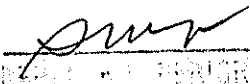


STATE OF GEORGIA

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ABRAHAM SINGLETON,)
)
Plaintiff,)
v.)
)
MEMORIAL HEALTH UNIVERSITY)
MEDICAL CENTER, INC.)
)
Defendant.)


CLERK OF SUPERIOR CT.
CHATHAM COUNTY, GA

CIVIL ACTION NO. CV03-1039-K

**MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER, INC.'S
BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

NOW COMES MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER, INC. (hereinafter "Memorial"), and in support of its Motion for Summary Judgment shows the Court the following:

I. FACTS.

Plaintiff has filed a civil lawsuit seeking recovery against Memorial Health University Medical Center Inc. for medical malpractice, alleged criminal activity (kidnapping, attempted murder), false imprisonment, and assault and battery. The Court has dismissed Plaintiff's claims for medical malpractice due to Plaintiff's failure to have an expert affidavit as required by O.C.G.A. § 9-11-9.1.

Plaintiff's claims of criminal activity do not create a civil cause of action against Memorial, and Memorial's Motion for Summary Judgment should be granted as to this issue.

Plaintiff's remaining claims of false imprisonment and assault and battery sound in medical malpractice because they arise from a medical decision to restrain Plaintiff. Because Plaintiff's claims of medical malpractice have previously been dismissed, these claims are not actionable.

II. ARGUMENT AND CITATION OF AUTHORITY.

A. Plaintiff's claims of criminal misconduct do not give rise to a civil action against Memorial.

Plaintiff alleges that employees of Memorial attempted to kidnap him, murder him, and commit a sexual assault upon him. Although Memorial denies that any such activities occurred, even assuming, *arguendo*, that they did, Memorial is not liable for the alleged intentional misconduct of its employees, as they were not acting within the course and scope of their employment at the time of such alleged actions. Piedmont Hospital, Inc. v. Palladino, 276 Ga. 612 (2003).

Palladino sued Piedmont Hospital alleging, among other things, that the hospital was liable for an assault and battery relating to the improper touching of Plaintiff's genitals during his hospital stay. The Court granted the hospital's Motion for Summary Judgment on the basis that under the doctrine of *respondeat superior*, the hospital was only responsible for actions which were taken in furtherance of the hospital's business and within the scope of such business. Since the actions complained of were done for personal reasons, and not in furtherance of the hospital's business, the hospital cannot be held liable for such actions. See also, Alpharetta First United Methodist Church v. Stewart, 221 Ga. App. 748, 752 (1996); B.C.B. Co. v. Troutman, 200 Ga. App. 671, 672 (1991); Favors v. Alco Mfg. Co., 186 Ga. App. 480, 482-483 (1988); Big Brother/Big Sister of Metro Atlanta v. Terrell, 183 Ga. App. 496 (1987).

Similarly, in the case of Lucas v. Hospital Authority of Dougherty County, 193 Ga. App. 595 (1989), the Court of Appeals upheld and award of summary judgment to a hospital that had been sued for vicarious liability for an employee who attempted to kill patients by injecting lethal doses of potassium chloride, on the basis that the hospital is not liable for the intentional acts of employees outside the course and scope of their employment.

Plaintiff alleges that certain hospital or emergency room personnel attempted to kidnap him, murder him and sexually molest him. These alleged criminal activities are not in furtherance of the hospital's business and are outside the scope of any authorized activity of its employees. (See Affidavit of Wayne Marchant, attached as Exhibit "A"). As a result, the hospital is not liable for any of the alleged acts of criminal misconduct and the Court should grant Memorial's Motion for Summary Judgment as to these claims.

B. The physician's order to restrain Plaintiff was a medical decision.

Due to the Affidavit requirement for bringing malpractice claims, there have been several decisions relating to the distinction between a medical decision and an act of simple negligence. Generally, **when the exercise of professional judgment is used in relation to the patient's medical condition, it is considered a medical action**, requiring an Affidavit. See, e.g. Robinson v. Medical Center of Central Georgia, 217 Ga. App. 8 (1995) (the positioning of the side rails is a professional decision, requiring an expert Affidavit); General Hospitals of Humana v. Bentley, 184 Ga. App. 489 (1987) (the sufficiency of supervision of elderly patient exiting bathtub is a medical question, requiring an expert Affidavit); Halloway v. Northside Hospital, 230 Ga. App. 371 (1998) (supervision to prevent fall of patient is medical decision, requiring expert Affidavit); Bulloch County Hospital Authority v. Parker, 196 Ga. App. 438 (1990); Sparks v. Southwest Community Hospital & Medical Center, Inc., 195 Ga. App. 858 (1990) ("The evidence here clearly indicates that the medical condition of the patient was the determinative factor as to the [type of wheelchair which should be used] by the hospital staff. Thus, the alleged negligent act required the exercise of expert medical judgment by [hospital's] staff.").

The Emergency Room physician has the authority to restrain a patient without the patient's consent. A hospital is "under the duty to exercise such reasonable care in looking after and protecting a patient as the patient's condition which is known to the hospital through its agents and servants charged with the duty of looking after and supervising the patient may require. This duty extends to safeguarding and protecting the patient from any known or reasonably apprehended danger from himself which may be due to his condition, and to use ordinary and reasonable care to prevent it." Emory Univ. v. Shadburn, 47 Ga. App. 643 (1933). Further, a healthcare provider is permitted to detain persons for mental evaluations and to restrain patients who are considered a danger to themselves or others. Bradley Center, Inc. v. Wessner, 250 Ga. 199 (1982).

The emergency room physician, Dr. Gechlik evaluated Mr. Singleton and discovered that Mr. Singleton was under the influence of alcohol and was impaired in his judgment. During the course of his evaluation of the possible heart attack, Mr. Singleton became physically aggressive toward staff. Because Mr. Singleton needed to be fully evaluated, and his actions made him a danger to himself or others, Dr. Gechlik ordered the security personnel to restrain him. (See Affidavit of Dr. Gechlik, attached as Exhibit "B;" See Affidavit of Lori Lockhart, attached as Exhibit "C") The decision to restrain Mr. Singleton, in this instance, was a medical one. As such, it falls within Plaintiff's claims for medical malpractice, which have previously been dismissed by this Court. As a result, Memorial's Motion for Summary Judgment should be granted. As there are no other claims pending, final judgment should be entered.

III. CONCLUSION.

Memorial is not liable under *respondeat superior* for intentional misconduct outside the course and scope of employment. As a result, Memorial is entitled to Summary Judgment on Plaintiff's claims of kidnapping, attempted murder, and attempted sexual assault.

Memorial should also be awarded summary judgment as to Plaintiff's claims of false imprisonment and assault and battery because these arise from Dr. Gechlik's medical judgment to restrain Plaintiff for his safety and that of others. As such, these claims constitute claims of medical malpractice. Since Plaintiff's claims of medical malpractice have previously been dismissed, these too must fail.

WHEREFORE, Memorial prays that the Court will grant its Motion for Summary Judgment.

This 1st day of October, 2004.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

Kirby Mason

Kirby G. Mason

State Bar of Georgia No.: 302310

Attorney for Memorial Health University Medical
Center, Inc.

P.O. Box 9848
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(912) 236-0261

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

ABRAHAM SINGLETON,)
)
Plaintiff,)
v.) CIVIL ACTION NO. CV03-1039-K
)
MEMORIAL HEALTH UNIVERSITY)
MEDICAL CENTER, INC.)
)
Defendant.)

CERTIFICATE OF SERVICE

This is to certify that I have this day served Memorial Health University Medical Center, Inc.'s Brief in Support of its Motion for Summary Judgment in the U. S. Mail, proper postage prepaid, addressed to pro se counsel of record as follows:

Abraham Singleton
150 10th Street
Apt. 311
Atlanta, Georgia 30309

This 1st day of October, 2004.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

Kirby Mason

P.O. Box 9848
Savannah, GA 31412-0048
(912) 236-0261

IN THE SUPERIOR COURT OF CHATHAM COUNTY ORIGINAL FILED
IN CLERK'S OFFICE ON
STATE OF GEORGIA

JAN 26 2005

Abraham Singleton,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. CV03-1039-KA
)	
Memorial Health University Medical)	
Center, Inc ,)	
)	
Defendant.)	

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**ORDER
ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the court on defendant's motion for summary judgment. Having read the parties' briefs and having considered the entire record and the law, the court hereby **GRANTS** defendant's motion.¹

This began as a civil suit for twenty five million dollars against defendant for medical malpractice, alleged criminal activity, including kidnapping and attempted murder, as well as claims for false imprisonment and assault and battery.² The court dismissed plaintiff's claim for medical malpractice due to plaintiff's failure to submit an expert affidavit as required by O.C.G.A. § 9-11-9.1. Defendant has now moved for summary judgment on the remaining issues on the basis that claims of criminal activity do not create a civil cause of action against defendant and the false imprisonment and assault and battery claims arose from a medical decision to restrain plaintiff and thus are not actionable because of the previous dismissal of the malpractice

¹Plaintiff also filed a motion for summary judgment. However, in light of the court's decision, plaintiff's motion for summary judgment is **DENIED**. All other outstanding motions are rendered moot.

²Plaintiff admits, in one of the many handwritten documents he submitted to the court, that he filed this suit because the police would not take the report. He also contends the police were in league with defendant and the possibility of a larger conspiracy between the police, security personnel at the hospital and defendant.

claim. The court agrees.

Briefly, the facts are as follows. Plaintiff called 911 on June 10, 2000, because he thought he was experiencing a heart attack. He was taken to defendant's emergency room where he alleges that he was tortured, brutalized, mistreated and terrorized.³ The undisputed evidence of record, however, demonstrates that plaintiff arrived at the emergency room intoxicated⁴ and he was restrained because he was striking and/or attempting to strike personnel with his cane.⁵ The record further reflects that he was given fluids intravenously in an attempt to help him sober up. Plaintiff admits to breaking free of the restraints placed on him and ripping the IV out of his arm on three separate occasions yet contends he was not unruly at any time.⁶

Plaintiff contends that employees of defendant attempted to kidnap, murder⁷ and sexually assault him. Although defendant denies any such behavior, even assuming these facts to be true, defendant is not liable as a matter of law for the alleged intentional misconduct of its employees,

³Plaintiff contends employees of the defendant hospital gave him mind altering drugs which caused him to lose track of time. However, he alleges "[s]ome type of spiritual element came and indicated that [he] was in Russia." Plaintiff further alleges that the guard was going to sexually molest him when he attempted to help him urinate in the container provided for same.

⁴In his deposition testimony, plaintiff denied that he drank alcohol. Yet in plaintiff's exhibit E, he states that he drinks very moderately. Moreover, the medical records indicate he had alcohol in his system.

⁵While plaintiff denies he was acting out in any way at the emergency room, he admits that he was hollering at the hospital. He says he was hollering because of his chest pain and as a result of the mind altering drugs he was given. As stated *infra*, he further admits to breaking out of his restraints and ripping the IV out of his arm on three separate occasions. *Prophecy Corp. v. Charles Rossignol, Inc.*, 256 Ga. 27 (343 S.E.2d 680) (1986)(holding that if self-contradictory testimony is not adequately explained, the contradictory testimony must be construed against the respondent).

⁶As to plaintiff's medical care, he admits in one document that he had an EKG and then recants this statement in another document. It is clear from the medical records that plaintiff did receive an EKG. *See also* footnotes 4 and 5.

⁷In his deposition, plaintiff alleges that employees of the defendant restrained him so that he would have a heart attack and this is where his allegation of attempted murder stems. Although not a part of this suit, he alleged that Metropolitan Life Insurance Company had attempted to murder him at the hospital also.

as the evidence shows any such behavior was not within the scope or course of their employment. *Piedmont Hospital, Inc. v. Palladino*, 276 Ga. 612 (2003)(summary judgment awarded to hospital where employee accused of sexual molestation of patient); *Lucas v. Hospital Authority of Dougherty County*, 193 Ga. App. 595 (1989)(summary judgment awarded to hospital where nurse accused of giving lethal injections to patients). Here, it is clear that the alleged attempted kidnapping, attempted murder and attempted sexual molestation extended beyond the scope of employment and were totally unconnected to the hospital's business. Accordingly, defendant's motion for summary judgment on these allegations is **GRANTED**.

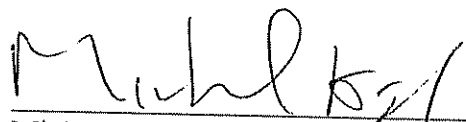
Plaintiff also contends that defendant falsely imprisoned him⁸ and committed assault and battery when he was restrained. The evidence shows that the emergency room physician evaluated plaintiff and discovered he was intoxicated. During the course of his evaluation, plaintiff became physically aggressive toward staff. As plaintiff needed to be fully examined in order to determine if he had experienced a heart attack, the doctor ordered the hospital's security personnel to restrain him.

When the exercise of professional judgment is used in relation to the patient's medical condition, it is considered a medical action and as such requires an expert affidavit for the claim to survive. *See e.g., Robinson v. Medical Center of Central Georgia*, 217 Ga. App. 8 (1995)(the positioning of side rails was a professional decision requiring an expert's affidavit where the claim goes to the propriety of a professional decision rather than to the efficacy of conduct in the carrying out of a decision previously made); *Halloway v. Northside Hospital*, 230 Ga. App. 371 (1998)(supervising patient to prevent fall is professional decision requiring an expert's affidavit). The doctor's decision to restrain plaintiff was clearly a medical decision based upon his medical judgment that plaintiff was a danger to himself and/or others. Moreover, the emergency room physician is authorized to restrain patients to prevent them from harming themselves and others. *Emory Univ. V. Shadburn*, 47 Ga. App. 643 (1933); *Bradley Center, Inc. v. Wessner*, 250 Ga. 199 (1982). As such, plaintiff's claims for false imprisonment and assault and battery constitute claims for medical malpractice and require an expert's affidavit.

⁸He also states he told them he needed to be freed so he could go see Pete, his guinea pig. This forms a part of the allegation that he was falsely imprisoned.

As the medical malpractice claim has already been dismissed, plaintiff's claims for false imprisonment and assault and battery are no longer viable. Accordingly, defendant's motion for summary judgment is **GRANTED**.

SO ORDERED this 26 day of January, 2005.



Michael L. Karpf, Judge, Superior Court
Eastern Judicial Circuit of Georgia

cc: Kirby G. Mason, Esq.
Mr. Abraham Singleton, *pro se*