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2018 IL App (3d) 160143-U

Order filed January 4, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

HEATHER and JUSTIN TERRY, individually )	Appeal from the Circuit Court
and as Mother, Father, and Next Friend of )	of the 10th Judicial Circuit,
FALON TERRY, a Minor, )	Peoria County, Illinois,
)	
Plaintiffs-Appellants, )	
)	
v. )	
)	
OSF HEALTHCARE SYSTEMS, d/b/a ST. )	
FRANCIS MEDICAL CENTER, d/b/a )	
CHILDREN'S HOSPITAL OF ILLINOIS, )	
individually and by and/or through the acts and )	
omissions of its agents, apparent agents and/or )	
employees; CHITTARANJAH V. REDDY, )	
M.D.; JAMES HOCKER, M.D.; KAMLESH )	
MACWAN, M.D.; RETINA CONSULTANTS )	
OF CENTRAL ILLINOIS, S.C.; )	
NEONATOLOGY ASSOCIATES, S.C. )	
and others; NEONATOLOGY ASSOCIATES, )	
S.C., individually and by and/or through the )	
acts and omissions of JAMES HOCKER, M.D., )	
KAMLESH MACWAN, M.D., and others; )	Appeal No. 3-16-0143
JAMES HOCKER, M.D., individually and as )	Circuit No. 11-L-49
agent, apparent agent and/or employee of OSF )	
HEALTHCARE SYSTEMS, d/b/a ST. )	
FRANCIS MEDICAL CENTER, d/b/a )	
CHILDREN'S HOSPITAL OF ILLINOIS )	
and/or NEONATOLOGY ASSOCIATES S.C.; )	
KAMLESH MACWAN, M.D., individually )	
and as agent, apparent agent and/or employee )	

of OSF HEALTHCARE SYSTEMS, d/b/a ST. FRANCIS MEDICAL CENTER d/b/a CHILDREN’S HOSPITAL OF ILLINOIS and/or NEONATOLOGY ASSOCIATES, S.C.; RETINA CONSULTANTS OF CENTRAL ILLINOIS, S.C., individually and by and/or through the acts and omissions of its agents, apparent agents and/or employees including, without limitation, CHITTARANJAH V. REDDY, M.D., and others; and CHITTARANJAH V. REDDY, M.D., individually and as an agent, apparent agent, and or employee of OSF HEALTHCARE SYSTEMS, d/b/a ST. FRANCIS MEDICAL CENTER, d/b/a CHILDREN’S HOSPITAL OF ILLINOIS, and/or RETINA CONSULTANTS OF CENTRAL ILLINOIS, S.C.,

Defendants

(OSF Healthcare Systems d/b/a St. Francis Medical Center, d/b/a Children’s Hospital of Illinois, individually and by and/or through the acts and omissions of its agents, apparent agents and/or employees,

Defendants-Appellees).

Honorable  
Stephen A. Kouri,  
Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice Carter and Justice Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* (1) Trial court properly granted hospital’s motion for summary judgment on issue of vicarious liability on theory of actual agency. Hospital was not liable under doctrine of actual agency for negligence of physicians.  
(2) Trial court erred in granting summary judgment in favor of hospital on plaintiffs’ claim of vicarious liability under doctrine of apparent authority. Plaintiffs alleged sufficient facts to create a genuine issue of material fact as to elements of holding out and reliance.

¶ 2 Plaintiffs, Heather and Justin Terry, filed suit against defendant, OSF Healthcare Systems, d/b/a St. Francis Medical Center, d/b/a Children’s Hospital of Illinois (OSF), and several physicians, alleging that defendant provided negligent treatment to their daughter following her premature birth that resulted in the loss of her vision. In their complaint, plaintiffs alleged that the hospital was vicariously liable for the doctors’ negligence based on theories of actual and apparent agency. The trial court granted OSF’s motion for summary judgment, finding no such liability. On appeal, plaintiffs argue that the court erred in granting summary judgment because a genuine issue of material fact exists as to whether the doctors acted as agents of OSF. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3 **BACKGROUND**

¶ 4 In June of 2005, Heather and Justin Terry were expecting their first child. Seventeen weeks into her pregnancy, Heather began losing amniotic fluid. She immediately sought medical attention from her local obstetric physician. He examined her and informed her that she was experiencing premature labor. He advised Heather of the risks associated with premature birth and placed her on strict bed rest. He then referred her to Children’s Hospital of Illinois, also known as OSF.

¶ 5 OSF is a Level III Perinatal Care Center that provides specialized care for early delivery and potential neonatal concerns. As a Level III center, OSF is obligated to provide special resources and services related to the care of premature infants. These services include neonatal ophthalmologic care for the treatment of retinopathy of prematurity (ROP), a condition of immature development of the retina that can lead to retinal detachment.

¶ 6 In 2005, OSF advertised itself as a facility that provided state of the art perinatal care. Through newspaper, television and billboard advertisements, OSF stated that it provided

specialized care in ophthalmology and neonatology. The hospital also advertised that it offered specialized physician care and high-level medical services to pediatric patients in central Illinois. Moreover, OSF marketed itself as the area's premier pediatric hospital, providing "the very best in healthcare." Pamphlets and ads targeting the Midwest stated that Children's Hospital of Illinois had a staff of about 800 physicians and that the OSF Neonatal Intensive Care Unit (NICU) was "among the top 10 in the nation."

¶ 7 On August 5, 2005, Heather was admitted to OSF for the premature birth of her daughter. Heather stated that she decided to deliver Falon at OSF because she was told that the baby would need specialized care if she was born early. Heather believed that OSF provided expert care for neonatal concerns.

¶ 8 Falon was born on August 10, 2005, and was immediately taken to OSF's NICU for observation and treatment. When Heather arrived in the NICU, the staff gave her a consent form for Falon's treatment and asked her to sign it, which she did. The consent form reads:

"Consent for Treatment

By my signature, I hereby present for admission to and/or treatment at OSF Saint Francis Medical Center and do hereby voluntarily consent to and authorize OSF Saint Francis Medical Center to render such care, examination, diagnosis, and treatment, as may be ordered or requested by the physician in charge or by authorized agents, employees or members of the staff of OSF Saint Francis Medical Center, as they may, in their professional judgement, deem necessary or beneficial. I acknowledge that no guarantees have been made to me as to the effect of such care, examination or treatment. I realize that among those who attend patients in this hospital are medical, nursing and other health care

personnel in training who, unless requested otherwise, may be present during patient care as part of their education.

#### PHYSICIAN INDEPENDENCE

I recognize that certain physicians and allied professionals on the medical staff at the hospital, including my attending physician, physicians performing or interpreting tests, and other physicians such as consultants, Radiologists, Pathologist, Anesthesiologists, etc. are independent contractors and not employees of the hospital; that the hospital is not legally responsible for them as such, and their practice of medicine is independent from hospital management. I also understand that I will be billed separately by them for their services. My decision to consent to treatment is based upon my understanding that OSF Saint Francis Medical Center does not employ all of the physicians who treat me.

The undersigned certified that he/she has read and understand this agreement and is the patient or legal representative of the patient who is authorized to agree to the above terms and to sign this agreement.”

¶ 9 During the next several weeks, Dr. James Hocker, and Dr. Kamlesh Macwan cared for Falon and monitored her development while she was a patient in the NICU department. Dr. Hocker and Dr. Macwan are University of Illinois doctors who specialize in neonatology and are employed by Neonatology Associates, a medical group that consists of specialists who have privileges to teach and practice medicine at OSF. At the time of Falon’s treatment, Dr. Hocker was the director of the NICU department at OSF and Dr. Macwan was the associate director. Dr.

Chittaranjah Reddy, a pediatric ophthalmologist, was also assigned to care for Falon. Dr. Reddy is employed by Retina Consultants and provides specialized services to patients at OSF. Heather had never met or heard of Dr. Hocker, Dr. Macwan, or Dr. Reddy prior to Falon's admission to OSF's neonatal unit.

¶ 10 OSF provides identification badges to physicians with privileges to practice in the NICU department. The badges identify the physicians as "Medical Staff" and allow them access to the neonatal unit. In their depositions, Dr. Hocker and Dr. Macwan stated that they also wore OSF lab coats that had their names embroidered on them. In addition, both doctors had offices in the hospital near the NICU wing.

¶ 11 Shortly after her birth, Falon developed ROP. From September through December 12, 2005, Dr. Reddy, Dr. Hocker and Dr. Macwan examined and provided services to Falon for treatment of her ROP. Falon was discharged from the NICU on December 12, 2005. Two weeks later, Dr. Michael Shapiro examined Falon and informed Heather and Justin that the infant had retinal detachment in both eyes and needed immediate surgery. Falon lost all vision in her left eye, and the vision in her right eye was severely reduced.

¶ 12 Heather and Justin filed suit against OSF, Dr. Reddy, Dr. Hocker, Dr. Macwan, and others, claiming that as a consequence of their negligent conduct, Falon's retinal condition was not treated in a timely manner and she lost her eyesight. In their complaint, plaintiffs claimed that OSF was directly liable for its own negligence in treating Falon and vicariously liable for the physicians' negligence based on theories of actual and apparent agency.

¶ 13 In his deposition, Dr. Tim Miller, the chief medical officer for OSF, stated that Neonatology Associates is a corporation of physicians that provides care for neonatal patients at OSF. Dr. Miller hired Dr. Hocker and Dr. Macwan in the mid-1990's, as employees of

Neonatology Associates. Physicians employed by Neonatology Associates provide exclusive neonatal services in the NICU pursuant to a service agreement. The service agreement between OSF and Neonatology Associates states that (1) the neonatologist providing care in the NICU are to be retained by Neonatology Associates at its own expense, (2) Neonatology Associates is an independent contractor, and (3) OSF is not allowed to exercise control or direction over the manner or method by which physicians in the group perform medical services.

¶ 14 Dr. Miller explained that, as the director and associate director of the NICU, Dr. Hocker and Dr. Macwan provide administrative services to the hospital. OSF pays Neonatology Associates \$170,000 each year for administrative and teaching services, but it does not pay the corporation or the doctors for clinical treatment and patient services. Miller further stated that the directors and associate directors of the departments are generally responsible for developing and implementing department protocol. He noted that the protocols may need to be modified from time to time, and it is the responsibility of the department heads to develop those protocols to meet the standard of care.

¶ 15 Dr. Reddy testified that he is a retinal ophthalmologist who, at the time of Falon's treatment, practiced independently through his professional corporation, Retina Consultants. He provided ROP screenings at the hospital on a three-month rotation. Falon's first ROP screening was conducted by another ophthalmologist on September 22, 2005. Dr. Reddy's rotation began on October 1, 2005, and continued through the end of December. He first examined Falon on October 6 and then conducted the rest of her ophthalmology exams until she was discharged in December 12, 2005.

¶ 16 OSF filed a motion for partial summary judgment on the issue of vicarious liability based on both theories of actual agency and apparent authority. The trial court found that there was no

actual agency relationship between the physicians and OSF and that, by signing the consent form, plaintiffs could not establish a genuine issue of material fact as to the elements of apparent agency. In doing so, the court interpreted the phrase “[OSF] does not employ all of the physicians who treat me,” as clearly putting plaintiffs on notice that the doctors providing medical services to Falon were independent contractors, not agents of OSF. The court granted summary judgment in favor of the hospital and against plaintiffs.

¶ 17 ANALYSIS

¶ 18 On appeal, plaintiffs contend that the trial court erred in granting summary judgment in OSF’s favor on theories of actual agency and apparent authority.<sup>1</sup>

¶ 19 Summary judgment is proper where the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). In reviewing a motion for summary judgment, we construe the record in the light most favorable to the nonmoving party and strictly against the moving party. *Williams v. Manchester*, 228 Ill. 2d 404 (2008). Although a plaintiff need not prove her entire case at the summary judgment stage, the plaintiff must present sufficient facts to support the elements of the cause of action. *Wallace v. Alexian Brothers Medical Center*, 389 Ill. App. 3d 1081, 1086 (2009). We review the trial court's ruling on a summary judgment motion *de novo*. *Williams*, 228 Ill. 2d at 417.

¶ 20 I. Actual Agency

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<sup>1</sup> OSF raises the issue of jurisdiction, claiming that the grant of partial summary judgment was not a final order. OSF filed an earlier motion to dismiss on the basis of jurisdiction, which we denied. Although OSF has the right to renew its objection, it has restated the same jurisdictional argument that this court previously denied. We conclude, as we did in our previous order, that we have jurisdiction pursuant to Supreme Court Rule 304(a) because the elements for recovery on plaintiffs’ vicarious liability claim against OSF are distinct and different from the elements of plaintiffs’ direct liability claim against OSF.



¶ 21 Plaintiffs allege that OSF is vicariously liable under the doctrine of actual agency. Plaintiffs contend that Dr. Hocker and Dr. Macwan's held leadership roles in the NICU at OSF and were responsible for developing and implementing protocol specifically related to Falon's treatment. They maintain that this evidence shows a principal-agent relationship that precludes summary judgment.

¶ 22 If a principal-agent relationship exists between the hospital and physician accused of malpractice, the hospital may be vicariously liable for the physician's alleged negligence. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 518 (1993). To prevail on a claim of actual agency, a plaintiff must show that (1) a principal-agent relationship existed between the hospital and physician, (2) the hospital controlled, or had the right to control, the conduct of the physician, and (3) the alleged conduct fell within the scope of the agency. *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 18.

¶ 23 Traditionally, the relationship between a hospital and the physicians on its staff who are not employees is an independent one. *Hundt v. Proctor Community Hospital*, 5 Ill. App. 3d 987, 990 (1972). A principal is not generally liable for the acts of an independent contractor. *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999). However, if the principal retains sufficient control over the independent contractor's work, his or her independent status is negated and the principal is vicariously liable for the contractor's tortious conduct. *Id.* at 42. This type of authority, termed implied authority, is actual authority proved by circumstantial evidence. *Id.* The primary consideration in determining the existence of implied authority is not the intent of the parties, or whether the physician is an employee or independent contractor, but rather the degree of control the principal retains over performance of the contractor's work. *Id.* In a hospital-physician relationship, the primary issue is whether the hospital has the right to

control the physician's exercise of medical judgment in delivering care to patients. *Id.* at 45-46.

¶ 24 In this case, Dr. Hocker and Dr. Macwan's employer, Neonatology Associates, executed a service agreement with OSF. That service agreement provides that physicians are retained and paid by Neonatology Associates and that OSF does not have the authority to control or direct the manner in which the physicians perform medical services. Plaintiffs recognize the existence of this service agreement. However, they contend that Dr. Hocker and Dr. Macwan's roles as OSF directors create, at a minimum, a question of fact as to an agency relationship between the parties, citing *Barbour v. South Chicago Community Hospital*, 156 Ill. App. 3d 324 (1987).

¶ 25 In *Barbour*, the plaintiff filed suit against a hospital after discovering that her doctor had performed an unauthorized tubal ligation during surgery. On appeal, the plaintiff challenged the trial court's ruling that she failed to sufficiently allege a principal-agent relationship between the hospital and the doctor. The plaintiff alleged that one of the doctors responsible for her injury was appointed department chief by the hospital's board of directors and that, as department chief, he monitored, controlled, and assisted in patient care within the department. *Id.* at 327-28. The complaint also alleged that the hospital could remove the doctor as department chief if he failed to perform his duties properly and that any change in policy or practice in the department would have to be made by the doctor and approved by the board. The plaintiff claimed that the physician was not an independent contractor but was the board's representative within the department. The appellate court concluded that such facts were sufficient to create some dispute as to the extent of the parties' agency relationship to overcome a summary judgment motion. *Id.* at 329-30.

¶ 26 Here, plaintiffs contend that, like the physicians in *Barbour*, Dr. Hocker and Dr. Macwan have been appointed to the highest positions within their department at the hospital. However,

apart from the titles of director and associate director, plaintiffs have failed to allege sufficient facts to support their assertion that those leadership roles demonstrate or create some dispute as to the extent of an agency relationship. Although it may be assumed that the hospital designated Dr. Hocker and Dr. Macwan as directors of the NICU, OSF's policy requirement for directors and associate directors within the NICU department is not included in the record.

¶ 27 Unlike the plaintiff in *Barbour*, who alleged facts showing control over medical judgment in addition to being department chief, plaintiffs generally argue that the substance of OSF's Level III certification shows a sufficient level of responsibility given to the directors within the hospital to establish an agency relationship. However, plaintiffs do not provide specific facts showing that it was Dr. Hocker's or Dr. Macwan's responsibility to meet with neonatologist, ophthalmologist, and ROP coordinators to create or revise the hospital's policy, or that the hospital exercised control over the physicians in their leadership roles. Those distinctions are critical in an actual agency context.

¶ 28 Plaintiffs assert that both doctors were being paid by OSF for their administrative roles and that payment by the principal is a dominant factor in determine whether an agency relationship exists. The record indicates that OSF pays Neonatology Associates \$170,000 per year for providing administrative and teaching services, while leaving the medical group to bill patients directly for treatment and clinical services. It does not indicate how Neonatology Associates then compensates Dr. Hocker, Dr. Macwan, or other doctors within the group for the administrative and teaching services they provide at the hospital. Payment by the principal is an important factor in determining the existence of an agency relationship. See *Petrovich v. Share Health Plan of Illinois*, 188 Ill. 2d 17, 46 (1999) (citing several cases holding that whether physician was paid by the hospital is an important factor in determining questions of agency).

But the evidence here does not show that OSF paid Dr. Hocker or Dr. Macwan directly.

¶ 29 An essential element of an agency relationship is the principal's right to control the manner in which the agent performs the work. In this case, the evidence fails to suggest that OSF exercised control over Dr. Hocker and Dr. Macwan when they provided services to patients at the hospital or that OSF had the authority to remove them from their positions. Instead, the service agreement between OSF and Neonatology Associates explicitly provides that the medical group is an independent contractor and that OSF may not "exercise control or direction over the manner or method by which [Neonatology Associates] Physicians perform their services." Although plaintiffs need not prove their entire case at the summary judgment stage, they must present some facts to support the elements of their cause of action. See *Hammer*, 2016 IL App (1st) 143066, ¶ 21. Here, the facts alleged by plaintiffs do not show that OSF retained control over the manner in which Dr. Hocker and Dr. Macwan performed their services. Thus, the trial court properly granted summary judgment on the issue of actual agency.

¶ 30 II. Apparent Authority

¶ 31 Plaintiffs also contend that OSF is vicariously liable under the doctrine of apparent authority. They argue that the court misinterpreted the apparent authority rule set forth in *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511 (1993), and failed to consider the ambiguous language used in OSF's consent form. Plaintiffs maintain that, although Heather signed a consent form, the trial court was still required to consider other facts and circumstances in evaluating whether a question of fact exists.

¶ 32 Under the doctrine of apparent authority, a hospital can be held vicariously liable for a physician's negligence in providing care at the hospital, regardless of whether the physician is an independent contractor. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 524 (1993).

As our supreme court articulated in *Gilbert*,

“[a]pparent authority in an agent is the authority which the principal knowingly permits the agent to assume, or the authority which the principal holds the agent out as possessing. It is the authority which a reasonably prudent person, exercising diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess.” *Gilbert*, 156 Ill. 2d at 523.

¶ 33 To establish apparent authority against a hospital for a physician’s negligence, a plaintiff must show (1) that the hospital held itself out as the provider of medical care without informing the patient that the care was given by independent contractors, and (2) the patient justifiably relied upon the hospital’s conduct by looking to the hospital to provide medical services, rather than on a specific physician. *Petrovich*, 188 Ill. 2d at 33-34. If a plaintiff can prove these elements, the hospital will be held vicariously liable for the physician’s negligence “regardless of whether the physician is an independent contractor, unless the patient knows, or should have known, that the physician is an independent contractor.” *Gilbert*, 156 Ill.2d at 524. Typically, apparent agency is a question of fact. *Id.*

¶ 34 Considering the first element, plaintiffs were required to present some evidence that the hospital’s or doctors’ actions created the appearance of authority and that the hospital had knowledge of or acquiesced in the actions. This is generally known as the “holding out” element. OSF argues that since Heather signed a consent form indicating that “certain physicians and allied professionals on the medical staff at the hospital, including my attending physician, physicians performing or interpreting tests, and other physicians \*\*\* are independent contractors and not employees of the hospital; that the hospital is not legally responsible for them as such, and their practice of medicine is independent from hospital management,” she cannot

establish that OSF held out the treating physicians as hospital employees.

¶ 35 While a signed consent form is an important factor on the holding out element, it is not dispositive. See *James v. Ingalls Memorial Hospital*, 299 Ill. App. 3d 627, 633 (1998); *Churkey v. Rustia*, 329 Ill. App. 3d 239, 244-45 (2002). In *Steele v. Provena Hospitals*, 2013 IL App (3d) 110374, ¶ 131, the appellate court held that strongly worded consent forms are “almost conclusive” in determining whether a hospital should be held liable for the medical negligence of an independently contracted physician. However, as the court in *Churkey* reasoned, “[t]here certainly could be situations in which a patient signs a consent form containing such a disclaimer but additional facts exist that would create a triable issue of fact as to whether the hospital held the defendant physician out as its agent.” *Id.* at 245.

¶ 36 Here, the language of the consent form is not clear and does not specifically mention the treating physicians or the service group. Although Heather signed a form, the language pertaining to the employment status of OSF physicians did not clearly state that Dr. Reddy, a pediatric ophthalmologist, and Dr. Hocker and Dr. Macwan, neonatal specialists, were independent contractors. Heather signed a form that stated “certain physicians” on the medical staff at the hospital “are independent contractors and not employees of the hospital.” It further provided that OSF “does not employ all of the physicians who treat [a patient].” Such a disclaimer is ambiguous in that the patient may assume some, all, or none of the treating physicians are independent contractors. Moreover, the term “certain physicians” may or may not include the specialists who treated Falon.

¶ 37 OSF relies on *Churkey v. Rustia*, 329 Ill. App. 3d 239 (2002), in support of its position that the consent form Heather signed precluded application of the apparent authority doctrine. That case is distinguishable. The form in *Churkey* contained clear language of the physicians'

independent status. See *Churkey*, 329 Ill. App. 3d at 241 (contract stated that “specific services” were performed by “independently contracted physicians” and immediately identified the treating physician’s service group in the list of specific service providers); see also *Frezados v. Ingalls Memorial Hospital*, 2013 IL App (1st) 121835, ¶ 5 (physicians providing services “are not employees, agents or apparent agents”); *Lamb-Rosenfeldt v. Burke Medical Group, Ltd.*, 2012 IL App (1st) 101558, ¶ 4 (form stated that “none” of the attending physicians are employees); *Gore v. Provena Hospital*, 2015 IL App (3d) 130446 (“all doctors \*\*\* are not employees nor agents of Saint Joseph Medical Center”). Therefore, a question of material fact exists as to whether the consent form adequately informed plaintiffs of Dr. Reddy, Dr. Hocker and Dr. Macwan’s status as independent contractors. See *Spiegelman v. Victory Memorial Hospital*, 392 Ill. App. 3d 826, 837 (2009).

¶ 38 Further, the record contains support for plaintiffs’ allegations that OSF held out Dr. Reddy and Drs. Hocker and Macwan as its employees. Heather stated that it was her understanding that the physicians were employees of the hospital. In their depositions, Dr. Hocker and Dr. Macwan stated that OSF provided them with lab coats that displayed their names and the OSF logo. Dr. Miller, OSF’s chief medical director, also testified that all independent contracting physicians wore name tags that identified them as OSF medical staff so they could have access to the appropriate hospital unit. And Dr. Hocker and Dr. Macwan both testified that they had offices in the hospital near the NICU.

¶ 39 OSF also advertises itself as a premier facility providing specialized care for neonatal concerns. It markets itself as a provider of specialized physician care in ophthalmology and neonatology and promotes that it has a staff of over 800 physicians providing high level services to families in central Illinois. See *Speigelman*, 392 Ill. App. 3d at 841 (hospital advertisement

stating that it has the best physicians is evidence the physicians are employees of the hospital). All of these facts create a genuine issue of material fact as to the holding out element.

¶ 40           Regarding the reliance element, Heather stated that she had never heard of Dr. Reddy or Dr. Hocker or Dr. Macwan before Falon was admitted to the NICU at OSF and that she believed their treatment of her daughter was arranged by OSF. In her complaint, she alleged that she sought treatment for herself and her daughter in Peoria because she believed OSF provided the specialized care that Falon would need. Plaintiffs satisfy the justifiable reliance element if they show reliance upon the hospital to provide medical care, rather than upon a specific physician. See *Gilbert*, 156 Ill. 2d at 525.

¶ 41           In *McCorry v. Evangelical Hospitals Corp.*, 331 Ill. App. 3d 668 (2002), the plaintiff's treating physician referred him to a neurosurgeon from an independent group providing neurosurgical care at the hospital. The plaintiff accepted care from Dr. Hurley, the available neurosurgeon, and testified that he thought Dr. Hurley was employed by the hospital. *Id.* at 674. In his complaint, the plaintiff alleged that Dr. Hurley's negligence resulted in his paralysis and sought to hold the hospital vicariously liable for Dr. Hurley's acts. *Id.* at 670. The facts showed that the plaintiff never met Dr. Hurley before arriving at the hospital. His personal physician did not refer him specifically to Dr. Hurley. The plaintiff simply accepted his doctor's referral and did not know of Dr. Hurley's independent contractor status. *Id.* The appellate court held that the plaintiff "presented sufficient evidence to create a triable issue of fact regarding his reliance on the appearance that Hurley acted as an agent of [the hospital]." *Id.* at 674.

¶ 42           Similarly, in their complaint, plaintiffs claimed that Dr. Reddy, Dr. Hocker and Dr. Macwan were agents of OSF, making OSF vicariously liable for the physicians' negligence. Heather's local obstetric physician recommended that she seek treatment at OSF for her



impending premature delivery. He did not recommend a specific doctor. He simply explained the concerns of delivering a baby at less than 24 weeks and suggested specialized care. Heather testified that she choose to deliver Falon at OSF because she believed the hospital could provide the neonatal care the baby would need. At the time Falon was admitted to the NICU, Heather did not ask the treating physicians whether they were employed by OSF. She did not speak with any of the physicians who treated Falon prior to signing the consent form. Heather alleged that she did not choose Dr. Reddy or Dr. Hocker or Dr. Macwan to provide neonatal services and that she relied on OSF to provide the specialized care Falon needed. Thus, we find that a genuine issue of material fact also exists regarding the element of reliance. Since questions of fact exist as to the holding out and reliance elements of plaintiffs' claim, the trial court erred in granting summary judgment in the hospital's favor on the theory of apparent authority.

¶ 43

#### CONCLUSION

¶ 44

The judgment of the circuit court of Peoria County is affirmed in part and reversed in part, and remanded for further proceedings.

¶ 45

Affirmed in part and reversed in part; cause remanded.