

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0876-MR

PRISCILLA JENT AND PRISCILLA
JENT, AS THE ADMINISTRATRIX
OF THE ESTATE OF GARY WAYNE
JENT

APPELLANTS

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE JAMES W. CRAFT, II, JUDGE
ACTION NO. 18-CI-00074

HAZARD ARH REGIONAL
MEDICAL CARE CENTER AND
APPALACHIAN REGIONAL
HEALTHCARE, INC.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, KAREM, AND McNEILL, JUDGES.

KAREM, JUDGE: Priscilla Jent, individually and as the administratrix of the estate of Gary Wayne Jent, appeals from the Perry Circuit Court's order granting summary judgment in favor of Hazard ARH Regional Medical Care Center

(“Hazard ARH”) and Appalachian Regional Healthcare, Inc. (“ARH”). After a thorough review of both the facts and applicable law, we affirm the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2016, Dr. James Shoptaw performed open heart surgery on Gary Wayne Jent (“Jent”) at Hazard ARH. Specifically, Dr. Shoptaw, a cardiothoracic surgeon, performed an aortic valve replacement and a three-vessel coronary artery bypass graft on Jent. It was a lengthy procedure complicated by episodes of heavy bleeding. After surgery, Jent was placed in the ICU on a ventilator and was subsequently transferred to University of Kentucky Medical Center for dialysis and additional treatment. His condition worsened, and life support was withdrawn on April 10, 2016. Jent passed away on April 11, 2016.

Prior to surgery, Jent and his wife were provided with – and signed – a form entitled “Conditions of Treatment and Responsibility for Payment.”

Paragraph 3 of that form read as follows:

The medical treatment rendered to the patient in the Emergency Department and/or during hospitalization or outpatient services will be provided by independent practitioners who are not employed by and are not agents of Appalachian Regional Healthcare, Inc. **These independent practitioners include, but are not limited to[,] emergency room physicians, radiologists, cardiologists, anesthesiologists, certified registered nurse anesthetists[,] and nurse practitioners.**

(Emphasis added.)

Additionally, the hospital had the following signage in the emergency room:

Independent healthcare providers will provide professional services at Appalachian Regional Healthcare, Inc. These health care providers are independent contractors and are not employees or agents of Appalachian Regional Healthcare, Inc. **These providers will include, but are not limited to,** the following: anesthesiologists, cardiologists, radiologists, emergency room physicians, nurse practitioners, **and other medical specialists.**

(Emphasis added.)

On February 16, 2018, Jent's daughter, Priscilla, filed a wrongful death action individually and as the administratrix of Jent's estate. In her complaint, she named Dr. Shoptaw, Hazard ARH, and ARH as the defendants.

On January 15, 2024, Hazard ARH and ARH filed a motion for summary judgment arguing that Curtis Brinkman ("Brinkman"), a perfusionist¹ who operated the heart bypass machine and administered cardioplegia at the direction of Dr. Shoptaw during Jent's surgery, was not their employee or agent.

¹ A perfusionist "plays an important role in the operating room. Cardiovascular perfusionists are responsible for operating extracorporeal circulation equipment, such as the heart-lung machine, during an open-heart surgery or any other medical procedure in which it is necessary to artificially support or temporarily replace a patient's circulatory or respiratory function." *Cardiovascular perfusionist*, MAYO CLINIC COLLEGE OF MEDICINE AND SCIENCE, <https://college.mayo.edu/academics/explore-health-care-careers/careers-a-z/cardiovascular-perfusionist/> (last accessed Aug. 26, 2026).

Thus, they argued that they could not be held responsible for his actions during the surgery.

On July 2, 2024, the circuit court entered an order stating that Hazard ARH and ARH were not vicariously liable for Dr. Shoptaw's or Brinkman's alleged negligence. On July 12, 2024, Priscilla filed a motion to alter, amend, or vacate the summary judgment order, requesting that the circuit court enter an order to include findings of fact as to whether Brinkman was an ostensible agent of Hazard ARH and/or ARH and whether the hospital's disclaimer provided adequate notice of its disclaimer of liability for Brinkman's acts or omissions. On August 5, 2024, the circuit court entered an order that included findings of fact and conclusions of law and again granted ARH's motion for summary judgment.² This appeal followed.

We will discuss further facts as they become relevant.

ANALYSIS

1. Standard of Review

“The proper standard of review on appeal when a trial judge has granted a motion for summary judgment is whether the record, when examined in

² Dr. Shoptaw reached a settlement with Hazard ARH and ARH that preserved Priscilla's right to appeal all claims against Hazard ARH and ARH. The circuit court entered an order on June 9, 2025, dismissing Priscilla's claims against Dr. Shoptaw, Hazard ARH, and ARH. In that order, the circuit court stated that “the order entered by this Court on July 2, 2024, granting summary judgment in favor of [Hazard ARH] and [ARH] is now deemed to have been re[-]adjudicated as of this entry date and is now final and appealable.”

its entirety, shows there is ‘no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.’” *Hammons v. Hammons*, 327 S.W.3d 444, 448 (Ky. 2010) (quoting Kentucky Rule of Civil Procedure (“CR”) 56.03). Indeed, “[a] motion for summary judgment presents only questions of law[.]” *Patton v. Bickford*, 529 S.W.3d 717, 723 (Ky. 2016). Therefore, “[o]ur review is *de novo*, and we afford no deference to the trial court’s decision.” *Id.* Importantly, “[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). However, in reviewing claims of ostensible agency, “[t]he burden of proving agency is on the party alleging its existence.” *Wright v. Sullivan Payne Co.*, 839 S.W.2d 250, 253 (Ky. 1992) (citing *Cincinnati Ins. Co. v. Clary*, 435 S.W.2d 88 (Ky. 1968)).

2. Discussion

In *Sneed v. University of Louisville Hospital*, 600 S.W.3d 221, 231 (Ky. 2020), the Kentucky Supreme Court addressed ostensible agency in the context of a medical negligence claim, stating:

This Court’s seminal case addressing ostensible agency in the hospital setting is *Paintsville Hospital Company v. Rose*, 683 S.W.2d 255 (Ky. 1985). In that case, quoting *Middleton v. Frances*, 257 Ky. 42, 77 S.W.2d 425, 426 (Ky. 1934), we stated:

An apparent or ostensible agent is one whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, although he has not, either expressly or by implication, conferred authority upon him.

Paintsville Hosp., 683 S.W.2d at 257. We further explained the principle of ostensible agency when we stated,

One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

Id. (quoting RESTATEMENT (SECOND) OF AGENCY § 267 (1958)).

Sneed, 600 S.W.2d at 231-32.

In *Sneed*, the patient, Jassica Sneed, was admitted to the University of Louisville Hospital to deliver her baby under the care of an attending OB/GYN and a medical resident. *Id.* at 224. While delivering her baby, Sneed “suffered a fourth-degree laceration,” which the physicians sutured immediately after delivery. *Id.* After experiencing additional complications, the patient eventually filed a lawsuit against the physicians and University of Louisville Hospital, alleging that the hospital was responsible under ostensible agency. *Id.* at 225.

In the course of her care, the patient signed a consent form that contained a notice to patients of the independent status of the physicians. *Id.* at

230-31. In affirming the trial court’s ruling on the hospital’s motion for summary judgment, the Supreme Court held that “the Hospital clearly attempted to alert its patients that the physicians who provided treatment at the hospital were not employees of the hospital.” *Id.* at 233. Because the Court could “see no evidence of any intent of the Hospital to deceive its patients into believing that the physicians were employees of the Hospital, nor . . . evidence of the Hospital holding the physicians out to be employees,” the Court determined that “no genuine issue of material fact existed as to whether [the physicians] were ostensible agents of the Hospital.” *Id.*

In the case at bar, we are not dealing with the independent status of a physician. However, the consent document *sub judice* clearly indicates it is not limited to physicians, as in *Sneed*. The form, “Conditions of Treatment and Responsibility for Payment” signed by Jent, and the signage in the emergency room state that the medical treatment rendered “will be provided by independent practitioners who are not employed by and are not agents of Appalachian Regional Healthcare, Inc.” Although the list of medical professionals identified both in the form and on the sign did not specifically name perfusionists, it clearly explained that the list was non-exhaustive by stating “[t]hese independent practitioners include, but are not limited to” Moreover, the emergency room signage added to the specific list of medical professionals the general category of “medical

specialists.” It cannot be reasonably argued that a perfusionist is not a medical specialist. As in *Sneed*, there is no evidence of the hospital’s specific intent to deceive patients or to hold Brinkman out as a hospital employee.

CONCLUSION

For the foregoing reasons, we affirm the Perry Circuit Court’s order granting summary judgment in favor of Appellees.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Jason E. Williams
John F. Kelley
London, Kentucky

BRIEF FOR APPELLEES:

David S. Strite
Noel R. Halpin
Louisville, Kentucky