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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000467-MR

SARAH VANHOOSE APPELLANT

v. APPEAL FROM LAWRENCE CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 14-CI-00285

THREE RIVERS MEDICAL CENTER, A/K/A HOSPITAL OF LOUISA, INC. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, KRAMER AND L. THOMPSON, JUDGES.

THOMPSON, L., JUDGE: Sarah VanHoose, through counsel, appeals from an order of the Lawrence Circuit Court granting summary judgment in favor of Three Rivers Medical Center, a/k/a Hospital of Louisa, Inc. She argues that the Lawrence Circuit Court erred in failing to conclude that she asserted a viable cause of action for medical negligence and negligent credentialing. VanHoose also

maintains that she has not had an adequate opportunity to engage in discovery or present evidence of Three Rivers Medical Center's negligence. For the reasons below, we find no error and AFFIRM the judgment on appeal.

On October 17, 2014, VanHoose filed the instant action in Lawrence Circuit Court asserting medical negligence claims against Three Rivers Medical Center (hereinafter "TRMC") and Dr. Curt Edens. The complaint alleged that Dr. Edens was negligent in treating VanHoose's endometriosis with three unnecessary surgeries, including a hysterectomy. The parties moved forward with discovery and depositions, and a trial date was set for May 16, 2016.

On October 12, 2015, VanHoose filed a first amended complaint alleging that TRMC was negligent in credentialing Dr. Eden to perform procedures at its medical center. Thereafter, TRMC filed a motion for partial summary judgment seeking dismissal of the stand-alone tort of "negligent credentialing" as not supported by the case law. The court then rendered an interlocutory order on February 10, 2016, granting TRMC's motion for partial summary judgment and dismissing the stand-alone claim of negligent credentialing.

On March 3, 3016, TRMC filed a Motion for Summary Judgment seeking dismissal of all remaining claims against it. In support of the Motion, TRMC argued that while VanHoose's sole expert witness, Dr. Mickey Karran, had offered an opinion about Dr. Eden's alleged medical negligence, Dr. Karran had

given no opinion or criticism regarding TRMC. VanHoose filed no written response, and the court entered an Order on March 28, 2016, dismissing her claims against TRMC. VanHoose settled with Dr. Edens, and that claim was dismissed by way of an agreed order entered on June 20, 2016. This appeal followed.

VanHoose first argues that having properly pled negligent credentialing, she had a viable cause of action against TRMC and the Lawrence Circuit Court erred in failing to so rule. In support of this argument, VanHoose directs our attention to the unpublished opinion in *Spalding v. Spring View Hospital, LLC*, No. 2013-CA-000842-MR, 2016 WL 929507 (Ky. App. March 11, 2016), which she claims recognized the separate tort of medical credentialing. After *Spalding* was rendered, the instant matter was held in abeyance pending the Kentucky Supreme Court's discretionary review of *Spring View* and related cases. *Spring View* and the related appeals were resolved in 2017, when the Kentucky Supreme Court rendered *Lake Cumberland Regional Hospital, LLC v. Adams*, 536 S.W.3d 683 (Ky. 2017).

In addressing the holding of *Lake Cumberland*, VanHoose acknowledges that the Kentucky Supreme Court "did not recognize the tort of negligent credentialing."[1] She contends, however, that such a holding was not necessary because the tort of negligent credentialing already exists under the

[1] Appellant's brief at p. 5.

umbrella of medical negligence, which imposes upon hospitals the duty to ensure that patients receive a medically-accepted standard of care including the duty to provide qualified staff. VanHoose goes on to assert that Dr. Edens was a terrible physician who performed unnecessary procedures, surrendered his medical license, and faced civil proceedings and criminal charges; therefore, TRMC should be held accountable for providing him with credentials to work in its facility. In sum, VanHoose contends that *Spring View* and *Lake Cumberland* implicitly recognize the tort of negligent credentialing and that the Lawrence Circuit Court erred in failing to so conclude.

Having closely examined the record and the law, we find no basis for concluding that *Lake Cumberland* either expressly or implicitly recognizes the tort of negligent credentialing. The *Lake Cumberland* Court held in clear and unambiguous terms that,

> this Court ***is not inclined to recognize the stand-alone tort of negligent credentialing***, as this Court has not been persuaded by counsel of the need for a new cause of action, and the tort's far-reaching implications, as well as its impact on rural hospitals and communities in the Commonwealth, are unknown. The plaintiffs already have available the means by which to bring their claims under common law principles of negligence, therefore, this Court need not create a new tort.

Lake Cumberland, 536 S.W.3d at 689 (Emphasis added). This holding disposes of VanHoose's first argument, and we find no error on this issue.

VanHoose next argues that she has not had an opportunity to discover and/or present her evidence concerning the lack of scrutiny by TRMC administrators as to the unnecessary surgeries performed on her. She notes that she pled both negligence and negligent credentialing against TRMC, and that prior to the rendering of *Spring View Hospital* and *Lake Cumberland* the law was not developed to the point where she could take discovery or develop evidence. VanHoose maintains that while she developed expert testimony critical of Dr. Edens, she did not undertake discovery as to TRMC's alleged negligence because "counsel did not believe there was a viable legal cause of action against the hospital."[2] In sum, VanHoose appears to argue that *Lake Cumberland* established a new cause of action against hospitals, *i.e.*, general negligence, and that the Lawrence Circuit Court erred in failing to give her a reasonable opportunity to develop evidence and expert testimony as to this cause of action.

We are not persuaded by VanHoose's argument on this issue. On one hand, she acknowledges that she pled against TRMC both negligence and negligent credentialing in her first amended complaint. That is to say, VanHoose asserted a claim of general negligence against TRMC for allowing an unqualified physician to practice medicine at its facility. On the other hand, she maintains that she did not believe there was a viable cause of action against TRMC until late in

[2] Appellant's brief at p. 8.

the proceedings, and was left with no time to develop evidence against TRMC. These assertions cannot be reconciled. Hospitals have long operated under a duty of general care. *Lake Cumberland*, 536 S.W.3d at 695. "Whether the hospital hired knowledgeable nurses, or had proper supervision for staff physicians, or accurate record keeping, and so forth, [are] all . . . questions for the jury to consider." *Id.* (quoting *Rogers v. Kasdan*, 612 S.W.3d. 133, 136 (Ky. 1981)). This is not a new cause of action which was sprung upon VanHoose late in the proceedings, but is long extant in Kentucky law and was pled by VanHoose from the outset. VanHoose acknowledges that "we admittedly had not performed all discovery that should have been done for such a claim."[3]

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, 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." Kentucky Rule of Civil Procedure (CR) 56.03. "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to

[3] Appellant's brief at p. 9.

produce evidence at trial warranting a judgment in his favor. *Id*. "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact." *Id.* Finally, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft,* 916 S.W.2d 779, 781 (Ky. App. 1996).

When viewing the record in a light most favorable to VanHoose and resolving all doubts in her favor, we nevertheless conclude that there were no genuine issues of material fact and that TRMC was entitled to judgment as a matter of law. VanHoose did not produce any expert testimony as to her claim of negligence against TRMC, and we find no error in the Lawrence Circuit Court's entry of summary judgment. Accordingly, we AFFIRM the order of the Lawrence Circuit Court granting summary judgment in favor of TRMC and dismissing all claims against it.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Thomas K. Herren Lexington, Kentucky	Nicholas R. Hart Louisville, Kentucky