

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ROBERT C. MURPHY and :
CATHERINE P. MURPHY, :
 : C.A. No. 03C-07-028 HdR
Plaintiffs, :
 :
v. :
 :
BAYHEALTH, INC., a Delaware :
corporation, DELMARVA :
EMERGENCY PHYSICIANS, LLP, :
a foreign limited liability partnership, :
ROBERT T. CHRZANOWSKI, M.D., :
individually, KENT DIAGNOSTIC :
RADIOLOGY, P.A., a Delaware :
corporation, RAPHAEL CACCESE, :
JR., M.D., individually, J. RAPHAEL :
YANEZ, M.D. and NIDIA DE YANEZ, :
M.D., P.A., a Delaware corporation, and :
J. RAPHAEL YANEZ, M.D., :
individually. :
 :
Defendants. :

Submitted: November 16, 2004
Decided: February 4, 2005

ORDER

Upon Defendants' Bayhealth, Inc., Robert T. Chrzanowski, M.D.
and Emergency Physicians, LLP Motion for Summary Judgment.
Denied.

Upon Plaintiffs' Motion to Amend Complaint. Granted.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,

Murphy v. Bayhealth, Inc., et al.

C.A. No. 03C-07-028 HdR

February 4, 2005

Delaware; attorneys for the Plaintiffs.

Mason E. Turner, Jr., Esquire of Prickett Jones & Elliott, Wilmington, Delaware; attorneys for Defendants Bayhealth, Inc., Robert T. Chrzanowski, M.D. and Emergency Physicians, LLP.

Richard Galperin, Esquire of Morris James Hitchens & Williams, LLP, Wilmington, Delaware; attorneys for Defendants Raphael Caccese, Jr., M.D. and Kent Diagnostic Radiology, P.A.

John D. Balaguer, Esquire of White and Williams, LLP, Wilmington, Delaware; attorneys for Defendants J. Raphael Yanez, M.D. and Nidia De Yanez, M.D. P.A. and J. Raphael Yanez, M.D.

WITHAM, R.J.

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

Before the Court is a Motion for Summary Judgment filed by Bayhealth, Inc. and Plaintiffs' Motion to Amend the Complaint. From the submissions of the parties it appears that:

FACTS

This medical malpractice action was initiated on July 16, 2003. Plaintiff, Robert C. Murphy, was involved in a motor vehicle accident on July 17, 2001 and was admitted to Kent General Hospital with a potential spinal cord injury. He was treated by Dr. Yanez, a neurosurgeon at Kent General Hospital. Plaintiff was discharged from the hospital but re-presented to the Kent General Emergency Department on July 28, 2001 with complaints of back pain and was examined by Dr. Chrzanowski who consulted with Dr. Yanez. Plaintiff again presented to Kent General Hospital's emergency department on July 31, 2001 and was evaluated by Dr. Vincent Schaller. An MRI was taken during that admission which was interpreted by Defendant Dr. Caccese, a radiologist at Kent General Hospital. Plaintiff was transferred to Milford Memorial Hospital Rehabilitation Center on August 3, 2001. On August 6, 2001, a duplex scan was performed on Plaintiff which showed extensive deep venous thrombosis ("DVT") which has now caused Plaintiff permanent disability.

Plaintiffs have submitted a report from an expert, Garry Ruben, M.D., dated March 22, 2004, in which Dr. Ruben criticized the treatment Plaintiff received and asserted that "the failure to consider DVT on July 30 and 31 represents a deviation

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

of the standard of care....”¹ Dr. Ruben further alleged that the “symptoms and clinical findings from July 30 to August 4 were suggestive of DVT...[and] [t]he standard of care for the physicians caring for him during this period of time required consideration of and an appropriate evaluation for deep venous thrombophlebitis.”²

Between July 30 and August 4, 2001, Plaintiff was treated by a number of health professionals associated with Kent General Hospital and Milford Memorial Hospital. According to Dr. Ruben’s report, Plaintiff was examined by Dr. Yanez on July 30. On July 31, Plaintiff presented to the Kent General Hospital ER complaining of pain in his left calf and was evaluated by Dr. Vincent Schaller. Plaintiff was thereafter admitted to Kent General Hospital and an MRI of the left leg was ordered. Defendant Dr. Caccese, Jr. interpreted the MRI on July 31. On August 2, 2001, Plaintiff was examined by a nurse at Kent General Hospital. On August 3, 2001, Plaintiff was discharged from Kent General Hospital and transferred to Milford Memorial Hospital Rehab Center. Dr. Ruben also avers that there was a breach of the standard of care in Plaintiff’s treatment for failure to diagnose on August 4, 2001. At that time, Plaintiff was being treated at Milford Memorial Rehab Center which is also operated by Bayhealth Medical Center, Inc.

Defendant Bayhealth, Inc. argues that it is a distinct corporate entity from Bayhealth Medical Center, Inc. and that Bayhealth, Inc. is not the operating entity for Kent General Hospital. Bayhealth, Inc. therefore asserts that it should be granted

¹ Medical Report of Dr. Garry Ruben, p. 3.

² *Id.* at 2-3.

Murphy v. Bayhealth, Inc., et al.

C.A. No. 03C-07-028 HdR

February 4, 2005

summary judgment. Plaintiff has filed a Motion to Amend to Correct a Misnomer under Superior Court Civil Rule 15(a) requesting that he be allowed to replace “Bayhealth, Inc., d/b/a Kent General Hospital” with “Bayhealth Medical Center, Inc., d/b/a Kent General Hospital” in the Complaint. Plaintiff argues that Defendant Bayhealth Medical Center, Inc. should not be dismissed from this action because one or more doctors who treated Plaintiff were either the direct or apparent agents of Defendant Bayhealth and therefore summary judgment would be inappropriate.

DISCUSSION

I. Plaintiff’s Motion to Amend

Plaintiff argues that he should be allowed to amend his Complaint because the error in originally naming Bayhealth, Inc. rather than Bayhealth Medical Center, Inc. was a minor misnomer. Plaintiff further asserts that Bayhealth Medical Center, Inc., d/b/a Kent General Hospital has been given notice throughout this litigation that it should have been named in the Complaint because the named physician defendants provided medical services to the patients of Kent General Hospital for the sole benefit of Bayhealth Medical Center, Inc. Plaintiff also contends that Defendant Bayhealth, Inc. has filed numerous responsive pleadings on behalf of Kent General Hospital and Bayhealth Medical Center, Inc. cannot claim it would be prejudiced in maintaining a defense if the Motion to Amend is granted.

Defendant Bayhealth, Inc. argues that Plaintiff’s Motion to Amend involves more than a mere misnomer because Bayhealth, Inc. is a separate and distinct entity from Bayhealth Medical Center, Inc. The Court recognizes that Bayhealth, Inc. is legitimately a separate corporate entity from Bayhealth Medical Center, Inc. In the

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

Court's view, however, the requirements of Rule 15(c) have been met even if Plaintiff's request to amend is considered more than a misnomer.

Under Superior Court Civil Rule 15, a party may amend its pleading to add, substitute or drop parties.³ Rule 15(a) "may extend to bring in separate entities, not originally named as defendants, and to permit such amendment after the statute of limitations has expired if the requirements of Rule 15(c) are satisfied."⁴ Under Rule 15(a), leave to amend "shall be freely given when justice so requires."⁵ But this "liberality must be tempered by the requirements" of subsection (c) of Rule 15.⁶ Rule 15(c) permits an amendment to relate back to the date of the original pleading if: (1) the basic claim arose out of the conduct set forth in the original pleading; (2) the party to be brought in received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements were fulfilled within the prescribed limitations period.⁷

In the present case, the Plaintiff filed the Complaint against Bayhealth, Inc. d/b/a Kent General Hospital. The record shows that process was served on JoAnn

³ See *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258 (Del. 1993).

⁴ *Id.* at 263 (citing *Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396 (Del. 1975)).

⁵ Super. Ct. Civ. R. 15(a).

⁶ *Bissell v. Papastavros' Assocs. Medical Imaging*, 626 A.2d 856, 865 (Del. Super. Ct. 1993), appeal denied 623 A.2d 1142 (Del. 1993).

⁷ *Marro v. Gopez*, 1993 WL 138997, at *2 (Del. Super.); see also *Mergenthaler*, 332 A.2d at 397.

Murphy v. Bayhealth, Inc., et al.

C.A. No. 03C-07-028 HdR

February 4, 2005

Davis on behalf of Bayhealth, Inc. on July 17, 2003. Ms. Davis serves as the Risk Manager of Bayhealth Medical Center, Inc. and originally answered Plaintiff's Interrogatories directed to Bayhealth, Inc. on behalf of Bayhealth Medical Center, Inc. d/b/a Kent General Hospital. Because Ms. Davis accepted process for Bayhealth, Inc. and filed responsive pleadings in this matter for Bayhealth Medical Center, Inc. d/b/a Kent General Hospital, it cannot be said that Bayhealth Medical Center, Inc. was not on notice of the Complaint or that it would now suffer prejudice by being added to this Complaint. Bayhealth Medical Center, Inc., through Ms. Davis, also was directly aware of the particular allegations in the cause of action because it filed answers to interrogatories on behalf of Kent General Hospital. It is also reasonable to assume that Bayhealth Medical Center, Inc. knew or should have known that it should have been named in the original complaint because the Complaint was filed directly against Kent General Hospital and what appeared to be the corporate entity in charge of Kent General Hospital.

Therefore, given these facts and in the interest of resolving this case on its merits, I grant Plaintiffs' Motion to Amend Complaint to replace Bayhealth, Inc. with Bayhealth Medical Center, Inc. I must note, however, Plaintiffs' considerable delay in filing this Motion to Amend. It appears that Bayhealth, Inc.'s Answers to Plaintiffs' Interrogatories, dated October 21, 2003, made clear that "Bayhealth, Inc. does not do business as Kent General Hospital." Despite this fact, Plaintiffs did not file the Motion to Amend until November 12, 2004. Because of this considerable delay, I order that Plaintiffs pay to Defendant Bayhealth, Inc. the costs of the additional motions Defendant was forced to file. The Defendant will submit an

affidavit outlining the expense incurred.

II. Defendants' Motion for Summary Judgment

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.⁸ Summary judgment is appropriate if there are no genuine issues of material fact after viewing the record in a light favorable to the non-moving party.⁹ Summary judgment will not be granted if the record reasonably indicates a material fact in dispute or a need to inquire more thoroughly into the facts to clarify the application of law to the circumstances.¹⁰

Direct Agency

Plaintiffs allege that Dr. Yanez and Dr. Caccese are the agents of Bayhealth Medical Center, Inc., d/b/a Kent General Hospital. In its Motion for Summary Judgment, Defendant asserts that any physicians who treated Plaintiff are independent contractors. The determination of whether an agency relationship exists depends on the particular facts of a case. The Delaware courts have “recognize[d] that no single rule could be laid down to determine whether a given relationship is that of [a servant to a master] as distinguished from an independent contractor.”¹¹ Such determinations

⁸ Super. Ct. Civ. R. 56(c).

⁹ *Enloe v. Gorkin*, 1990 WL 263563, at *1 (Del Super.); *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

¹⁰ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

¹¹ *See, e.g., White v. Gulf Oil Corp.*, 406 A.2d 48, 51 (Del. 1979).

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

are consequently “ordinarily made by the factfinder.”¹²

According to Dr. Ruben’s report, Plaintiff’s symptoms between July 30 to August 4, 2001 suggested the presence of DVT and Dr. Ruben asserts that there was a breach of the standard of care in not evaluating Plaintiff for DVT at that time. Plaintiff was evaluated by a number of doctors and staff personnel associated with Kent General Hospital during this time, including Dr. Yanez, who was the sole neurosurgeon on call at Kent General Hospital and Dr. Caccese, Jr. who examined the radiograph of Plaintiff’s leg on July 31, 2001.

Plaintiffs assert that the facts of the case suggest that Defendant Dr. Caccese, Jr. and Defendant Dr. Yanez were both acting as agents of Defendant Bayhealth Medical Center, Inc. to provide services for the sole benefit of Defendant Bayhealth Medical Center, Inc. In order to establish that an actual agency relationship exists between a physician and a hospital, “it must be shown that the employer/hospital controlled or had the right to control the physical conduct of the servant/physician in the performance of the servant/physician’s work.”¹³ If there is sufficient evidence to establish that the requisite right of control existed “the trier of fact may find that the physician is an agent of the hospital and thus impose vicarious liability on the hospital.”¹⁴

Defendant Dr. Caccese, Jr. was a partner in Kent Diagnostic Radiologic

¹² *Fisher v. Townsends, Inc.*, 695 A.2d 53, 59 (Del. 1997).

¹³ *Fulton v. Quinn*, 1993 WL 19674, at *3 (Del. Super.).

¹⁴ *Id.*

Murphy v. Bayhealth, Inc., et al.

C.A. No. 03C-07-028 HdR

February 4, 2005

Associates (“KDRA”) which has an ongoing relationship with Kent General Hospital. According to Defendant Dr. Caccese, Jr.’s deposition, the radiologists of KDRA only perform work for patients of Kent General Hospital and no other entity. In addition, the KDRA facilities are located at Kent General Hospital and Defendant Dr. Caccese, Jr. referred to himself as a staff radiologist at Kent General Hospital during the course of Plaintiff Robert Murphy’s treatment. Dr. Yanez also stated that he was on staff at Kent General Hospital as a neurosurgeon during the time of Plaintiff’s treatment in 2001. In fact, Dr. Yanez was the sole neurosurgeon at the hospital for over half of his employment at Kent General Hospital. Dr. Yanez was forced to abide by the policies and procedures of Kent General Hospital which required, among other things, that Defendant Dr. Yanez live within fifteen miles of the hospital and that he be on call for all emergencies.

A basic axiom in agency law is that “[i]f the principal assumes the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results in conformity to the contract, a master/servant type of agency relationship has been created.”¹⁵ The facts of this case seem to indicate that, at the least, there remains some dispute as to whether Defendants Dr. Caccese, Jr. and Dr. Yanez were agents of Kent General Hospital. In any event, not enough specific facts exist about this relationship and the amount of control and direction Defendant Bayhealth exercised over Dr. Yanez or Dr. Caccese to permit a decision on this issue as a matter of law.

¹⁵ *Fisher*, 695 A.2d at 59.

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

Apparent Agency

Plaintiffs have also alleged that Defendants Dr. Yanez and Dr. Caccese were apparent agents of Bayhealth Medical Center, Inc., d/b/a Kent General Hospital. While hospitals are generally not liable for the acts of physicians who are independent contractors, there is a recognized exception to this rule.¹⁶ As the court noted in *Vanaman v. Milford Memorial Hospital, Inc.*:

[I]f it should be found that the Hospital represented that [the doctor] was its servant or other agent in diagnosing and treating plaintiff in its emergency facility, and if it thereby caused [the plaintiff] to justifiably rely upon the care or skill of [the doctor], then it is liable to her for harm caused by any lack of care or skill by [the doctor] just as if he were the Hospital's servant or agent.¹⁷

Plaintiff Robert Murphy asserts that he relied on the treating physicians at Kent General Hospital without regard to whether those physicians were acting under the authority of the hospital or as independent contractors. In this case, as in *Vanaman*, it is not clear whether Defendant Kent General Hospital represented to Plaintiff that Defendants Dr. Yanez or Dr. Caccese, Jr. were its servants or agents in treating or diagnosing Plaintiff. Because it is necessary to more closely examine the facts to determine the degree of relationship between Dr. Yanez or Dr. Caccese and Kent General Hospital, judgment as a matter of law is not possible.

¹⁶ *Fulton*, 1993 WL 19674, at *4. See also *Schagrin v. Wilmington Medical Center*, 304 A.2d 61 (Del. Super. Ct. 1973); *Vanaman v. Milford Memorial Hospital, Inc.*, 272 A.2d 718 (Del. 1970).

¹⁷ *Vanaman*, 272 A.2d at 722.

Murphy v. Bayhealth, Inc., et al.
C.A. No. 03C-07-028 HdR
February 4, 2005

CONCLUSION

Determining whether an agency relationship exists between Kent General Hospital and these physicians is primarily a question of fact.¹⁸ Where the question of agency, as in this case, is “critical to the disposition of the case and is dependent upon a reconciliation of the facts, summary judgment must be denied.”¹⁹ Because there are still material factual questions in dispute, it is not possible for the Court to rule on the agency relationship as a matter of law. Rather, the finder of fact must be relied upon to make this determination. Defendant’s Motion for Summary Judgment is therefore *denied*. The Court recognizes that Bayhealth Medical Center, Inc. has not had a chance to specifically respond after Plaintiffs’ Motion to Amend was granted. Bayhealth Medical Center, Inc. may again raise the issue of agency at a later date if it so wishes.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

¹⁸ See *McNatt v. Hopkins*, 1997 WL 528293, at *2 (Del. Super.); *Fisher v. Townsends, Inc.*, 695 A.2d 53, 61 (Del. 1997).

¹⁹ *Fisher*, 695 A.2d at 61.