

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELLA CALFEE, :
 :
 Plaintiff, :
 :
 v. : CIVIL ACTION
 : NO. 02-1085
 CITY AVENUE HOSPITAL, and :
 TENET HEALTHCARE CORP., :
 :
 Defendants. :

MEMORANDUM

Giles, C.J.

May ____, 2003

I. INTRODUCTION

Ella Calfee, (“Calfee”) instituted this action against City Avenue Hospital, and Tenet Healthcare Corporation (“Tenet”), the owner of the hospital, alleging that the agents and employees of City Avenue Hospital and Tenet committed assault and battery upon her by administering blood transfusions without first obtaining informed consent. She did not sue the physician who performed the procedures and who possesses a signed consent form that he claims she signed knowingly and after being informed of the need for the procedures.

The court has jurisdiction over the matter based upon diversity of citizenship of the parties and amount.¹ Under consideration is City Avenue Hospital’s and Tenet’s renewed Motion to Dismiss Calfee’s amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons stated below, City Avenue Hospital’s and Tenet’s Motion to Dismiss is granted.

¹Calfee is a citizen of North Carolina. City Avenue Hospital is a corporation organized and existing under the laws of Pennsylvania. Tenet Healthcare is a corporation organized and existing under the laws of California. The amount in controversy exceeds the sum of seventy five thousand dollars (\$75,000).

II. BACKGROUND

On February 25, 2000, Calfee was hospitalized and treated at City Avenue Hospital for several illnesses. (Calfee First Am. Compl. at ¶ 6.) Upon her admission, Calfee instructed City Avenue Hospital and Tenet that she was a Jehovah's Witness and that because of her religious beliefs she did not wish to receive any blood transfusions. (Id. at ¶ 7.) She alleges that at all stages of her hospitalization she insisted and never deviated from these instructions. Calfee asserts that she never signed a consent form allowing blood transfusions but, despite her instructions and over her objections, agents and employees of City Avenue Hospital and Tenet administered blood transfusions on March 7 and 8, 2000. (Id. at ¶¶ 8-11.) She avers that the blood transfusions were not medically necessary, (Id. at ¶ 20), and that Calfee was the victim of assault and battery. (Id. at ¶ 13.) She alleges that the tortious acts of the agents and employees of City Avenue Hospital and Tenet were wanton, reckless, and malicious. (Id. at ¶ 21.) Alternatively, she alleges that City Avenue Hospital and Tenet were negligent and careless in hiring the employees or agents who attended to her and that the unauthorized blood transfusions received were the direct result of negligent and careless acts of the defendants.

III. DISCUSSION

A. The Doctrine of Informed Consent Precludes a Suit Against City Avenue Hospital and Tenet

City Avenue Hospital and Tenet assert that Calfee's complaint fails to state a claim against them upon which relief may be granted because under Pennsylvania law no cause of action lies against a hospital for failure to obtain informed consent, it being the attending physician's sole responsibility to obtain that necessary consent for any medically invasive

procedure.

Calfee argues that where the treatment or procedure was of a type that the defendants knew that the patient would have refused, the case law limitation of hospital liability should not apply. This theory suggests that the hospital had a duty to oversee and direct the physician, even if not a hospital employee. Calfee further argues that, in any event, hospital liability can be imposed where a hospital agent or employee failed to properly obtain consent for a procedure for which it was directly responsible. This theory presumes that the physician is an employee of the hospital and under the supervision and control of the hospital.

Valles v. Albert Einstein, 805 A.2d 1232 (Pa. 2002), unambiguously and emphatically stands for just the opposite. The Pennsylvania Supreme Court held that hospitals generally have no duty to a patient under the informed consent doctrine, even where the physician is an employee of the hospital, because of the doctrine and because a medical facility cannot maintain control over this “individualized and dynamic” aspect of the physician-patient relationship. Valles, 758 A.2d at 1239.

Compelling reasons require that this non-delegable duty rest solely upon the physician and not be placed upon the hospital. The physician possesses the education, training, and expertise essential to advise competently each patient of the risks associated with a procedure and is in the best position to know the patient’s medical history and to evaluate and explain the risks relative to the patient’s medical history. Kelly v. Methodist Hosp., 664 A.2d 148, 151 (Pa. Super. Ct. 1995).

One exception to this rule may exist. A Superior Court panel in Friter v. Iolab Corp., 607 A.2d 1111, 1113 (Pa. Super. 1992), found that a hospital that contracted with the United States

Food and Drug Administration to obtain informed consent from persons who agreed to participate in a clinical investigation could be held liable for its employee physician's failure to do so before performing an eye operation. Since there is no theory alleged here that the hospital assumed the duty through contract, we do not have to decide whether the Friter holding squares with the Valles holding discussed above.

Although the complaint does not formally allege that City Avenue Hospital and Tenet should be held vicariously liable for Dr. Goss' tortious conduct, a reading of the amended complaint, in the light most favorable to plaintiff, may be that the allegations could be construed as a claim of vicarious hospital liability. Calfee avers that the defendants should be held responsible for its employee/physician's failure to obtain informed consent because the hospital had an affirmative duty to manage and supervise the physician's practice of medicine within its facility. The Supreme Court of Pennsylvania was presented with the identical argument in Valles and rejected it. The Court said:

[A] battery which results from a lack of informed consent is not the type of action that occurs within the scope of employment. In our view, a medical facility cannot maintain control over this aspect of the physician-patient relationship. Our lower courts have recognized that the duty to obtain informed consent belongs solely to the physician. Informed consent flows from the discussion each patient has with his physician, based on the facts and circumstances each case presents. We decline to interject an element of a hospital's control into this highly individualized and dynamic relationship. We agree with the lower court that to do so would be both improvident and unworkable. Thus, we hold that as a matter of law, a medical facility lacks the control over the manner in which the physician performs his duty to obtain informed consent so as to render the facility vicariously liable. Because of the unique nature of the informed consent doctrine, we find a battery in this context to be distinguishable from those cases in which an employer has been held vicariously liable for its employee's assault Thus, we hold that a medical facility cannot be held vicariously liable for a physician's failure

to obtain informed consent.

Valles, 805 A.2d at 1239.

Accordingly, an action against City Avenue Hospital and Tenet for failure to obtain informed consent under the theory of vicarious liability is not viable.

B. Claims of Negligence Are Meritless Because They Are Lack of Informed Consent Claims Camouflaged as Negligence

Calfee argues that City Avenue Hospital and Tenet acted negligently and carelessly by hiring unqualified agents and employees that attended to her when she was admitted. She further argues that these agents and employees acted negligently and carelessly by performing the blood transfusions. Her claims notwithstanding, the allegations of negligence do not state a cause of action.² The amended complaint is no more than a refashioned claim of lack of informed consent. As such, that claim must be dismissed for the reasons discussed above.

IV. CONCLUSION

For the foregoing reasons, City Avenue Hospital's and Tenet's Motion to Dismiss is granted.

An appropriate order follows.

²During oral argument on March 27, 2003, on the Renewed Motion to Dismiss, City Avenue Hospital and Tenet stated that Calfee's treating physician, Dr. Steven Goss, a resident physician, testified at his deposition that he obtained Calfee's written informed consent for the blood transfusions performed and that Calfee gave such consent while she was awake, alert, and oriented to persons, place and time. His deposition is supported by notes to Calfee's medical chart.

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JUDGMENT ORDER

AND NOW, this ____ day of May, 2003, upon consideration of Defendants' Renewed Motion to Dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6), and Plaintiff's response thereto, it is hereby ORDERED that Defendants' motion is GRANTED.

IT IS FURTHER ORDERED, that Judgment is molded in favor of defendant and against the plaintiff.

BY THE COURT:

JAMES T. GILES C.J.

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