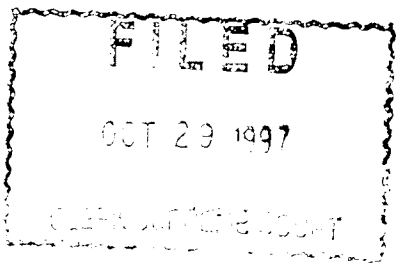
IN THE COURT OF APPEALS OF IOWA

No. 7-399 / 96-0667

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YVONNE L. BROWER,

Plaintiff-Appellant,

vs.

PHILLIP SCOTT ZIMMERMAN, RAMON TIESO, MS. SHAR (Last Name Unknown), MS. MARYANN (Last Name Unknown), SAMARITAN HEALTH SYSTEM, INC., MEDICAL ASSOCIATES, SAMUEL FRENCH, ROBERT J. DONNELLY, CITY OF CLINTON POLICE DEPARTMENT, and SGT. LESTER SHIELDS,

Defendants-Appellees.

Appeal from the Iowa District Court for Clinton County, David E. Schoenthaler and Charles H. Pelton, Judge.

Plaintiff appeals two district court rulings granting summary judgment in favor of defendants on plaintiff's seven-count action for false imprisonment, defamation, interference with business and contractual relations, intentional infliction of emotional distress, abuse of process, breach of fiduciary duty, and negligence. **AFFIRMED.**

Yvonne L. Brower, Cincinnati, Ohio, pro se, for appellant.

Jean Dickson Feeney and Greg E. Egbers of Betty, Neuman & McMahon, L.L.P., Davenport, for appellee Phillip Scott Zimmerman.

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Kerry A. Finley and Thomas A. Finley of Finley, Alt, Smith, Scharnberg, May & Craig, P.C., Des Moines, for appellees Ramon Tieso and Samaritan Health System.

Charles E. Miller, Constance A. Schriver, and Amy H. Snyder of Lane & Waterman, Davenport, for appellees Medical Associates, Samuel French and Robert J. Donnelly.

Heard by Sackett, P.J., and Vogel and Mahan, JJ.

PER CURIAM.

Yvonne L. Brower appeals the trial court's order granting summary judgment to defendants Phillip Scott Zimmerman, Ramon Tieso, Ms. Shar (last name unknown), Ms. Maryann (last name unknown), Samaritan Health System, Inc., Medical Associates, Samuel French, Robert J. Donnelly, City of Clinton Police Department, and Sgt. Lester Shields in her claims against them for (1) false imprisonment; (2) tortious interference; (3) intentional infliction of emotional distress; (4) abuse of process; (5) medical malpractice; and (6) breach of fiduciary duty. We affirm.

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hameed v. Brown*, 530 N.W.2d 703, 706 (Iowa 1995). A party resisting a motion for summary judgment must set forth facts showing a genuine issue for trial and not rely on legal conclusions. *Bradshaw v. Wakonda Club*, 476 N.W.2d 743, 745 (Iowa App. 1991).

In the early 1990's, plaintiff traveled from Cincinnati, Ohio, to Clinton, Iowa, for gynecological and obstetric care and treatment. Plaintiff made the trips because the obstetrician who treated her in Ohio moved to Clinton. This doctor, not a party to this lawsuit, was to advise plaintiff not to come to Clinton and would ultimately notify plaintiff he would not treat her. This case arises out of plaintiff's contacts with defendants when she was in Clinton and sought medical treatment.

Plaintiff sued defendant Samaritan Health Systems, Inc.; a nurse at Samaritan; defendant Ramon Tieso; defendant Medical Associates; defendant Samuel French; and defendant Phillip Scott Zimmerman claiming false imprisonment. Plaintiff claims she was falsely imprisoned after she presented herself at Samaritan for a gynecologic consultation on September 25, 1992. Defendant French, as administrator of defendant Medical Associates, filed an application in the district court under Iowa Code section 229.6 alleging plaintiff was seriously mentally impaired. Attached to the application were affidavits of defendants Zimmerman and Tieso. An attorney was appointed for plaintiff. The district court ordered plaintiff submit to a psychiatric evaluation. She was evaluated at University Hospitals in Iowa City and released.

To establish a claim of false imprisonment, plaintiff must show (1) she was detained or restrained against her will, and (2) the detention was not lawful. *See Valdez v. City of Des Moines*, 324 N.W.2d 475, 477 (Iowa 1982); *State v. Snider*, 479 N.W.2d 622, 623 (Iowa App. 1991). Plaintiff was detained. The question is whether there is evidence to support a finding the detention was not lawful. *See Sundholm v. City of Bettendorf*, 389 N.W.2d 849, 852 (Iowa 1986). A legally valid process that results in detention will not support a claim for false imprisonment. *See Johannsen v. Steuart*, 260 Iowa 1140, ____, 152 N.W.2d 202, 204 (1967).

Plaintiff makes no claim the proper statutory procedure was not followed before she was hospitalized at University Hospital in Iowa City. Her only claim is the facts advanced in the affidavits were false. The issue, however, is not whether

plaintiff ultimately was found to need immediate psychiatric treatment, but whether the proper procedure was followed. *See Sundholm*, 389 N.W.2d at 852. We affirm on this issue.

Plaintiff next claims to have been defamed by affidavits filed by defendants Zimmerman, Tieso, and French. The affidavits were filed with the clerk of the district court as a part of the application for involuntary hospitalization under Iowa Code section 229.6.

A qualified privilege permits communication between parties with a valid interest to the extent only interested parties are recipients of the communication. *Spencer v. Spencer*, 479 N.W.2d 293, 295 (Iowa 1991), *cert. denied*, ___ U.S. ___, 113 S. Ct. 120, 121 L. Ed. 2d 76 (1992).

The trial court found and we agree the statements in the affidavit were subject to a qualified privilege because the statements were made as a part of an involuntary hospitalization proceeding and took place in the context of the proceedings. To overcome a qualified privilege, plaintiff must show there is substantial evidence to support a finding of actual malice. *See Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 546 (Iowa 1995). Plaintiff has failed to show substantial evidence to support a finding of malice. We affirm on this issue.

Defendants contend the statements were granted an absolute privilege because they took place in a judicial proceeding. *See Robinson v. Home Fire & Marine Ins.*

Co., 242 Iowa 1120, 49 N.W.2d 521, 524-27 (1951). We have affirmed on other grounds, so we need not address this issue.

Plaintiff claims the trial court should not have granted summary judgment on her claim of interference with contractual relations against certain defendants. To show an interference with a contractual relationship, plaintiff must show (1) she had a contract with a third party; (2) defendant knew of the contractual arrangement; (3) defendant intentionally and improperly interfered with the contract causing a breach or termination of the relationship; and (4) plaintiff was damaged. *Schaefer v. Cerro Gordo County Abstract Co.*, 525 N.W.2d 844, 847 (Iowa 1994).

Plaintiff claimed she and her husband were in Clinton to purchase a house and the contract fell through because of defendants' actions. Plaintiff introduced no evidence to support this claim. We affirm on this issue.

Plaintiff contends the trial court should not have dismissed her claim for medical malpractice. To establish medical malpractice, plaintiff must show (1) the applicable standard of care; (2) a violation of the standard; and (3) that the violation of the standard of care caused injury. *See Oswald v. LeGrand*, 453 N.W.2d 634, 635 (Iowa 1990). Ordinarily evidence of the applicable standard of care and its breach must be furnished by an expert. *Id.* Plaintiff in a medical malpractice case is required by Iowa Code section 668.11 to designate an expert by name and qualification within a certain time frame. Plaintiff did not comply with the dictates of section 668.11. *See Hantsbarger v. Coffin*, 501 N.W.2d 501, 504 (Iowa 1993).

Plaintiff contends an expert was not necessary, but did not support her resistance to her claim for summary judgment with facts showing the alleged negligence was so obvious a doctor need not testify. Consequently, her claim that she did not need to designate an expert under the holding of *Donovan v. State*, 445 N.W.2d 763, 766 (Iowa 1989), is without merit. We affirm on this issue.

We have considered plaintiff's other claims and find them to be without merit.

AFFIRMED.