis kept going in and out of the bathroom and, when Katranis came out of the bathroom, he was "walking weird and acting messed up."

This circumstantial evidence supports a reasonable inference that Katranis was aware that he was using a controlled substance at the time he ingested heroin, despite his apparently intoxicated state from his misuse of his prescription Ambien. Indeed, our Courts have recognized that "[a]n actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499 (2003) (citation omitted). We conclude that the evidence adequately established that Katranis knowingly used heroin in violation of MCL 333.7404(1).

We recognize that there is no evidence that Katranis obtained his prescription Ambien illegally, without a valid prescription, or by any fraudulent means. However, Katranis's conduct was nonetheless prohibited under the section of the health code regulating prescription drugs. MCL 333.17766(e) prohibits the knowing possession of a prescription drug for other than a legitimate therapeutic purpose, and MCL 333.17766(f) prohibits giving away a prescription drug. An individual who violates these provisions is guilty of a misdemeanor, MCL 333.17766, which is punishable by up to 90 days in jail and a \$500 fine, MCL 750.504.

It is beyond question that Katranis knowingly possessed his prescription Ambien for a use other than a legitimate therapeutic purpose, conduct prohibited by MCL 333.17766(e), as evidenced by his ingestion of more than his prescribed dosage,³ "passing pills around," and giving pills to other individuals. Such conduct is prohibited or "almost entirely prohibited" under a penal statute. *Orzel*, 449 Mich at 561.

Moreover, Katranis's use of heroin and misuse of his Ambien prescription was sufficiently serious in nature to implicate the wrongful-conduct rule. *Id.* at 563-564. As the *Orzel* Court explained when considering the serious nature of the plaintiff's misusing and fraudulently obtaining his prescription drugs:

³ Plaintiff concedes that Katranis took more than his prescribed dosage and was "highly intoxicated." In fact, plaintiff's cause of action is based on the fact that Katranis gained access to his prescription Ambien and was able to consume several doses due to defendant's alleged negligence.

Under the controlled substances act, transactions involving controlled substances are almost entirely prohibited. Improper use of a controlled substance on just one occasion can have a substantially detrimental, and possibly even permanent, effect on the health of the user. Illegal possession and use of controlled substances may also produce widespread social loss and lead to further criminal acts. [*Id.* at 563.]

As in *Orzel*, the detrimental effect of transactions involving controlled substances is clearly evident in the present case. We conclude that Katranis’s wrongful conduct rose to the level of serious misconduct—sufficiently serious to bar plaintiff’s cause of action under the wrongful-conduct rule. *Id.* at 561-564.

We also find a sufficient causal nexus exists between Katranis’s wrongful conduct and his death. *Id.* at 564-565. It is undisputed that Katranis died of “heroin toxicity,” either from his ingestion of heroin or from his ingestion of a combination of heroin and Ambien. Katranis’s own wrongful conduct in using heroin and misusing his prescription Ambien caused his death and gave rise to plaintiff’s cause of action. Further, plaintiff cannot establish her claim that defendant failed to safeguard Katranis’s access to his medication or adequately supervise the administration of the medication without relying on Katranis’s illegal misuse of his prescription Ambien. Likewise, plaintiff cannot establish her claim that defendant negligently discharged Katranis from the center in a compromised state without relying on his misuse of his prescription Ambien. Thus, Katranis’s wrongful conduct is an integral and essential part of plaintiff’s cause of action. See *id.* at 565. We find no error in the trial court’s ruling that plaintiff’s cause of action is barred by Michigan’s wrongful-conduct rule.

Plaintiff next argues that the culpability exception to the wrongful-conduct rule is applicable and precludes the wrongful-conduct rule from barring her cause of action. We disagree. In *Orzel*, 449 Mich at 569, our Supreme Court recognized a “culpability exception” to the wrongful-conduct rule:

An exception to the wrongful-conduct rule may apply where both the plaintiff and defendant have engaged in illegal conduct, but the parties do not stand in *pari delicti*. In other words, even though a plaintiff has engaged in serious illegal conduct and the illegal conduct has proximately caused the plaintiff’s injuries, a plaintiff may still seek recovery against the defendant if the defendant’s culpability is greater than the plaintiff’s culpability for the injuries, such as where the plaintiff has acted under circumstances of oppression, imposition, hardship, undue influence, or great inequality of condition or age. [Citations and quotations omitted.]

For this exception to apply, the defendant must be “significantly more culpable than the plaintiff” or “egregiously more at fault than a plaintiff.” *Stopera v DiMarco*, 218 Mich App 565, 571 n 5; 554 NW2d 379 (1996).

Plaintiff contends that there is a “great inequality of condition” between Katranis, who had a significant drug addiction, and defendant, a substance abuse treatment center with

influence and authority over Katranis. In *Orzel*, 449 Mich at 570, the Court rejected a similar argument from the plaintiff, who was allegedly legally insane due to his drug use:

[The plaintiff's] status does not prompt application of the culpability exception in this case because it was [the plaintiff] who, by his continuous illegal use of Desoxyn, caused himself to become both addicted and insane. Certainly, we regard his status as a tragedy. However, because [the plaintiff] is ultimately responsible for causing any "great inequality of condition" in the first place, we conclude it would be inappropriate to apply the culpability exception under these facts.

Similarly, in the instant case, Katranis caused himself to become addicted to drugs and was "ultimately responsible for causing any 'great inequality of condition in the first place.'" Therefore, defendant cannot be significantly more culpable than Katranis whose drug use caused his death. *Id.* We do not believe, under the circumstances of this case, that defendant "played a pivotal role" in making Katranis's drug use possible or "engaged in the illegal conduct" that undisputedly caused his death. *Id.* at 569-570. Significantly, Katranis's use of heroin allegedly occurred hours after he left defendant's center. As in *Orzel*, it would be inappropriate to apply the culpability exception in this case.

We likewise reject plaintiff's argument that defendant's illegal conduct in failing to obtain a license to operate its substance abuse center in violation of Michigan law warrants the application of the culpability exception to the wrongful-conduct rule.⁴ Defendant's failure to obtain a license, if required by MCL 333.6233, would constitute illegal conduct that might be potentially relevant to defendant's alleged negligence in violating the standard of care. However, defendant's unlicensed status does not warrant application of the culpability exception in this case. Plaintiff does not allege that defendant violated any specific laws or regulations that bear directly on its alleged wrongful conduct (i.e., the safeguarding and administration of Katranis's prescribed medication or discharging Katranis from the program due to his suspected drug use). Accordingly, defendant's unlicensed status, whether in violation of Michigan law or not, is inconsequential to the application of the wrongful-conduct rule in this case.

We affirm the trial court's grant of defendant's motion for summary disposition on the ground that plaintiff's cause of action was barred by Michigan's wrongful-conduct rule. Given our resolution of this issue, we need not decide whether plaintiff's claim was also barred under MCL 600.2955b.

⁴ It is undisputed that defendant did not hold a Michigan license to operate its substance abuse program in December 2009, when Katranis participated in defendant's substance abuse treatment program. The parties, however, disagree regarding whether defendant is required to obtain a license to operate its substance abuse center under MCL 333.6233(1) or whether it is excepted from licensure under MCL 333.6233(3). We do not address this issue because it is not necessary for the resolution of the issue at hand.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder