

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1889

September Term, 2015

CELESTE PUPPOLO, *et al.*

v.

HOLY CROSS HOSPITAL OF SILVER
SPRING, INC.

Krauser, C.J.,
Kehoe,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: November 14, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

For the second time, appellant Celeste Puppolo asks us to decide whether the Circuit Court for Montgomery County properly granted summary judgment against her, dismissing her claims against appellee, Holy Cross Hospital (“HCH”). Appellant raises four questions on appeal, which we rephrase as follows:

- I. Did the trial court err in concluding that the estate did not originally file a claim for fraudulent concealment?
- II. Did the trial court err in granting summary judgment, dismissing Celeste’s claim for fraudulent concealment?

We hold that the trial court did not commit error, and affirm.

FACTS AND PROCEEDINGS

On August 7, 2014, we issued an unreported opinion in this case. There, a panel of this Court explained how appellant’s mother, Nancy, suffered a “major intracranial hemorrhage” in 2006 and received treatment at HCH. *Celeste Puppolo, Personal Representative of the Estate of Nancy Puppolo v. Holy Cross Hospital of Silver Spring, Inc.*, No. 1219, slip op. at 3-4 (Sept. Term 2012). While receiving treatment for her hemorrhage at HCH, Nancy developed a bedsore on her lower back. *Id.* at 4. The bedsore became a serious health issue, and required extensive treatment. *Id.* Nancy passed away in December of 2008. *Id.* at 6.

Upset with HCH’s alleged failure to treat Nancy’s bedsore, appellant, in her individual capacity, and as Nancy’s personal representative, sued HCH. Appellant alleged the following claims in her complaint: medical malpractice, battery, fraudulent

concealment, intentional infliction of emotional distress, and wrongful death.¹ *Id.* at 1-2. The trial court ultimately dismissed the claims. *Id.* at 9-11. Both Celeste and the estate, for the first time, appealed.

The *Puppolo I* panel affirmed the dismissal of all claims except for Celeste’s claim for fraudulent concealment. *Id.* at 42-44. We vacated and remanded the fraudulent concealment claim, holding that it could not be barred under a theory of limitations, as the trial court had decided. *Id.* We expressed doubt that the claim for fraudulent concealment contained merit, noting that, “it is far from clear that the Hospital owed Celeste, in her individual capacity, any duty.” *Id.* at 44. Despite this comment, we did “not affirm the granting of summary judgment on a ground not relied upon by the trial judge.” *Id.* at 45.

Once the case returned to the circuit court, HCH filed Defendant’s Motion for Summary Judgment as to Celeste Puppolo’s Individual Fraudulent Concealment Claim. Appellants filed an opposition, and the circuit court held a hearing on August 27, 2015. The day of the hearing, appellants filed an Amended Complaint for Damages and Request for Jury Trial. The amended complaint added new language in an effort to clarify that both

¹ We do not specify here which plaintiff (Celeste individually, or Celeste in her capacity as personal representative) brought which claim. The only claim relevant to our discussion—fraudulent concealment—will be addressed thoroughly in the Discussion section.

Celeste in her individual capacity, and as Nancy’s personal representative, sought relief for HCH’s alleged fraudulent concealment.²

After hearing argument, the trial court dismissed the claim for fraudulent concealment, granting HCH’s motion for summary judgment. The court entered its order on August 31, 2015. Appellants filed a motion to alter or amend the order for summary judgment on September 8, 2015. HCH filed its opposition, and the trial court denied the motion in an order dated September 29, 2015. On September 11, 2015, appellants filed a Second Amended Complaint for Damages and Request for Jury Trial which the trial court dismissed in an order filed November 16, 2015. Appellants timely noted their appeal.

STANDARD OF REVIEW

We review a trial court’s grant of summary judgment *de novo*. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013). The Court of Appeals has explained the appellate standard of review on a motion for summary judgment as follows:

Summary judgment is appropriate where “there is no genuine dispute as to any material fact” and “the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Maryland Rule 2–501(f). “In granting or denying a motion for summary judgment, a judge makes no findings of fact.” *King v. Bankerd*, 303 Md. 98, 111, 492 A.2d 608, 615 (1985). The appellate court will “review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Myers v. Kayhoe*, 391 Md. 188, 203, 892 A.2d 520, 529 (2006). “In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the

² The amended complaint filed on August 27, 2015 also added a claim for intentional misrepresentation. However, when appellants filed their Second Amended Complaint on September 11, 2015, they deleted their claim for intentional misrepresentation, effectively withdrawing it.

record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 294 (2007). “In appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the lower court relied in granting summary judgment.” *PaineWebber Inc. v. East*, 363 Md. 408, 422 (2001).

DISCUSSION

I. The Original Claim for Fraudulent Concealment

Appellant contends that “Count III [fraudulent concealment] of the Complaint stated a Claim on behalf of the Estate.” According to appellant, the amended complaint “merely added Celeste’s individual claim.” We disagree. The claim for fraudulent concealment has always been a claim by Celeste alone, in her individual capacity.

The original claim filed with the Health Claims Arbitration Board of Maryland reads as follows:

COUNT III –FRAUDULENT CONCEALMENT

27. Plaintiff incorporates all of the preceding paragraphs into this Count.

28. During the Care Period, until January 9, 2007, *in violation of its legal duty to Daughter*, Defendant intentionally concealed from the Daughter both the existence of Nancy’s bedsores, and its failure to treat these bedsores.

29. The Defendant’s concealment delayed the Daughter from being able to mitigate Nancy’s damages caused by the Defendant’s negligence, and placed *undue and unnecessary mental strain on Daughter*.

(Emphasis added). The amended complaint changed the word “Plaintiff” to “Plaintiffs” in paragraph 27.

In our unreported opinion, we addressed which plaintiff sought relief pursuant to count III, fraudulent concealment. We stated:

By contrast, count III did provide the Hospital with notice that Celeste, individually was making a claim for “fraudulent concealment.” Significantly, the wording of count III in both the original and amended statement of claim is identical except that in paragraph 27, which is the first paragraph under count III of the original statement of claim, the word plaintiff is used (“Plaintiff incorporates all [sic] of the proceeding [sic] paragraphs into this count”) *Importantly, count III in both statements of claim alleges that it is Celeste, individually, to whom the Hospital owed a duty, that the Hospital violated that duty to her by intentionally concealing from her the existence of Nancy’s bedsores and also concealing from Celeste the Hospital’s failure to treat the bedsores, and that the concealment “placed undue and unnecessary mental strain on” Celeste.*

Celeste Puppolo, Personal Representative of the Estate of Nancy Puppolo, No. 1219, slip op. at 42-43 (emphasis added). We further concluded, “Moreover, the person who sought to be compensated in count III of both statements of claim was Celeste.” *Id.* at 44.

The trial court did not err in relying on our language on remand. In fact, the trial court properly incorporated our holding when it stated:

The pleading that was on which this case was tried and which went to the Court of Special Appeals in English and clearly said it was brought individually on behalf of daughter for daughter’s own harm allegedly caused by the defendant’s fraudulent concealment of mom’s condition. That’s just what it says in English.

The trial court correctly construed our decision that Celeste only stated a cause of action arising from fraudulent concealment.³ Having established, beyond any possible doubt, that Celeste in her individual capacity sought relief pursuant to count III, fraudulent concealment, we turn to whether the trial court properly dismissed her claim.

II. Summary Judgment Against Celeste

A. Duty to Non-Patient

In its bench opinion, the trial court stated:

First, looking at count three solely from the point of view of does daughter have a claim, respectfully the answer is no. The claim, if it exists, belongs to the patient. The duty that is owed is owed to the patient. It very well is understandably so that agents of patients, be they family members or courageous others, implement and work on behalf of the patient, but the duty belongs to the patient. That's the duty of care is [sic] owed to the patient, absent in my judgment a legislature creating a cause of action.

I am aware of no case where at common law in Maryland the Court of Appeals has said there is a duty, there is a tort duty in this context.

We agree with the trial court that HCH does not owe Celeste, a non-patient, a duty of care.

The Court of Appeals has stated that the essential elements for an action sounding in fraudulent concealment are,

(1) *the defendant owed a duty to the plaintiff to disclose a material fact*; (2) the defendant failed to disclose that fact; (3) the defendant intended

³ Appellants filed an amended complaint the day of the hearing on the motion for summary judgment. This amended complaint sought to clarify the position that Celeste and Nancy's estate both sought relief for HCH's alleged fraudulent concealment. The trial court found the estate's claim untimely, and dismissed it. Appellants do not appeal the estate's dismissal on limitations grounds. Instead, appellants argue that the amended complaint did not add the estate as a new party because the estate had always alleged fraudulent concealment.

to defraud or deceive the plaintiff; (4) the plaintiff took action in justifiable reliance on the concealment; and (5) the plaintiff suffered damages as a result of the defendant's concealment.

Blondell v. Littlepage, 413 Md. 96, 119 (2010) (emphasis in original). A claim for fraudulent concealment first requires a duty the defendant owes to the plaintiff.

In *Dehn v. Edgecombe*, the Court of Appeals considered “whether Maryland recognizes an independent cause of action in a patient’s wife against a doctor who acted negligently while treating her husband but who had no relationship or direct interaction with the wife.” 384 Md. 606, 610 (2005). In *Dehn*, Mr. and Mrs. Dehn sued Mr. Dehn’s physician, Dr. Edgecombe, for negligence when, after Mr. Dehn’s vasectomy, he successfully impregnated his wife. *Id.* at 615-16. Mrs. Dehn contended that she “should be permitted to bring an independent cause of action despite her lack of a doctor-patient relationship with Dr. Edgecombe.” *Id.* at 616.

The Court of Appeals disagreed, noting that an action for negligence first requires a duty. *Id.* at 619. In addressing that duty, the Court of Appeals stated: “It is the general rule that recovery for malpractice against a physician is allowed only where there is a relationship between the doctor and patient.” *Id.* at 620 (citing *Eid v. Duke*, 373 Md. 2, 16 (2003); *Dingle v. Belin*, 358 Md. 354, 367 (2000); *Hoover v. Williamson*, 236 Md. 250, 253 (1964); *Lemon v. Stewart*, 111 Md. App. 511, 521 (1996)).

The *Dehn* Court looked to two cases for guidance where a non-patient sued the treating physician: *Homer v. Long*, 90 Md. App. 1 (1992) and *Lemon*, 111 Md. App. 511. *Dehn*, 384 Md. at 620-21. The Court concluded that only the most extraordinary

circumstances would create a doctor to non-patient relationship sufficient to impose the requisite duty to maintain the tort action.

Homer and *Lemon* teach that although the common law does not foreclose the possibility of imposing a duty of care in the absence of a doctor-patient relationship to a third party who never received treatment from the doctor, it will not do so except under extraordinary circumstances. In *Homer*, the husband of the patient-wife not only hired the physician to treat his wife but also gave him confidential, personal information on their marriage. But even so, the Court of Special Appeals was unable to discern a doctor-patient relationship sufficient to impose a medical malpractice duty of care on the psychiatrist with respect to the husband. In *Lemon*, even where there existed the potential for transmittal of a fatal virus, the court refused to impose a duty of care on the physicians to notify third parties, even relatives.

Id. at 621-22 (internal citations omitted).

Here, as in *Homer* and *Lemon*, appellant did not successfully establish the existence of a special relationship between herself and HCH's care providers. Although appellant was given power of attorney by Nancy, this status alone did not create a special relationship sufficient to create a duty to appellant individually. As the Court of Appeals in *Dehn* concluded, "[a] duty of care does not accrue purely by virtue of the marital status of the patient alone; some greater relational nexus between doctor and patient's spouse must be established." *Id.* at 627. Similarly here, some greater relational nexus between doctor and patient's daughter must be established to create a duty of care.

In *Lemon*, we did not find a sufficient nexus between a health care provider and a non-patient in a case involving the possible transmission of HIV or AIDS to the non-patient. There, health care providers did not inform Mr. Lemon's family members that he had tested positive for the AIDS virus. *Lemon*, 111 Md. App. 518-19. Mr. Lemon's family

members sued the health care providers, claiming that the providers had a duty to inform them of Mr. Lemon’s condition. *Id.* at 521. We disagreed, and noted that, “it has often been said that a malpractice action lies only where a health care provider-patient relationship exists and there has been a breach of a professional duty.” *Id.* We reviewed cases from other jurisdictions in which a relationship between a health care provider and a non-patient would create a duty. *Id.* However, those cases, “involved either a communicable disease that was actually transmitted to the plaintiff or that was easily transmittable through casual contact or . . . a special relationship between the patient and an identified or identifiable third person that put that third person in particular and foreseeable danger.” *Id.* (internal citations omitted). In rejecting the appellants’ claims that a nexus did exist, we noted that the contact between the appellants and Mr. Lemon had not been shown to cause transmission of the AIDs virus. *Id.* at 524. With appellants not in any danger of contracting the AIDs virus, we rejected the notion that the health care providers had a special relationship with appellants sufficient to create a duty. *Id.*

Here, appellant does not allege that her mother’s ulcer was contagious, or put her personally in foreseeable danger. She only alleges that learning about her mother’s condition had caused her emotional distress. Under *Lemon*, appellant must establish that her own special relationship with her mother’s health care providers created a separate duty to her. Without this special relationship, appellant cannot argue that her mother’s health

care providers owed her a duty.⁴ We were not prepared to find a duty to family members susceptible to transmission of the AIDS virus in *Lemon*; we likewise hold that appellant cannot establish a duty on the part of HCH to advise her in her individual capacity of her mother’s bedsore.

B. Causation

After establishing that HCH owed no duty to appellant, a non-patient, the trial court next concluded that appellant failed to raise a genuine issue of material fact regarding causation. During argument at the hearing on the motion for summary judgment, the trial court asked appellant why she had not produced an expert to establish causation. Appellant argued that,

with respect to causation . . . this wound was so massive it’s almost a kin [sic] to, you know, someone leaving scissors in a patient and you don’t really need an expert to tell you that that’s a problem or that patient was, will be, you know, less painful [sic] if the scissors is [sic] removed.

The trial court asked appellant whether the medical matter could be presented to a jury without an expert. Appellant replied that “the obvious injury to the patient and obvious effects of the injury” would suffice. The trial court asked:

But wouldn’t you need an expert on the type of – see and this is, this is sort of more nuanced the question presented here is did the withholding of information cause -- Did the concealment here of information approximately caused [sic] further harm too . . . ?

⁴ Appellant argues that HCH owed her a duty because of her health care power of attorney over her mother. HCH likely had a duty to advise Celeste in her capacity as Nancy’s health care power of attorney. The claim, however, would belong to Nancy with Celeste acting as Nancy’s agent—the claim would not belong to Celeste in her individual capacity.

In other words, the trial court focused on appellant’s need for an expert to show that HCH’s fraudulent concealment caused Nancy’s injury to worsen, which then caused non-economic damages to appellant.

In her opposition to HCH’s motion for summary judgment, appellant offered the affidavit of Gretchen Vaughn, a former Administrative Coordinator at HCH, to establish causation.⁵ Specifically, appellant relied on Vaughn’s statement that she “saw evidence that Holy Cross was neglecting to treat the patient’s wound appropriately. [She] properly reported it, as is mandated, and [was] sabotaged in previous attempts on the part of the patient’s family to affect the hospital transfer.” Even if we were to ignore the improper form of the affidavit, this statement does not demonstrate that HCH’s alleged fraudulent concealment caused Nancy’s ulcer to worsen.

Appellant also relies on the testimony of Nurse Johnston, who testified at trial as a standard of care expert, to show that the fraud caused Nancy’s injury to worsen. Appellant argues that Nurse Johnston established causation by testifying as to the following:

Typically, whenever you have a patient that has an involved wound and you educate the family, the family is also aware of the current treatments and the nursing interventions that should be done so as they’re assisting with the patient and they’re asking what is being done, they’re on the same page and that awareness helps to minimize, sometimes, the deterioration of the pressure ulcers

⁵ The trial court noted serious deficiencies in the Vaughn affidavit: it was not based on personal knowledge, it was not dated, much of the affidavit contained hearsay, and most importantly, Vaughn was not established as an expert on causation for the tort alleged.

This language does not suffice to establish causation. Rather, this language simply asserts that a family member advocating on behalf of a patient might produce a better result for the patient, generally. Appellant produced no evidence that her mother would have had a better medical outcome but for the alleged concealment. The trial court correctly determined that appellant failed to produce any competent evidence to establish causation.⁶

CONCLUSION

The circuit court correctly concluded, as a matter of law, that HCH did not owe a duty to appellant in her individual capacity. Even assuming HCH did owe her a duty, the trial court correctly determined that there was legally insufficient evidence to demonstrate that HCH's fraudulent concealment caused her mother's condition to deteriorate, causing appellant emotional damages. Therefore, the trial court did not err in dismissing Celeste's individual claim for fraudulent concealment.

**JUDGMENT OF THE CIRCUIT COURT FOR
MONTGOMERY COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**

⁶ In her brief, appellant offers Nurse Johnston's statement in the Certificate of Merit to support causation: "Had early detection and appropriate intervention been made available to her, Mrs. Puppolo would not have developed the large Stage IV pressure ulcer that necessitated debridement as soon as she was admitted to the University of Maryland Medical Center." An unsworn statement submitted by a standard of care expert is legally insufficient to establish causation for summary judgment purposes. We also note that in her opposition to the motion for summary judgment, appellant used Vaughn's affidavit to establish causation—not Nurse Johnston's statement.