IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Nelson Moody, as independent administrator of the estate of Debra Griffin, Deceased, Plaintiff, v. Chantal Tinfang, M.D., County of Cook d/b/a John H. Stroger Hospital, Daniela Filip-Kovacs, M.D., Mount Sinai Hospital Medical Center of Chicago, and the Mount Sinai Community Foundation d/b/a Sinai Medical Group, Defendants.	)	No. 19 L 13883

MEMORDANUM OPINION AND ORDER

To hold a hospital liable under the doctrine of apparent agency for the acts of independent contractors, a plaintiff must prove the hospital held the independent contractor out as an employee, the hospital was aware of such representations and acquiesced, and the plaintiff relied on those representations. Here, the plaintiff provided sufficient evidence to establish the "holding out" and "reliance" elements; consequently, the defendant's motion for summary judgment must be denied.

Facts

On April 15, 2018, Debra Griffin experienced shortness of breath. Paramedics transported her to St. Bernard Hospital where doctors diagnosed Griffin with an abnormal fluid buildup around her heart. Later the same day, doctors approved Griffin's transfer to Mount Sinai Hospital Medical Center ("MSH"), which could provide a higher level of medical care. Doctors at MSH admitted Griffin with a hypertensive emergency, acute heart failure, and pulmonary edema.

When MSH admitted Griffin on April 15, 2018, Lenardo Griffin, her son, executed a document entitled "Consent for Treatment & Disclosure That Physicians are Not Employees." The consent form states, in part:

> PHYSICIANS ARE NOT EMPLOYED BY THE HOSPITAL. I understand that the physicians who provide services to me during

my stay are not employed or paid by the hospital, and the hospital does not in any way control or direct their care of patients. Rather, these physicians (including, but not limited to, my personal physician, physicians associated with Mount Sinai Community Foundation d/b/a Sinai Medical Group, emergency department physicians, radiologists, pathologists, anesthesiologists, on-call physicians, consulting physicians, surgeons, obstetricians, other specialists and any allied health earn providers working with these physicians) are independent medical practitioners who have been permitted to use the hospital's facilities for the care and treatment of their patients. I understand that each of these independent medical practitioners will bill me separately for their services. My decision to seek care at this hospital is not based upon any understanding, representation or advertisement that the physicians who will be treating me are employees, agents or apparent agents of the hospital.

I understand that I have the right to select my own physicians and the right to change physicians at any time during my hospitalization (including, but not limited to, my personal physician, physicians associated with Mount Sinai Community Foundation d/b/a Sinai Medical Group, emergency department physicians, radiologists, pathologists, anesthesiologists, on-call physicians, consulting physicians, surgeons, obstetricians, other specialists and any allied health care providers working with these physicians).

On April 19, 2018, Dr. Daniela Filip-Kovacs performed a percutaneous coronary intervention by placing two metal stents in Griffin's arteries. Filip-Kovacs then placed Griffin on a one-month, triple antithrombotic regimen of aspirin, Plavix, and Coumadin. On April 24, 2018, Filip-Kovacs discharged Griffin. The discharge instructions indicated Griffin was to have a blood draw two days after discharge and return to see Filip-Kovacs on May 10, 2018.

On April 27, 2018, Griffin returned to MSH to see Filip-Kovacs. Filip-Kovacs did not order a blood-level check at that time. On May 9, 2018, Griffin saw her primary care provider, Dr. Chantal Tinfang. Despite a change in Griffin's triple-therapy regime, Tinfang did not order a blood-level check. Tinfang also ordered that Griffin's triple antithrombotic therapy regimen be changed. Tinfang discontinued Warfarin and prescribed Xarelto.

On May 21, 2018, Griffin presented to the emergency room of John H. Stroger, Jr. Hospital of Cook County. Doctors diagnosed Griffin with an acute gastrointestinal bleed and hemorrhagic shock. Griffin later acceded to

cardiac arrest. On May 26, 2018, Griffin died from the effects of the hemorrhagic shock.

On January 25, 2021, Nelson Moody, as independent administrator of Griffin's estate, filed a third amended complaint. The complaint alleges among other things that no one ever told Griffin she had to undergo regular blood tests. The complaint alleges that greater care should have been taken in this regard given Griffin's age—65—and slight stature—89 pounds—and that she had previously been diagnosed with chronic renal disease.

Count four is a cause of action for medical negligence directed against MSH under the Wrongful Death Act. 740 ILCS 180/0.01 – 2.2. Count four alleges that Filip-Kovacs was an actual or apparent agent of MSH and that she acted within the scope of her employment while treating Griffin. The count alleges that MSH owed Griffin a duty of professional medical treatment and that MSH breached its duty by failing to: (1) inform Griffin of the high risks of the triple-therapy regimen; (2) inform Griffin of the importance and need for frequent blood checks; (3) refer Griffin to an anticoagulant clinic; (4) refer Griffin to a cardiologist for management of anticoagulant triple therapy; and (5) monitor Griffin's blood level at her April 27, 2018, visit. These failures are alleged to have proximately caused Griffin's death.

The case proceeded to discovery. In her interrogatory answers, Filip-Kovacs indicted that co-defendant Mount Sinai Group employed her, not MSH. At her deposition, Filip-Kovacs confirmed that Mount Sinai Group was her employer.

On February 17, 2022, MSH filed a summary judgment motion. The motion presents two related arguments—that Filip-Kovacs was neither an agent nor an apparent agent of MSH. The parties fully briefed the motion and provided various exhibits.

Analysis

MSH brings its summary judgment motion pursuant to the Code of Civil Procedure. The code authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A defendant moving for summary judgment may disprove a plaintiff's case showing the plaintiff lacks sufficient

evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

If a defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.*

Moody's cause of action against MSH in count four is grounded in negligence. Further, the allegations against MSH are based solely on the theory of *respondeat superior* for Filip-Kovacs' conduct, not on any direct wrongdoing by MSH. In other words, MSH's motion is contingent solely on the issue of actual or apparent agency.

Of the two arguments MSH presents, the first is easily addressed. It is uncontested that Mt. Sinai Group, not MSH, employed Filip-Kovacs. Given that fact, Filip-Kovacs was not an actual agent of MSH.

The argument that Filip-Kovacs was an apparent agent of MSH is more nuanced. To establish apparent agency, a plaintiff must prove that (1) the principal or its agent acted in a manner that would lead a reasonable person to conclude that the alleged tortfeasor was the principal's employee or agent; (2) the principal knew of and acquiesced in the agent's acts; and (3) the plaintiff acted in reliance on the principal's or agent's conduct. *Gilbert v. Sycamore Mun. Hosp.* 156 Ill. 2d 511, 525 (1993); *Wilson v. Edward Hosp.*,

2012 IL 112898, ¶ 18. If a principal creates the appearance of authority, the principal may not deny the existence of the agency relationship to prejudice the plaintiff who has been led to rely on the agent's appearance of authority. *Gilbert*, 156 Ill. 2d at 523-24 (quoting *Union Stock Yards & Transit Co. v. Mallory, Son & Zimmerman Co.*, 157 Ill. 554, 565 (1895)).
Whether an agent is authorized to act is a question of fact. *Id.* at 524 (citing *Barkhausen v. Naugher*, 395 Ill. 562, 566 (1946)). Whether the plaintiff knows the agent lacks authority is also a question of fact. *Id.* (citing *Schoenberger v. Chicago Transit Auth.*, 84 Ill. App. 3d 1132, 1138 (1st Dist. 1980), citing, in turn, *Paine v. Sheridan Trust & Savings Bank*, 342 Ill. 342, (1930)).

The first two elements of apparent agency are typically considered together and are referred to as the "holding out" elements. *Id.* For the holding out elements of apparent agency, MSH relies primarily on the consent form that Lenardo Griffin executed explaining that the physicians at MSH are independent contractors. According to MSH, the consent form put both Griffin and her family on notice that all physicians at the hospital were independent contractors. MSH further points to Nelson Moody's deposition in which he testified that he and his brother, Lenardo, probably discussed the paperwork that Lenardo had filled out.

Those bare facts are wholly insufficient to support a factual conclusion that Griffin knew or had reason to know the physicians treating her at MSH were not MSH employees. Indeed, there are no facts in the record indicating that Griffin knew at any point in her nine-day admission at MSH that any physician treating her, including Filip-Kovacs, was an independent contractor. Further, MSH presents no executed power of attorney or other evidence showing that Leonardo Moody or any of his siblings had the legal authority to sign the consent form on their mother's behalf.

MSH relies to its detriment on *Wallace v. Alexian Brothers Medical Center*, a case that is plainly distinguishable. 389 Ill. App. 3d 1081 (1st Dist. 2009). In *Wallace*, the patient was a 14-year-old girl whose mother signed the consent form. In that situation, the court made plain that the mother signed the consent form while acting as the minor's legal representative. A similar scenario appeared in *Gore v. Provena Hospital*. 2015 IL App (3d) 130446 (mother signed consent on behalf of 10-year-old son). As the *Wallace* court pointed out, "to defeat . . . a [medical malpractice] claim, all that was required was some evidence to show that the plaintiff knew or should have known of the physician's independent contractor status. 389 Ill. App. 3d at 1088 (citing *Gilbert*, 156 Ill. 2d at 524-25; *James v. Ingalls Mem'l Hosp.*, 299 Ill. App. 3d 627, 633 (1st Dist. 1998); *Churkey v. G.A. Rustia*, 329 Ill. App. 3d

239, 245 (2d Dist. 2001)). Such evidence does not exist in the record in this case.

Seen in the converse, the holding out elements are satisfied if a hospital holds itself out as a provider of emergency room care without informing the patient that the care is provided by independent contractors. *Gilbert*, 156 Ill. 2d at 525. Further, a patient is not required to make a direct inquiry into the status of physicians working at the hospital. *Kane v. Doctors Hosp.*, 302 Ill. App. 3d 755, 761-62 (4th Dist. 1999). Rather, the burden is on the hospital to provide the patient with sufficient notice. *Id.* The factual record in this case, once again, provides the basis for a reasonable inference that MSH never informed Griffin that any of her physicians were independent contractors.

MSH in its reply brief attaches and relies on a decision from the Federal District Court for the Northern District of Illinois. *Houskin v. Sinai Health Sys.*, 2018 U.S. Dist. LEXIS 191180 (Nov. 8, 2018). MSH relies on *Houskin* because the court confronts the identical consent form at issue in this case. *Id.* at 4-5. The court found the consent form that Houskin signed was unambiguous, *id.* at 9, but also acknowledged that, over the course of her alleged negligent treatment at MSH, Houskin signed 12 consent forms informing her that the doctors treating her were not MSH employees. *Id.* at 8. Those facts are in sharp divergence from those here in which the consent form was presented only once, and not to Griffin but her son, and was not signed by Griffin but, again, by her son. In short, *Houskin* is not persuasive authority.

The third element of apparent agency is referred to as the "reliance" element. In a medical malpractice case, the reliance element is satisfied if the plaintiff reasonably relied on a hospital to provide medical care, rather than on a specific physician. *York v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 222 Ill. 2d 147, 194 (2006) (citing *Gilbert*, 156 Ill. 2d at 525). As the court in York explained:

> Upon admission to a hospital, a patient seeks care from the hospital itself, except for that portion of medical treatment provided by physicians specifically selected by the patient. If a patient has not selected a specific physician to provide certain treatment, it follows that the patient relies upon the hospital to provide complete care—including support services such as radiology, pathology, and anesthesiology—through the hospital's staff. If, however, a patient does select a particular physician to perform certain procedures within the hospital setting, this does not alter the fact that a patient may nevertheless still reasonably rely upon the hospital to

> provide the remainder of the support services necessary to complete the patient's treatment. Generally, it is the hospital, and not the patient, which exercises control not only over the provision of necessary support services, but also over the personnel assigned to provide those services to the patient during the patient's hospital stay. To the extent the patient reasonably relies upon the hospital to provide such services, a patient may seek to hold the hospital vicariously liable under the apparent agency doctrine for the negligence of personnel performing such services even if they are not employed by the hospital.

Id. at 194-95.

The record here is undisputed that Griffin did not select MSH as her care provider. Rather, doctors at St. Bernard Hospital transferred Griffin to MSH because it could provide a higher level of care. Courts have found that, even in instances in which a patient arrives in an unconscious state, the patient relies on the receiving hospital to provide proper care because the emergency personnel relied on the hospital's ability to provide the necessary medical services. *Monti v. Silver Cross Hosp.*, 262 Ill. App. 3d 503, 507-08 (3d Dist. 1994). *Monti* is persuasive here given that Griffin arrived at MSH in extremis and would not be expected to read, ask questions about, and eventually execute the consent form. Another court arrived at a similar conclusion. *McCorry v. Evangelical Hosp. Corp.*, 331 Ill. App. 3d 668, 674 (1st Dist. 2002) (if hospital refers patient to next available physician who patient has never met, reliance is a question of fact). In this instance, Griffin had never been treated at MSH before April 2018 and had never been treated by Filip-Kovacs before that time. Rather, the fair inference is that Griffin relied on MSH, not a particular physician, to provide the necessary care and treatment.

In sum, the issue here is not whether the consent form was unambiguous as MSH argues; rather, the issue is one of knowledge. Although Griffin's son signed the consent form containing the disclosure language, there is no evidence that Griffin was even placed on notice that her treaters at MSH, including Filip-Kovacs, were independent contractors. As for the reliance prong of apparent agency, the mere fact that MSH admitted Griffin through the emergency department is sufficient to establish reliance.

Conclusion

For the reasons presented above, it is ordered that:

The summary judgment motion of Mount Sinai Hospital Medical Center of Chicago is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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