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

Crystal Walton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 18 L 9308
Ingalls Memorial Hospital,	)	
Manoj Sreedharan, M.D. and	)	
Joanna Westerfield, PAC,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A medical negligence claim is viable against a hospital for a physician's negligence if the physician is the hospital's actual or apparent agent. The record presented establishes the plaintiff knew or should have known her medical providers were not the hospital's actual or apparent agents. For that reason, the hospital's summary judgment motion as to count one must be granted.

Facts

On November 14, 2017, Crystal Walton went to Ingalls Urgent Aid in Calumet City for an evaluation of a painful lump in her right groin. Walton chose to go to Ingalls Urgent Aid because it was close to her home. Ingalls Urgent Aid had posted a sign inside the facility's vestibule stating:

LEGAL NOTICE TO PATIENTS

DOCTORS IN THIS MEDICAL OFFICE BUILDING ARE NOT EMPLOYEES OR AGENTS OF

INGALLS MEMORIAL HOSPITAL

> The doctors and allied health professionals providing services to you in this medical office building are not employees or agents of Ingalls, but are independent medical practitioners who are tenants and who lease office space to care for their own patients.

Walton checked in at the reception area where she signed two consent forms. One form was entitled: "**LEGAL NOTICE TO PATIENTS PHYSICIANS ARE NOT EMPLOYEES OR AGENTS OF INGALLS MEMORIAL HOSPITAL OR THE UNIVERSITY OF CHICAGO MEDICINE**" and instructed the patient to, "**Please read carefully.**" The first paragraph stated that the "urgent aid physicians . . . and allied health care providers working with those physicians, are not employees or agents of Ingalls or The University of Chicago Medicine." The second paragraph stated:

> Your physicians and the allied health care professionals working with those physicians are independent medical practitioners who have been permitted to use Ingalls for the care and treatment of their patients. As independent medical practitioners, they exercise their own professional judgment in caring for their patients and they are not supervised or controlled by Ingalls or The University of Chicago Medicine.

Walton signed and printed her name under a paragraph stating:

> I have read and understand all of this form. I understand all of the information being provided to me in this document. I understand and agree that the physicians and the allied health care professionals working with those physicians are not employees or agents of Ingalls or The University of Chicago Medicine. By accepting this

form, I am saying that I understand and agree to what it says.

Walton then read and executed a second document entitled, "Consent for Treatment." The second paragraph of this document stated, in part:

> I have been informed and understand that physicians providing services to me at Ingalls, including but not limited to . . . Urgent Aid physicians . . . and allied health care providers working with those physicians are not employees, agents or apparent agents of Ingalls, but are independent medical practitioners who have been permitted to use Ingalls' facilities for the care and treatment of their patients. I acknowledge that these physicians and allied health care providers are not subject to the supervision or control of Ingalls, at that the employment or agency status of physicians and allied healthcare providers who treat me is not relevant to my selection of Ingalls for my care. I further understand that each physician will bill me separately. . . .

After signing the consent forms, Walton waited in the reception-waiting room. In that location, Ingalls had installed another sign stating, in part:

> **LEGAL NOTICE TO PATIENTS**
>
> **PHYSICIANS ARE NOT EMPLOYEES OR AGENCTS OF HOSPITAL**
>
> The physicians providing services to you at Ingalls, including but not limited to . . . allied health care providers working with those physicians, are not employees or agents of Ingalls, but are independent medical practitioners who have been permitted to use Ingalls for the care and treatment of their patients. Your physician

will bill you separately for their services. You have the right to choose your own physicians and the right to change physicians at any time.

A physician's assistant, Joanna Westerfield, then escorted Walton to an examination room. To get there, Walton passed by a third sign identical to the one in the reception-waiting room.

Westerfield treated Walton under the supervision of Dr. Manoj Sreedharan. Sreedharan did not see Walton at Ingalls Urgent Aid, but consulted with Westerfield during Walton's examination. Westerfield conducted a physical examination of Walton, diagnosed the lump as an abscess, drained it, administered intravenous antibiotics, and discharged Walton with a prescription for an oral antibiotic. Both Sreedharan and Westerfield wore badges identifying them as a physician and physician's assistant, respectively, and identifying them as independent practitioners.

Six days later, on November 20, 2017, Walton consulted with another physician. That physician diagnosed Walton with necrotizing fasciitis in the area of the lump. Walton was admitted to Ingalls Memorial Hospital for further treatment. The care and treatment Walton received at Ingalls Memorial Hospital is not at issue in this case.

On August 28, 2018, Walton filed her original complaint. On April 9, 2019, Walton filed an amended complaint, and on August 6, 2019, Walton filed the current, four-count, second amended complaint. Count one is a cause of action for negligence against Ingalls Memorial Hospital (IMH) vicariously for the conduct of its actual or apparent agents, including Sreedharan and Westerfield. Count two is a claim of institutional negligence against IMH, while counts three and four are negligence counts against Sreedharan and Westerfield, respectively.

On January 14, 2021, IMH filed a summary judgment motion as to count one. IMH argues, in essence, that Sreedharan

and Westerfield are not IMH employees or agents and, therefore, IMH cannot be held liable for their conduct. IMH attached various exhibits to its motion, including Sreedharan's and Westerfield's depositions in which they both deny any employment or agency relationship with IMH. Each testified that, as of November 14, 2017, Emergency Physicians Medical Group employed each provider.

Analysis

The Code of Civil Procedure 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 Ed. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). A defendant moving for summary judgment may disprove of a plaintiff's case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called "traditional test." *See Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish that 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.

Regardless of the approach, if the 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). Regardless of the defendant's approach, 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. N. 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.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

IMH adopts both evidentiary approaches in arguing that Walton has failed to raise a question of material fact as to Sreedharan's and Westerfield's alleged agency status. "Agency is a fiduciary relationship in which the principal controls the agent's conduct and the agent has authority to act on the principal's behalf. *Harris v. Symphony Countryside, LLC*, 2019 IL App (1st) 180160, ¶ 17 (citing *Zahl v. Krupa*, 365 Ill. App. 3d 653, 660 (2d Dist. 2006)). Agency may be actual or apparent. *Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 34. IMH argues that Sreedharan and Westerfield were neither IMH's actual nor apparent agents. Each argument is addressed seriatim.

Actual Agency

The *respondeat superior* doctrine permits a plaintiff to hold a principal vicariously liable for the plaintiff's injuries arising from the conduct of the principal's actual agents. *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶ 67 (citing *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 75 (1st Dist. 2008)). The proof necessary to establish actual agency, or *respondeat superior*, is: "(1) a principal/agent, master/servant, or employer/employee

relationship existed; (2) the principal controlled or had the right to control the conduct of the alleged employee or agent; and (3) the alleged conduct of the agent or employee fell within the scope of the agency or employment." *Wilson v. Edward Hosp.*, 2012 IL 112898, ¶ 18; *see also Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, ¶ 64. The "hallmark of agency" is the principal's right to control the manner in which the agent performs the work. *Simich v. Edgewater Beach Apt. Corp.*, 368 Ill. App. 3d 394, 402 (1st Dist. 2006) (quoting *Kaporovskiy v. Grecian Delight Foods, Inc.*, 338 Ill. App. 3d 206, 210 (1st Dist. 2003)).

In contrast, a principal does not control an independent contractor's work. As defined,

> [a]n independent contractor is one who undertakes to produce a given result but in the actual execution of the work is not under the orders or control of the person for whom he does the work but may use his own discretion in things not specified . . . [and] without his being subject to the orders of the [person for whom the work is done] in respect to the details of the work.

Horwitz v. Holabird & Root, 212 Ill. 2d 1, 13 (2004) (quoting *Hartley v. Red Ball Trans. Co.*, 344 Ill. 534, 539 (1931)). The disjunctive relationship means that a principal will generally not be held vicariously liable for an independent contractor's conduct. *Petrovich v. Share Health Plan of Ill., Inc.*, 188 Ill. 2d 17, 31 (1999). For that reason, hospitals are generally not liable for the actions of physicians who provide medical care as an independent agent outside hospital control. *Magnini v. Centera Health Sys.*, 2015 IL App (1st) 133451, ¶ 25 (citing *Wogelius v. Dallas*, 152 Ill. App. 3d 614, 621 (1st Dist. 1987) and *Buckholtz v. MacNeal Hosp.*, 337 Ill. App. 3d 163, 172 (1st Dist. 2003) ("the decision to treat a patient in a particular manner is generally a medical question entirely within the discretion of the treating physician and not the hospital")).

There is no evidence in the record establishing or from which it may be inferred that Sreedharan or Westerfield were Ingalls' actual agents. Each testified plainly and unequivocally that each was an employee of Emergency Physicians Medical Group; there is no evidence to the contrary. Walton does not attempt to overcome that hurdle, but go around it by relying on IMH's policies and procedures. Such an argument has previously been considered and rejected.

In *Magnini*, the court considered the effect of a hospital's policies, procedures, and by-laws on the patient care decisions by an independent-contractor-physician. The court held that absent any evidence linking patient care decisions to the hospital's administrative documents, those sorts of records were collateral to patient care and failed to show hospital control over a physician's independent medical judgment. 2016 IL App (1st) 133451, ¶ 32. Walton similarly goes far afield to rely on the table of contents to a manual and policies applicable to IMH's emergency department. First, there is no evidence that IMH and Ingalls Urgent Aid are corporate alter egos. Second, even if they were, the table of contents and the IMH policies do not present evidence from which it could even be inferred that they control the patient care decisions of independent contractors such as Sreedharan and Westerfield. Third, Walton's argument runs up against Sreedharan's and Westerfield's explicit testimony that IMH's policies and procedures did not apply to their patient care and treatment.

In short, the record fails utterly to support any claim of actual agency. Without a question of material fact as to actual agency, IMH's summary judgment motion as to actual agency must be granted.

Apparent Agency

The apparent authority doctrine originated in agency and was generally applied in contract law. *See Lynch v. Board of Ed. of Collinsville Comm. Unit Dist. No. 10* (1980), 82 Ill. 2d 415, 439

(1980) (J. Ryan dissenting and citing Restatement (Second) of Agency §§ 8, 27 (1958)). An agent possesses apparent authority through a principal's words or conduct indicating the principal either knowingly permits the agent to exercise such authority or holds out the agent as possessing such authority. *See State Sec. Ins. Co. v. Burgos*, 145 Ill. 2d 423, 431 (1991). "Apparent authority is that authority which a reasonably prudent person, in view of the principal's conduct, would naturally suppose the agent to possess." *Id.* at 432.

The Supreme Court applied the apparent authority doctrine to medical malpractice claims in *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511 (1993). Under *Gilbert*, a hospital may be vicariously liable for a physician's negligent acts or omissions, even if the physician is an independent contractor, unless the patient knows, or should have known, the physician was an independent contractor. *Id.* at 524. For apparent authority to apply to a medical malpractice scenario, the plaintiff must show:

> (1) the hospital, or its agent, acted in a manner that would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital; (2) where the acts of the agent create the appearance of authority, the plaintiff must also prove that the hospital had knowledge of and acquiesced in them; and (3) the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence.

Id. at 524-25.

The first two elements comprise the "holding out" requirement. *Yarbrough v. Northwestern Mem. Hosp.*, 2017 IL 121367, ¶ 30. For a hospital to be holding out, it need not make an express representation that a physician is an employee; rather, holding out is established if a hospital fails to inform a patient that the physician providing care and treatment is an independent contractor. *Id.* (citing *Gilbert*, 156 Ill. 2d at 525). The third

element addresses the issue of justifiable reliance. "[A] plaintiff's reliance is satisfied if the plaintiff relies upon the hospital to provide medical care, rather than upon a specific physician." *Id.* at ¶ 31 (citing *Gilbert*, 156 Ill. 2d at 525). "A 'critical distinction' is whether the plaintiff is seeking care from the hospital itself or whether the plaintiff is looking to the hospital merely as a place for his or her personal physician to provide medical care." *Id.*

The holding out elements typically turn on the clarity of consent forms informing a patient of a particular physician's independent contractor status. As has been acknowledged, "it is unlikely that a patient who signs such a [clear and unambiguous independent contractor disclaimer] can reasonably believe that her treating physician is an employee or agent of a hospital when the form contains specific language to the contrary." *Lamb-Rosenfeldt v. Burke Med. Group, Ltd.*, 2012 IL App (1st) 101558, ¶ 27 (citing *Wallace v. Alexian Brothers Med. Cntr.*, 389 Ill. App. 3d 1081, 1083, and *James by James v. Ingalls Mem. Hosp.*, 299 Ill. App. 3d 627, 632 (1998)). Put affirmatively,

> if a patient is placed on notice of the independent status of the medical professionals with whom he or she might be expected to come into contact, it would be unreasonable for a patient to assume that these individuals are employed by the hospital. It follows, then, that under such circumstances a patient would generally be foreclosed from arguing that there was an appearance of agency between the independent contractor and the hospital.

York v. Rush-Presbyterian-St. Luke's Med. Ctr., 222 Ill. 2d 147, 202 (2006).

There exists no question of material fact that IMH did not hold out either Sreedharan or Westerfield as apparent agents. First, the record includes photographs showing various signs Ingalls Urgent Aid posted in the vestibule, reception area, and near the examination rooms clearly stating the physicians and

allied healthcare workers at the facility were not IMH employees or agents, but independent practitioners. Second, the language contained in the consent forms Walton executed before her surgery was plain and unambiguous. One form stated, in all capital letters, bolded, and in large-point font, that the physicians at Ingalls Urgent Aid were not IMH's employees or agents. The form went further to explain that the physicians and other healthcare workers: (1) have been permitted to use IMH's facilities for the care and treatment of their patients; (2) exercise their own professional judgment; and (3) are not supervised or controlled by Ingalls or The University of Chicago Medicine. Walton signed and printed her name under a paragraph plainly stating that she understood and agreed to those facts. The second "Consent for Treatment" form repeated those same facts nearly word for word. It is also important to acknowledge that the language used in both the signage and forms is often identical, thereby expressing consistency and emphasis to the statements made.

There are two additional points that go beyond the forms themselves. First, it has not gone unnoticed that Illinois courts have previously found Ingalls' consent forms to contain clear and concise language that defeats an apparent agency claim. *See, e.g., Frezados v. Ingalls Mem. Hosp.*, 2013 IL App (1st) 121835, ¶¶ 17-22. In *Frezados*, the plaintiff's testimony that the physician had done nothing to make the plaintiff believe the hospital employed the physician, plus the disclaimer language, "suggests that as a matter of law, no reasonable person could have believed the doctors were the agents of defendant." Id. at ¶ 20. *See also James by James*, 299 Ill. App. 3d at 632-33. The *James* court distinguishes *Gilbert* because the physician's independent contractor status was set out in a hospital-physician agreement unknown to the patient. *Id.* at 633. "Here, in contrast, [the doctor's] independent contractor status was clearly set out in the consent to treatment form, which appellant signed. Under *Gilbert,* appellant here either knew [the doctor] was an independent contractor or should have known." *Id.* For this court now to find nearly identical Ingalls' language lacking would defy well-established precedent.

Second, a finding that Sreedharan and Westerfield were Ingalls' apparent agents would transgress the law of contract. Walton acknowledged the consent forms' contents, understood their terms, and indicated such by her signature. IMH rightly relied on Walton's affirmation. If IMH's plain and unambiguous language is meaningless in contract formation, hospitals would have no incentive to do what Illinois law precisely requires them to do—explain to the patient the hospital-physician relationship. This court is not about to create such an unacceptable trick bag.

It is equally plain that Walton did not reasonably rely on Ingalls or Ingalls Urgent Aid to provide her medical care. The reliance element of apparent agency is met only if there exists evidence establishing the plaintiff's reliance on the defendant hospital, as opposed to a particular physician, to render care and treatment. *Gilbert*, 156 Ill. 2d at 525-26; *Lamb-Rosenfeldt*, 2012 IL App (1st) 101558, ¶ 32. Absent such evidence, summary judgment is appropriate. *Wallace v. Alexian Brothers Med. Cntr.*, 389 Ill. App. 3d 1081, 1088-89 (1st Dist. 2009).

Walton testified plainly that she went to Ingalls Urgent Aid because it was close to her home; she made no mention of going there because of a particular medical provider. Such testimony has previously been found to foreclose a plaintiff's apparent agency argument. *See James v. Ingalls Mem. Hosp.*, 299 Ill. App. 3d 627, 635 (1st Dist. 1998). That conclusion must apply here, certainly as to Sreedharan, since Walton never met him while she was at Ingalls Urgent Aid. It is fair to infer that conclusion as to Westerfield as well since there is no indication that she had ever treated Walton previously.

Walton improperly relies on various IMH website printouts to support her reliance argument. None of these documents were produced during the many years of discovery in this case. Further, Walton has failed to provide a proper foundation for these documents; consequently, if they would be inadmissible for a lack of foundation at trial, they are equally inadmissible at the

summary judgment stage. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 333 (2002) (summary judgment must be based on "facts admissible in evidence"), *quoting* Ill. S. Ct. R. 191(a); *Watkins v. Schmitt*, 172 Ill. 2d 193, 203-04 (1996).

The evidentiary record equally fails to support any claim of apparent agency. Without a question of material fact, IMH's summary judgment motion as to apparent agency must be granted.

Conclusion

For the reasons presented above, it is ordered that:

1. IMH's summary judgment motion as to count one is granted;
2. IMH is dismissed with prejudice; and
3. Pursuant to Illinois Supreme Court Rule 304(a), there exists no just reason for delaying either enforcement or appeal of this court's judgment.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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