NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1624

RUSS R. IVY

VERSUS

ST. TAMMANY PARISH HOSPITAL SERVICE DISTRICT NUMBER 1,
D/B/A ST. TAMMANY PARISH HOSPITAL

Judgment Rendered: March 23, 2012

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2010-13129

THE HONORABLE ALLISON H. PENZATO, JUDGE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Hughes, J. concurs.

McDONALD, J.

This appeal challenges a decision of the district court to grant a summary judgment on behalf of St. Tammany Parish Hospital Service District Number 1 d/b/a St. Tammany Parish Hospital. For the following reasons, we affirm.

FACTS

On July 12, 2009, appellant, Russ Ivy, experienced pain during sexual intercourse that did not resolve, so he telephoned the emergency room at the hospital in Bogalusa, the emergency room closest to his home. He described his symptoms and was advised to contact St. Tammany Parish Hospital (STPH). He then called STPH, which advised him to come to the ER for treatment. He arrived at STPH, over an hour away, at approximately 11:00 a.m. on July 12, 2009. Ultimately, Mr. Ivy was diagnosed as having sustained a penile fracture.

At STPH, Mr. Ivy was triaged and then examined by Dr. Susan Craig, who administered pain medication. Following her evaluation of Mr. Ivy, Dr. Craig consulted by telephone with Dr. Sunil K. Purohit, the on-call urologist. Dr. Craig testified in her deposition that she consulted Dr. Purohit because managing Mr. Ivy's condition was beyond the scope of emergency medicine practice. After consultation with Dr. Purohit, Dr. Craig discharged Mr. Ivy with a diagnosis of penile fracture, gave him Dr. Purohit's phone number, and instructions to report to him in the morning. Dr. Craig also testified that emergency room procedure is the same on Sunday as it would be on a week day, and that STPH does have the capacity to perform surgery, although she didn't recollect any occasion where she had requested an on-call urologist to come in on a Sunday to perform emergency surgery. The discharge instructions stated: "[T]his type of problem is considered a surgical emergency and the sooner the problem is repaired, the more likely there

will be a satisfactory or good result. Emergency surgical repair offers the best chance of recovery with a correct working penis."

On May 11, 2010, Mr. Ivy filed a petition for damages against STPH under the Emergency Treatment and Active Labor Act (EMTALA) and the Louisiana Anti-Dumping Statute. These statutes are designed to insure that a person receives appropriate medical screening and emergency treatment, if appropriate and within the medical facility's capabilities, regardless of whether he is indigent or without insurance. Mr. Ivy did not have insurance, although he asserts that he did have financial resources available to pay for treatment. His petition alleges that when Mr. Ivy called Dr. Purohit's office on Monday morning to make an appointment, he was refused because he had no insurance.

Mr. Ivy's attorney conducted discovery, including depositions of doctors and of Mr. Ivy. On April 19, 2011, he filed a motion to withdraw as counsel of record, which was granted by the district court by order dated April 26, 2011. On April 29, 2011, STPH filed a motion for summary judgment. By order dated May 6, 2011, the district court scheduled a hearing for June 22, 2011, on the rule to show cause why the summary judgment should not be granted, Mr. Ivy filed a motion to continue in proper person, indicating that he had received notice of the hearing on or about May 9, 2011, that he was interviewing attorneys in an attempt to obtain legal counsel, that he needed to maintain his medical malpractice claim, and requesting that the hearing on the summary judgment be rescheduled for a later date. On June 15, 2011, an opposition to the motion for summary judgment was filed by attorneys representing Mr. Ivy. The motion requested that the district court deny defendant's Motion for Summary Judgment as a matter of law; alternatively, that the motion be denied because of the existence of genuine issues

of material fact; alternatively, the plaintiff requested additional time to retain an expert and to take the La. C.C.P. art. 1442 deposition of defendant.

The hearing on STPH's Motion for Summary Judgment was held on June 22, 2011. Prior to the hearing the judge disclosed that although she had never represented STPH, she did formerly represent Dr. Craig. She did not feel that it was grounds for recusal, as Dr. Craig was only a witness and not a defendant in this matter, but she disclosed it nevertheless. Mr. Ivy's attorneys requested that they be given time to consider the issue of recusal, and the district judge indicated they did not have to make a decision immediately, but she was going to proceed with the hearing. At the end of oral argument, the judge indicated that she felt the motion was well founded and it was going to be granted. She told STPH's counsel to prepare a judgment within ten days and to circulate it. This appeal followed.

The appellant alleges two errors by of the district court: (1) the trial court erred when it found that plaintiff's claims were "standard of care issues" and that plaintiff's claim was not proper under EMTALA as a matter of law and (2) the trial court erred when it failed to permit plaintiff an opportunity to take the 1442 deposition of the hospital to ascertain facts relative to the treatment of other patients who presented to the ER with a penile fracture who had insurance, as opposed to the treatment of plaintiff, who presented to the ER with a penile fracture and no insurance.

DISCUSSION

Initially, we note that summary judgment is designed to secure the just, speedy, and inexpensive determination of every action. The procedure is favored and shall be construed to accomplish these ends. After adequate discovery or after a case is set for trial, a motion which shows that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law shall be

granted. La. C.C.P. art. 966. Appellate courts review summary judgments *de novo* under the same criteria that govern a district court's consideration of whether summary judgment is appropriate. *Samaha v. Rau,* 2007-1726, pp. 3-4 (La. 2/26/08), 977 So.2d 880, 882.

Appellant's contention is that STPH violated the cited statutes because although he was "screened" by Dr. Craig, Mr. Ivy's condition was an emergency, and he did not receive the legally-required medical treatment. Since Mr. Ivy did not have insurance, the implication that is he was not given the medically necessary emergency surgery for that reason, which would be a violation of the law. The trial court found otherwise, believing the failure to conduct emergency surgery was a standard of care issue, rather than a violation of the anti-dumping statutes.

We have carefully reviewed the applicable jurisprudence and find no error on the part of the district court. The supreme court has examined the statutes applicable here, federal and state, on several occasions, and has provided comprehensive analysis of the issues.

In *Coleman v. Deno,* 2001-1517 (La. 1/25/02), 813 So.2d 303, the distinction between claims for violation of the statutes and medical malpractice was thoroughly examined. In doing so, the court noted that the two claims can overlap, before concluding that the court of appeal had erred in finding that the plaintiff's claim was more properly considered a malpractice claim governed by the Medical Malpractice Act (MMA), La. R.S. 40:1299.47. The court also noted that the anti-dumping statutes are only applicable to participating hospitals, and not to physicians.

In *Fleming v. HCA Health Services of Louisiana, Inc. d/b/a Cypress Hospital,* 96-1968 (La. 4/8/97), 691 So.2d 1216, the court examined whether a

hospital had violated the Louisiana statute by failing to render emergency services to a person who later committed suicide. In reversing the appellate court that had rendered judgment against the hospital, the supreme court held that in the absence of preponderating proof that emergency services were needed, the statute is "simply inapplicable." The Court noted that La. R.S. 40:2113.6C defines emergency medical services. We note that emergency services are services that are "usually and customarily available at the respective hospital and that *must be provided immediately to stabilize a medical condition* which, if not stabilized, could reasonably be expected to result in the loss of the person's life, serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or which is necessary to provide for the care of a woman in active labor if the hospital is so equipped and, if the hospital is not so equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm." (Emphasis added.)

Spradlin v. Acadian-St.Landry Medical Foundation, 98-1977 (La. 2/29/00), 758 So.2d 116, 121, discusses the nature and purpose of both EMTALA and the Louisiana statutory counterpart and the relationship between those two "anti-dumping" statutes and the MMA. As the Supreme Court noted, "EMTALA thus statutorily sets up two distinct types of 'dumping' claims: (1) failure to conduct an appropriate medical screening examination to determine the existence of an emergency medical condition, and (2) failure to stabilize the emergency condition or to provide an appropriate transfer."

In this case, Mr. Ivy's condition was stable and he was not transferred to another medical facility for treatment. He was discharged home and advised to seek medical treatment in the morning. Thus, his condition did not meet the statutory definition of a medical emergency. Appellant relies on the hospital's

discharge instructions to assert Mr. Ivy's condition required emergency treatment. The instructions note, "emergency surgical repair offers the best chance of recovery with a correct working penis." However, Dr. Craig indicated in her deposition that the time immediately following the fracture is when the surgery is most successful and the results are not as successful after a 12-hour delay. More importantly for a possible claim against the hospital, Dr. Craig called an urologist for consultation and followed his advice. Any time delays that may have impacted Mr. Ivy's condition were the result of the urologist's instructions to discharge the patient home. As noted, Mr. Ivy was stable when he was discharged, and that is what the statutes require.

Louisiana Code of Civil Procedure Article 966 provides that the summary judgment procedure is available only "[a]fter adequate discovery." Here, appellants contend that there had not been adequate discovery. Counsel had only represented Mr. Ivy for about ten days before the hearing. They further contend that the court's failure to allow them to conduct a 1442 deposition of the hospital prevented them from determining possible disparate treatment between patients presenting with a penile fracture who had insurance and those who did not have insurance. This issue was addressed by the district court and we find no error in its decision.

The petition in this matter was filed in May 2010. The motion was heard over a year later, after depositions had been taken. Mr. Ivy's original counsel had not chosen to take a 1442 deposition. Had the district court felt that justice required an opportunity to do so, we have no doubt that it would have been allowed. As it was, the judge decided that the defendant's right to a "just, speedy, and inexpensive" disposition of this matter required that the summary judgment be granted, without what could be construed as a delay tactic by opposing counsel.

While we note that the plaintiff's counsel had only begun representing Mr. Ivy ten days before the hearing on the motion for summary judgment, and thus, could not possibly be accused of waiting until the motion for summary judgment was filed and then requesting the deposition as a delay tactic, we do not find any error on the part of the district court.

Accordingly, the summary judgment rendered by the district court is affirmed. Costs are assessed against the appellant, Russ Ivy.

AFFIRMED.