STATE OF MICHIGAN

COURT OF APPEALS

HOON K. JEUNG, M.D. and YUN HEE JEUNG, Plaintiffs-Appellants,	UNPUBLISHED April 20, 2004
v MICHAEL H. ALLEN, CAROLYN POLLOCK CARY, and CURRIE KENDALL POLASKY MEISEL PLC, Defendants-Appellees.	No. 245997 Saginaw Circuit Court LC No. 02-043856-NM

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition to defendants pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

This case arises out of plaintiff Hoon K. Jeung, M.D.'s suspension from the staff of a hospital and the hospital's refusal to purchase from plaintiff his medical practice and the building that housed the practice. Defendants provided legal representation to the hospital. Plaintiffs' claims were premised upon defendant Allen's providing of legal services to plaintiffs in the past. The trial court held that plaintiffs had failed to state a claim for legal malpractice and that there was no genuine issue of material fact because all evidence necessary to support the claims was barred from discovery by the peer review privilege and by the attorney-client privilege.

A trial court's grant of summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(8), a court examines the pleadings to determine if the allegations in the complaint could be sufficiently developed to justify recovery. *Id*. at 119-120. Under MCR 2.116(C)(10), a court examines all submitted evidence to determine if it establishes a genuine issue of material fact. *Id*. at 120. Under either MCR 2.116(C)(8) or MCR 2.116(C)(10), the materials considered should be viewed in the light most favorable to the non-moving party. *Id*. at 119-120. Although a trial court's order regarding discovery is ordinarily reviewed for an abuse of discretion, whether production of evidence is barred by a statute is a question of law and is therefore reviewed de novo. *Ligouri v Wyandotte Hospital and Medical Center*, 253 Mich App 372, 375; 655 NW2d 592 (2002). Application of the peer review privilege is an issue of law reviewed de novo. *Dye v St John Hospital and Medical Center*, 230 Mich App 661, 665-666; 584 NW2d 747 (1998). Whether the attorney-

client privilege applies is reviewed de novo. *Leibel v General Motors Corp*, 250 Mich App 229, 236; 646 NW2d 179 (2002).

The peer review privilege is based on MCL 333.20175(8), MCL 333.21515, and MCL 331.533. The peer review privilege is broad, *In re Lieberman*, 250 Mich App 381, 390; 646 NW2d 199 (2002), and this Court has held that these statutes "evidence the Legislature's intent to *fully* protect quality assurance/peer review records from discovery." *Ligouri*, *supra* at 376 (emphasis original). Although the mere fact that information was submitted to a peer review committee does not automatically trigger the peer review privilege, *Monty v Warren Hospital Corp*, 422 Mich 138, 146-147; 366 NW2d 198 (1985), plaintiffs seek information obtained by a peer review committee pursuant to its peer review function. The privilege therefore applies. Although a protective order might induce a party to waive a privilege, the hospital here has explicitly not done so, and the privilege itself is absolute. The trial court properly applied the peer review privilege.

The attorney-client privilege is narrowly applicable to confidential communications between a client and the client's attorney for the purpose of obtaining legal advice, but where the client is an organization, the privilege covers any of that organization's agents or employees authorized to speak for it on that subject. *Leibel*, *supra* at 236. The privilege further extends to opinions, conclusions, and recommendations based on facts. *Id*. at 239. Only the client may waive the privilege, and it may not be waived by accident. *Id*. at 240. If a document is privileged, it retains the status of being privileged even if it is publicly disclosed or obtained by a party from an independent source. *Id*. at 241. Defendants' client, the hospital, expressly declined to waive any privileges. Therefore, the trial court correctly found that any confidential communications between defendants and the hospital pertaining to defendants' representation of the hospital is immune from discovery.

Plaintiffs argue that the trial court erred by dismissing their claim of tortious interference with a business relationship. However, to prevail on that claim, plaintiffs must show a valid business expectancy, that defendants were aware of that expectancy, that defendants intentionally interfered with it, and resulting damage. *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003). Plaintiffs must show that defendants engaged in an act that was wrongful per se or an act that was lawful but malicious and not legally justified for the purpose of invading plaintiffs' rights. *CMI International, Inc v Intermet International Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002). Plaintiffs are further required to "demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference," and plaintiffs are required to do so in response to the motion. *Id*. at 131-132. Here, plaintiffs merely stated that the facts would demonstrate defendants' involvement in a scheme to interfere with the purchase. Plaintiffs failed to produce any evidence to show that defendants involvement in the hospital's decision not to purchase Dr. Jeung's building and practice was wrongful. Because defendants were involved in their capacity as the hospital's attorneys, any further discovery of communications between defendants and the hospital on the matter would be barred by the attorney-client privilege. Because there is no evidence showing the wrongfulness element of this claim and no reasonable likelihood of discovering any, there is no genuine issue of material fact regarding this claim.

Plaintiffs next contend that the trial court erred by granting summary disposition of the legal malpractice claim. To support this claim, plaintiffs had to show an attorney-client

relationship, negligence in that legal representation, injury proximately caused by that negligence, and the fact and extent of the injury. *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). Plaintiffs are required to show that, but for defendants' actions, the claimed injury would not have occurred. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 586-587; 513 NW2d 773 (1994). Here, those injuries are apparently Dr. Jeung's suspension from the hospital and the hospital's decision not to purchase Dr. Jeung's building or practice. Plaintiffs did not provide any evidence that either event would not have taken place if different attorneys with no knowledge of plaintiffs had been employed by the hospital as legal counsel, and any communications between the hospital and defendants regarding legal advice or the peer review is privileged. Because there is no evidence showing that the hospital would have acted differently but for defendants' alleged actions and no reasonable likelihood of discovering any, there is no genuine issue of material fact regarding this claim.

Plaintiffs next allege that the trial court should not have dismissed the case before discovery was completed. Although a motion for summary disposition is generally premature if granted before completing discovery regarding a disputed issue, "if a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence." *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). Mere conjecture does not entitle a party to discovery, because that discovery would be no more than a fishing expedition. *Pauley v Hall*, 124 Mich App 255, 263; 335 NW2d 197 (1983). Summary disposition may be appropriate before the completion of discovery where further discovery stands no reasonable chance of resulting in factual support for the nonmoving party. *Colista v Thomas*, 241 Mich App 529, 537-538; 616 NW2d 249 (2000). Here, the evidence in the record does not show the possibility that any non-privileged evidence might be discoverable, and an unsupported statement that certain facts can be proven is insufficient. *Bellows*, *supra* at 561. Therefore, summary disposition was not premature.

Finally, plaintiffs argue that their claim of legal malpractice should not have been dismissed because violations of the Michigan Rules of Professional Conduct constitute evidence of negligence. Although violations of the former Code of Professional Responsibility gave rise to a cause of action, *Hooper v Lewis*, 191 Mich App 312, 316; 477 NW2d 114 (1991), Rule 1.0(b) of the MRPC explicitly states that the current rules do not. Further, even if the MRPS's gave rise to a cause of action, as noted above, plaintiffs failed to establish the element of proximate cause. Plaintiffs failed to state a cause of action for legal malpractice.

Affirmed.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald