IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 12, 2005 Session

BRADLEY S. LOGAN, M.D. v. LEON EVERETT, M.D., VIRGIL CROWDER, M.D., JACK BUCK, CROCKETT HOSPITAL, LLC., and LIFEPOINT HOSPITALS, INC.

Direct Appeal from the Circuit Court for Davidson County
No. 02C-2090 Hon. Hamilton V. Gayden, Jr. Circuit Judge

No. M2005-00012-COA-R3-CV - Filed January 27, 2005

Plaintiff sued defendants, claiming defendants intentionally interfered with a business relationship by making false and malicious statements about him. The Trial Court granted defendants summary judgment on the grounds defendants were immune pursuant to Tenn. Code Ann. § 63-6-210(d)(1)(2) for providing information to a credential committee investigating plaintiff. On appeal, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, J., joined.

Bradley S. Logan, M.D., Nashville, Tennessee, *pro se*.

Robert L. Trentham and Taylor B. Mayes, Nashville, Tennessee, for Appellee, Virgil Crowder, M.D.

Andrew S. Naylor and Stanley E. Graham, Nashville, Tennessee, for Appellees, Leon Everett, M.D., Jack Buck, Crockett Hospital, LLC., and Lifepoint Hospitals, Inc.

OPINION

TRIAL COURT PROCEEDINGS

Plaintiff, a physician, sued Dr. Leon E. Everett and John Does A thru I, and averred he was a licensed physician, and that Dr. Everett practices medicine in Lawrenceburg, Tennessee

where he is the Chief of the Medical Staff of Crockett Hospital.

The Complaint averred that in 2001 plaintiff began negotiations with Skyline Medical Center ("Skyline") with the purpose of moving his medical practice from Lawrenceburg, Tennessee, to Nashville, and that plaintiff and Skyline entered into a Recruiting Agreement wherein Skyline promised to guaranty plaintiff a minimum monthly income for the first year of his practice in Nashville. The promise was conditioned upon Plaintiff "obtaining and maintaining full medical staff privileges at [Skyline]" and engaging "in the full-time private practice of medicine as [an] Ob/Gyn in [Nashville]" by January 1, 2002.[1] Plaintiff further averred that he applied for medical privileges at Skyline, but was informed that his application would be rejected due to negative statements made by individuals at Crockett Hospital. Further, that plaintiff learned that none of the physicians contacted by Skyline during the application process gave him a positive reference, and his Complaint concluded that defendants committed tortious interference with the contract between plaintiff and Skyline by making false and malicious statements in bad faith.

Subsequently, the Trial Court allowed plaintiff to amend his Complaint to add Virgil H. Crowder, M.D.; Crockett Hospital, LLC ("Crockett"); and LifePoint Hospitals, Inc. ("LifePoint") as defendants.

On December 3, 2003, Dr. Crowder filed a Motion for Summary Judgment and a Statement of Undisputed Facts. The Motion argued:

> [Dr. Crowder] made no statements whatsoever to representatives of [Skyline] concerning the application by the [P]laintiff . . . to [Skyline] for medical staff privileges and therefore, [Plaintiff's] claims against Dr. Crowder necessarily fail to state a claim upon which relief could be granted for intentional interference with a business relationship as a matter of law.

The Trial Court denied Dr. Crowder's Motion, and Dr. Everett then filed a Motion for Summary Judgment on the grounds that plaintiff had executed a Release, which released from liability, "all representatives of the hospital and its medical staff for their acts performed in good faith and without malice in connection with evaluating my application and my credentials and qualifications". A copy of the Release was filed, along with a Motion, as well as excerpts from the deposition of plaintiff. One of the more relevant exchanges from the deposition is:

> Q. So you don't know what Dr. Everett said [to the credentials committee]?
>
> A: Of course not.
>
> Q: Do you have any knowledge or information that would tend to show or

[1]Plaintiff did not engage in full time practice as an Ob/Gyn in Nashville by the January 1, 2002 deadline, and Skyline rescinded the Recruiting Agreement on February 20, 2002.

suggest that anything Dr. Everett may have said to any one was untrue or was a lie?

A: No.

Q: Do you have any facts or anything to show that would suggest that anything that Dr. Everett may have said to anyone with regard to your application at Skyline was made in bad faith?

A: Yes

. . .

Q: Okay. Tell me what the proof is, facts, or hearsay.

A: Okay. . . . Kelly Duggan [a Skyline attorney] communicated to me that none of the physicians that were contacted by Skyline . . . gave [me] a positive reference. Mr. Klein [Skyline's CEO] has also said that it was the telephone conversation with physicians in Lawrenceburg that made the credentials committee uncomfortable.

Q: Anything else?

A: Dr. Everett has told me that he spoke to somebody at Skyline . . . . Dr. Everett has also told me that he told them that my charts were reviewed.

. . .

Q: And your charts were, in fact, reviewed?

A: Yes.

. . .

A: Okay. So then Dr. Neal [President of Skyline's medical staff] spoke to Dr. [Janice] Huckaby [Plaintiff's friend and colleague] and said that he spoke to the physicians in Lawrenceburg and that they did not give [me] a positive reference, that he took each of those persons off of the record and had a conversation with them that also made him feel uncomfortable.

Q: Anything else?

A: At this time, no.

Plaintiff responded to these Motions for Summary Judgment, but did not file responses to the Statement of Undisputed Facts filed by Dr. Everett and Dr. Crowder. Regarding the doctors' arguments that they were immune pursuant to Tenn. Code Ann. § 63-6-219(d)(2), plaintiff argued that there was a factual issue as to whether this immunity applied because this immunity is conditioned on acting in good faith without malice and the immunity could be lost if the doctors provided false information and actually knew the information was false. Regarding the doctors' assertion there was no evidence to show that they engaged in the alleged tortious conduct, plaintiff argued that his search for evidence was hampered by assertions of the peer review privilege and that the documents evidencing communication between representatives of Skyline and doctors at Crockett raised the possibility of false and malicious statements.

Two of the documents relied on by plaintiff, were telephone verification forms, one of which lists comments made by the Chief of Staff at Crockett (i.e. Dr. Everett). The comments listed on the form include the following: "has had some issues—now resolved[;] lots of politics[;] poor relationship with peers[;] some complications—reviews done[;] recommended.". The other form is not dated and lists comments made by a former Chief of Staff at Crockett. Plaintiff also attached, as an exhibit to his Response to Dr. Crowder's Motion, a letter dated February 22, 2002, written on Dr. Crowder's stationary, which was not signed and addressed to Skyline's Credentials Committee. The letter included the following comments:

> [Plaintiff's] charts were reviewed at my request because I thought that his surgical complication rates might be high. . . . The Surgery [Committee] had reviewed all instances of complications for [Plaintiff] as a regular part of its function. No finding of complications was ever categorized as other than "a known complication of surgery appropriately handled.". . . [Plaintiff's] complication rate was compared to system wide averages and his average was actually below the system average. Outside review was performed. The Medical Executive Committee met, reviewed the findings and no recommendation for anything other than observation for 6 months was made.

The Trial Court granted Dr. Crowder's and Dr. Everett's Motions for Summary Judgment.

Plaintiff then filed a Motion to Amend his Complaint and added Jack Buck as a Defendant. This Complaint averred that Buck was the Chief Executive Officer of Crockett and that he committed intentional interference with the business relationship between Plaintiff and Skyline by knowingly making false statements to Skyline's CEO about Plaintiff's abilities.

Crockett, LifePoint, and Mr. Buck filed a Motion for Summary Judgment and Statement of Undisputed Facts based upon the same grounds presented by Drs. Everett and Crowder. In plaintiff's Response to the Motion, plaintiff attached a telephone verification form listing comments regarding plaintiff made by Buck to Robert Klein, Skyline's CEO. The form listed these comments:

> very negative overall; both clinical and financial issues[;] '4 months behind rent'[;] behind in ultrasound lease payments[;] spoke of numerous surgical mishaps; 'sloppy'[;] . . . bad reputation.

Plaintiff alleged these comments evidenced false statements made by Buck, and served a subpoena upon Klein for a deposition and specified documents, as well as a subpoena upon Skyline to produce specified documents. At these parties' request, the Trial Court entered a Protective Order denying discovery and granted defendants' Motion for Summary Judgment.

ISSUES RAISED ON APPEAL

1. What is the extent of the privilege from discovery created by the Tennessee Peer Review Law of 1967?

2. Whether summary judgment was appropriate because the Tennessee Peer Review Law of 1967 bars any claim for liability against the Appellees.

3. Whether summary judgment was appropriate because the Appellant released all of his claims against each Appellee.

4. Whether summary judgment was appropriate because, as a matter of law, the Appellees did not tortiously interfere with the Appellant's "business relationship" with Skyline.

Our review of summary judgments are *de novo* "without any presumption of correctness accorded the trial court's judgment." *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d 528, 534 (Tenn. 2002). Our task in deciding the propriety of a summary judgment is to determine whether "the pleadings, depositions, answers to interrogatories, 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." *Guy*, (quoting Tenn. R. Civ. P. 56.04). When making this determination, "[c]ourts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn. 1999).

The moving party must do more than make conclusory assertions "that the nonmoving party has no evidence." *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993). Instead, the moving party must either "affirmatively negate an essential element of the nonmoving party's claim" or "conclusively establish an affirmative defense that defeats the nonmoving party's claim." *Id.* at 215 n.5. At this juncture, the nonmoving party may not simply rely upon "the allegations or denials of

his pleadings," but must establish the existence of genuine disputed issues of material fact. *Id.*

Defendants argued below, and on appeal, that the Tennessee Peer Review Law of 1967 (the "TPRL") creates an absolute privilege protecting their communications with Skyline regarding Plaintiff's application for privileges. Plaintiff counters that the privilege from discovery is not absolute.

The General Assembly enacted the TPRL in order to create an "incentive for the medical profession to undertake professional review." Tenn. Code Ann. § 63-6-219(b)(2) (2005). As part of this incentive, the General Assembly decided that "peer review committees must be protected from liability for their good faith efforts." The TPRL includes the following provision:

> (d)(1) All state and local professional associations and societies and other organizations, . . .**any person who participates with or assists a medical review committee** with respect to its functions, or any other individual appointed to any committee, as such term is described in subsection (c), **is immune from liability to any . . . individual** or organization **for furnishing information** . . . **to any such committee** or for damages resulting from any decision . . . entered or acted upon by such committees undertaken or performed within the scope or function of the duties of such committees, **if made or taken in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.**

Tenn. Code Ann. § 63-6-219(d)(1) (2005). (Emphasis supplied). As the foregoing establishes, immunity is conditioned on acting "in good faith, and without malice, and on the basis of facts reasonably known or reasonably believed to exist." In 1988, General Assembly amended the original Act, as it applies to those who provide information to medical review committees. 1988 Tenn. Pub. Acts, ch. 609, § 2. The following language was added to the Act:

> (2) Notwithstanding the provisions of subdivision (d)(1), **any person providing information**, whether as a witness or otherwise, **to a medical review committee** regarding the competence or professional conduct of a physician **is immune** from liability to any person, **unless such information is false and the person providing it had actual knowledge of such falsity**.

Tenn. Code Ann. § 63-6-219(d)(2) (2005) (emphasis supplied). The foregoing phrase establishes that any further consideration of an information-provider's good faith or malice is unnecessary. *Ironside v. Simi Valley Hosp.*, 188 F.3d 350, 353 (6th Cir. 1999).

Beyond a showing that they assisted a review committee, participants in the medical review process do not have to prove their eligibility for immunity. Instead, "[a] member of a medical review committee, or person reporting information to a medical review committee, is presumed to have acted in good faith and without malice. Any person alleging lack of good faith has the burden

of proving bad faith and malice." Tenn. Code Ann. § 63-6-219(d)(3). Thus, where a plaintiff wishes to demonstrate that a provider of information to a medical review committee is ineligible for immunity, the plaintiff must prove the information was false and the provider had actual knowledge of its falsity.

The TPRL also protects the information submitted to and generated by such review committees by making it confidential and privileged. Tenn. Code Ann. § 63-6-219(e). Plaintiff argues there is an implied exception to this privilege which gives the party opposing immunity the right to discover information otherwise privileged under subsection (e). We cannot agree with this interpretation of the provision. The General Assembly expressed its intent regarding subsection (e) as follows:

> [I]t is the stated policy of Tennessee to encourage committees made up of Tennessee's licensed physicians to candidly, conscientiously, and objectively evaluate and review their peers' professional conduct, competence, and ability to practice medicine. Tennessee further recognizes that confidentiality is essential both to effective functioning of these peer review committees and to continued improvement in the care and treatment of patients.

Tenn. Code. Ann. § 63-6-219(b)(1).

According to the plain terms of Subsection (e), the privilege from discovery is broad and protects "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee." The plain terms of this section provide for only three limitations in the privilege's scope. First, the privilege only protects information "furnished to, or generated by, a medical peer review committee." Second, the privilege only applies in civil actions. Third, the privilege applies to neither "records made in the regular course of business" nor to "records otherwise available from original sources" which are simply presented during the proceedings of a medical peer review committee.

Under plaintiff's interpretation of subsection (e), a participant in the peer review process could not assert his immunity without simultaneously losing enjoyment of the privilege from discovery created by the subsection. Accordingly, plaintiff's interpretation would have the effect of rendering the privilege created by subsection (e) effectively void. "It is a well-settled principle of statutory construction that statutory provisions should be construed in a manner that will not render them meaningless or useless." *Hoyer-Schlesinger-Turner, Inc. v. Benson*, 479 S.W.2d 223, 225 (Tenn. 1972).

Plaintiff argues that the Tennessee Supreme Court has recognized an implied exception to the peer review privilege in *Eyring v. Fort Sanders Parkwest Med. Ctr., Inc.*, 991 S.W.2d 230 (Tenn. 1999). In *Eyring*, the plaintiff was a licensed physician with staff privileges at the defendant hospital, and his privileges were later revoked by a medical review committee at the

hospital. The plaintiff sued the hospital, charging intentional interference with a business relationship. The Trial Court allowed the plaintiff to conduct discovery of peer review participants for the limited purpose of allowing the plaintiff to discover the participants' good faith, malice, and whether they acted on the basis of facts reasonably known or believed to exist, but declined to allow plaintiff to conduct discovery regarding the peer review process itself.

Prior to 1999, the second sentence of the peer review privilege provision stated, "All such information, in any form whatsoever, so furnished to, or generated by, a medical review committee shall be privileged communication subject to the laws pertaining to the attorney-client privilege." 1994 Tenn. Pub. Acts, ch. 732, § 6. The plaintiff argued that the language "subject to the laws pertaining to the attorney-client privilege" granted an implied exception to the confidentiality privilege, which argument was rejected by this Court. The plaintiff appealed to the Supreme Court, which affirmed the Trial Court's approach with the following reasoning:

> This statute creates a broad privilege from disclosure for "[a]ll information, interviews, incident or other reports, statements, memoranda or other data ... and any findings conclusions or recommendations resulting from the [committees'] proceedings." **In our view, this broad language encompasses any and all matters related to the peer review process itself. We reject Eyring's contention that the statute grants an implicit right to any information "furnished to or resulting from the proceedings" of the peer review committees.**
>
> It appears, however, that the broad language extending the privilege from discovery must be reconciled with the statutory requirement that the plaintiff bear the burden of producing evidence of malice and bad faith. **We therefore agree with the trial court's ruling allowing Eyring to conduct discovery for the limited purpose of investigating the committee members' good faith, malice, and reasonable knowledge or belief, but prohibiting any inquiry into the peer review process itself.** Accordingly, we conclude that . . . the broad language of the statute encompasses any and all matters related to the peer review process.

Eyring, p.239 (citations omitted) (emphasis supplied).

The Supreme Court clearly rejected the plaintiff's contention that the statute grants an implicit right to any information furnished to or resulting from the proceedings of the peer review committees, and prohibits any inquiry into the peer review process itself. In the Court's words, "the broad language of the statute encompasses any and all matters related to the peer review process."

We conclude there is no implied exception to the rights of privilege and confidentiality created by the statute.

Next, plaintiff argues that the immunity from civil liability is conditional, and whether

the relevant conditions have been satisfied is a genuine issue of material fact. Defendants counter that summary judgment was appropriate because they are immune to liability under the TPRL.

The record establishes that Skyline's Credentials Committee and its Medical Executive Committee are "medical review committees" for purposes of Tenn. Code Ann. § 63-6-219. In this regard see a definition of the medical review committee contained in Tenn. Code Ann. § 63-6-219(c).

Plaintiff's claim is based on the belief that the defendants provided information to Skyline's Credentials Committee regarding plaintiff's application for privileges at Skyline. The record establishes that these individuals satisfy subsection (d)(2)'s definition of "person[s] providing information, whether as a witness or otherwise, to a medical review committee regarding the competence or professional conduct of a physician." As such, they have "immunity from liability to any person" unless the information they provided was false and they had actual knowledge of its falsity. According to Tenn. Code Ann. § 63-6-219(d)(3), the defendants will be presumed to enjoy this immunity unless plaintiff can show they are ineligible.

We have previously noted that plaintiff, as to Dr. Everett, testified that he did not have any knowledge or information that would suggest that what Everett may have said "was untrue or was a lie." The material submitted by plaintiff in support of his claim against Everett is the telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of a telephone conversation with Dr. Everett. However, under Tenn. Code Ann. § 63-6-219(e) "[a]ll information, interviews, incident or other reports, statements, memoranda or other data furnished to any [medical peer review] committee" are privileged from discovery. The telephone verification form falls within this category, and therefore would be inadmissible at trial. Although the facts relied upon by plaintiff need not be in admissible form, they "must be admissible at the trial." *Byrd,* 215-16. Plaintiff has failed to establish a disputed issue of material fact as to Everett's ineligibility for immunity, and summary judgment was appropriate in his case.

Plaintiff's support for his claim against Dr. Crowder, is another telephone verification form prepared by an agent of Skyline's Credentials Committee listing notes of an alleged telephone conversation with Dr. Crowder.[2] Under Tenn. Code Ann. § 63-6-219(e), however, this form is privileged and would not be admissible at trial. Plaintiff also presented minutes from a meeting of Skyline's Credentials Committee as circumstantial evidence of what Dr. Crowder told the Credentials Committee.[3] These minutes are also privileged from discovery pursuant to Subsection (e).

---

[2]Dr. Crowder's name is not mentioned on this form.

[3]Although the minutes refer to comments made by "the former Chief of Staff at Crockett", Dr. Crowder is not mentioned by name in the minutes.

The only other material presented by plaintiff in support of his claim is a letter dated February 22, 2002 and addressed to Skyline's Credentials Committee regarding plaintiff's application for privileges. The letter is written on Dr. Crowder's stationary, but it was not signed. The Record indicates this copy of the letter was sent to Plaintiff by Dr. Crowder's clinic, assuming *arguendo* that the letter is admissible, it does not create a disputed issue of material fact as to whether Dr. Crowder supplied false information to Skyline because plaintiff has not presented any evidence that any of the information in the letter is false. Therefore, summary judgment in favor of Dr. Crowder was properly entered by the Trial Court.

In support of plaintiff's claim against Mr. Buck, plaintiff presented a third telephone verification form prepared by Skyline's CEO, Robert Klein. Klein is a member of Skyline's Credentials Committee. Robert Klein listed notes of a conversation with Buck regarding plaintiff's application for privileges at Skyline. Under Subsection (e), however, this form is privileged and would be inadmissible at trial. This form is the only evidence presented by plaintiff regarding Buck's communications with Skyline's Credentials Committee. Plaintiff therefore, has not established what information was provided by Buck, and hence, cannot establish whether that information was true or false. Accordingly, summary judgment was appropriate for Mr. Buck.

The parties do not dispute that Dr. Everett and Mr. Buck are employees of Crockett, and "[A]n employer may be held liable for the torts committed by his or her employees while performing duties within the scope of employment." *White v. Revco Disc. Drug Ctrs., Inc.*, 33 S.W.3d 713, 718 (Tenn. 2000). Yet, "a principal may not be held vicariously liable under the doctrine of respondeat superior based upon the acts of its agent . . . when the right of action against the agent is extinguished by operation of law . . . ." *Johnson v. LeBonheur Children's Med. Ctr.*, 74 S.W.3d 338, 345 (Tenn. 2002); *see also Graham v. Miller*, 187 S.W.2d 622, 625-26 (Tenn. 1945); *Raines v. Mercer*, 55 S.W.2d 263, 264 (Tenn. 1932). We have concluded that Dr. Everett and Mr. Buck are entitled to immunity. Plaintiff's right of action against these agents is extinguished by operation of law, and summary judgment in Crockett's favor was appropriate.

Plaintiff's Complaint did not clearly state how LifePoint could be held liable for intentional interference with the business relationship between Plaintiff and Skyline. During depositions, Plaintiff asserted that LifePoint committed this tort through the actions of its employees. Plaintiff alleged that one of these employees, Mr. Gracey,[4] "failed to put adequate policies and procedures in effect to deal appropriately with false allegations that had been made against [Plaintiff] during [Plaintiff's] tenure at Crockett." Plaintiff also alleged that another LifePoint employee, Mr. Kunkel,[5] made false statements to Skyline regarding Plaintiff's lease payments at Crockett.

---

[4]According to LifePoint's Brief, William Gracey is LifePoint's Chief Operations Officer.

[5]According to LifePoint's Brief, Neil Kunkel is LifePoint's in-house counsel.

Plaintiff does not allege that Mr. Gracey communicated with Skyline's Credentials Committee, but whatever immunity was provided by Tenn. Code Ann. § 63-6-219(d), Mr. Gracey's alleged conduct does not support a claim for intentional interference with a business relationship. The tort of intentional interference with business relationships requires intentional conduct. Our Supreme Court outlined the elements of this tort as follows:

> We also hold that liability should be imposed on the interfering party provided that the plaintiff can demonstrate the following: (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general; (3) **the defendant's intent to cause the breach or termination of the business relationship**; (4) the defendant's improper motive or improper means; and finally, (5) damages resulting from the tortious interference.

Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 701 (Tenn. 2002). (emphasis supplied). Plaintiff does not allege that Gracey intended to terminate plaintiff's business relationship with Skyline. Instead, Plaintiff asserts that Gracey "failed to put adequate policies and procedures into effect." This allegedly negligent conduct is insufficient to satisfy the third element of plaintiff's claim, which requires intentional conduct.

Plaintiff alleges that Kunkel falsely told representatives of Skyline's Credentials Committee that Plaintiff had "unpaid lease amounts at [Crockett]." If plaintiff's belief that Kunkel provided information to Skyline's Credentials Committee is correct, then Kunkel would be entitled to immunity pursuant to Tenn. Code Ann. § 63-6-219(d)(2), unless the information he provided was false and he had actual knowledge of its falsity. Plaintiff provided no evidence showing that Mr. Kunkel's statement was false. For these reasons, the plaintiff has failed to establish his claim against LifePoint, and summary judgment was appropriate as to this defendant.

The foregoing renders the remaining issues moot, and we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to the plaintiff, Bradley S. Logan, M.D.

_____

HERSCHEL PICKENS FRANKS, P.J.