

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN D. LUKAS,

Plaintiff-Appellee,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellant.

UNPUBLISHED

July 23, 2013

No. 309486

Oakland Circuit Court

LC No. 2011-116924-NO

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant.

Plaintiff underwent total knee replacement surgery on her right leg at defendant hospital. Her doctor had advised her that getting up and moving was necessary after the surgery. Two of defendant's employees instructed her to get up while plaintiff was in the recovery room and had her sit on the edge of the bed. As they attempted to help move her from a seated to a standing position, they "dropped" her approximately 2-1/2 feet, before grabbing her again under her arms. Her fall caused her right foot to bend under the weight of her leg, fracturing her ankle. Plaintiff complained of pain and attempted to have her ankle x-rayed, but for several days defendant refused and instead had plaintiff undergo physical therapy. When an x-ray was eventually taken, it confirmed that plaintiff sustained a fracture of the distal right fibula. Plaintiff filed the instant action, asserting a claim for ordinary negligence. Defendant moved to dismiss, arguing that plaintiff's claim sounds in medical malpractice and she failed to comply with the procedural prerequisites for commencing a medical malpractice claim. The trial court agreed with plaintiff that her claim sounded in ordinary negligence and denied the motion.

We review a trial court's decision on a motion for summary disposition de novo, including the determination whether a claim sounds in ordinary negligence or medical malpractice. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004). A claim sounds in medical malpractice if an alleged breach occurred within a "professional relationship" and if "the claim raises questions of judgment beyond the realm of common knowledge and experience." *Bryant*, 417 Mich at 422. There is no dispute here that plaintiff's claim involves conduct that occurred within the course of a professional relationship. The only question presented here is

whether that conduct called for expert medical judgment “beyond the realm of common knowledge and experience.”

In the abstract, plaintiff is unambiguously correct in stating that it takes no special expertise to appreciate that a diabetic, immediately post-operative patient of plaintiff’s age and weight could be injured if not properly supported while helping her to her feet. Plaintiff analogizes the situation to the claim found in *Bryant* to sound in ordinary negligence: the defendant in *Bryant* became aware that a particular patient was exposed to a specific risk and took literally no action to avert or alleviate that risk, and no professional judgment was necessary to evaluate whether the defendant should have done anything at all. *Bryant*, 417 Mich at 430-432. We would agree, if the facts were truly that simple.

We very much doubt that it is within the realm of common knowledge and experience how to assist the ambulation of someone whose entire knee has just been surgically replaced. The evidence was that plaintiff had a pain pump and immobilizer, and professional knowledge was required to assist the ambulation of a patient, such as plaintiff, in a way that would avoid aggravating her injury. The evidence further indicated that prior to ambulating or transferring a patient such as plaintiff, the patient must undergo a neurovascular assessment, and her pain, heart rate, and mobility must be checked. A registered nurse and a physical therapist both explained that ambulating a patient such as plaintiff required specialized medical knowledge, training, and judgment, including being able to recognize cues and utilize proper techniques that nurses are expected to possess. Ordinary laypersons, however, would not be expected to possess such expertise.

The inescapable conclusion is that assisting the ambulation of a patient such as plaintiff is not a matter within “the realm of common knowledge and experience.” It *seems* intuitive that defendant’s employees should have “done something different,” but because it calls for expert medical judgment to know what they should have done in the first place, we cannot actually *know* that in the absence of that expertise. Put another way, because the way in which one *should* assist a patient such as plaintiff is not within common knowledge or experience, it is not possible for an unassisted jury to *truly* evaluate whether defendant’s employees should have done something different, let alone what they should have done differently. Consequently, “the reasonableness of the action can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts.” *Bryant*, 417 Mich at 423. This is fundamentally a claim involving a medical misjudgment. This is therefore a medical malpractice action.

Because the claim is one for medical malpractice, plaintiff was required to provide notice of her intent to sue before filing a complaint, and she was required to file an affidavit of merit with her complaint. *Lockwood v Mobile Med Response, Inc*, 293 Mich App 17, 27-28; 809 NW2d 403 (2011). Plaintiff failed to comply with these procedural requirements. When a plaintiff files a complaint without complying with these statutory requirements, the complaint does not toll the limitations period. *Ligons v Crittenton Hosp*, 490 Mich 61, 73, 75; 803 NW2d 271 (2011); *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679; 684 NW2d 711 (2004); *Lockwood*, 293 Mich App at 26-28. The untolled two-year limitations period for a medical malpractice action arising from defendant’s actions in April 2009 expired before defendant filed its second motion for summary disposition in 2012. Accordingly, we reverse the

trial court's order denying defendant's motion for summary disposition and remand for entry of judgment in favor of defendant.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause