

MICHIGAN COURT OF APPEALS

Shane v. Mouw, 116 Mich. App. 737

323 N.W.2d 537 (1982) · No. Docket No. 52651 · Decided June 8, 1982

SUMMARY

The Michigan Court of Appeals addressed whether a physician-patient relationship continued, for medical-malpractice statute-of-limitations purposes, through a telephone call concerning hospitalization and medication. The majority held that the call could constitute continued treatment or service under MCL 600.5838(1), reversed the accelerated judgment, and remanded for trial; a dissent would have affirmed.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	J.R. Ernst; D.F. Walsh, P.J.; MacKenzie, J.; J.R. Ernst, J.
JURISDICTION	Michigan
DECIDED	June 8, 1982
DOCKET	Docket No. 52651
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed the circuit court's accelerated judgment dismissing her medical-malpractice action as barred by the statute of limitations.
STANDARD OF REVIEW	On an accelerated judgment based on the statute of limitations, disputed questions of material fact must be resolved in favor of the nonmoving party for purposes of the motion; accelerated judgment is improper when such factual disputes exist.
PRECEDENTIAL VALUE	published Michigan Court of Appeals opinion
PARTIES	Shane v. Mouw

TOPICS

- medical malpractice
- statute of limitations
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- medical malpractice
- health law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether disputed facts concerning the date and nature of defendant's last treatment or professional service precluded accelerated judgment based on the medical-malpractice statute of limitations.
2. Whether a telephone call involving a patient's request for treatment, a physician's assessment based on prior treatment and current information, and an offer to prescribe medication could constitute treating or otherwise serving the plaintiff under MCL 600.5838(1).

HOLDINGS

1. Accelerated judgment based on the statute of limitations was improper because plaintiff's version of the facts, if accepted, created a material factual dispute about whether defendant continued to treat or otherwise serve her on August 7, 1977.
2. Under the circumstances presented, the August 7 telephone interaction could constitute treating or otherwise serving plaintiff for purposes of MCL 600.5838(1).

KEY QUOTATIONS

“In DeGrazia v Johnson, 105 Mich App 356; 306 NW2d 512 (1981), it was held that under some circumstances a telephone conversation between a physician and patient which takes place after the last examination of the patient may constitute “treating or otherwise serving the plaintiff” pursuant to MCL 600.5838(1); MSA 27A.5838(1).” (at 740)

“As observed in the dissenting opinion, the physician-patient relationship is consensual; it may be established by a request for treatment and treatment being furnished in response to such request.” (at 741)

FACTUAL BACKGROUND

The parties had a physician-patient relationship beginning in 1961 and continuing into 1977. Plaintiff visited defendant approximately 63 times between 1965 and May 1977 and claimed that she last visited him in July 1977, when severe symptoms required her to use a walker. On August 7, 1977, plaintiff's son called defendant on her behalf and requested hospitalization; defendant declined hospitalization but offered to prescribe medication, after which plaintiff obtained treatment from another physician who diagnosed gout.

PROCEDURAL HISTORY

Plaintiff filed her malpractice complaint on August 2, 1979. The circuit court granted defendant accelerated judgment under GCR 1963, 116.1(5), concluding that defendant last treated plaintiff on May 3, 1977, and that the two-year malpractice limitations period had expired. The Michigan Court of Appeals reversed and remanded for trial, accepting plaintiff's version of disputed facts for purposes of the appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for trial. Costs to plaintiff.

CASES CITED

- DeGrazia v. Johnson, 105 Mich. App. 356, 306 N.W.2d 512 (1981)
- Dyke v. Richard, 390 Mich. 739, 744, 213 N.W.2d 185 (1973)
- DeHaan v. Winter, 258 Mich. 293, 296-297, 241 N.W. 923 (1932)
- Kelleher v. Mills, 70 Mich. App. 360, 365-366, 245 N.W.2d 749 (1976)
- Thomas v. Golden, 51 Mich. App. 693, 695, 214 N.W.2d 907 (1974)
- Thomas v. Golden, 392 Mich. 779 (1974)