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MAY 04 2010

STATE OF VERMONT  
CALEDONIA COUNTY, S.S.

CALEDONIA COURTS

TERRENCE WHITE, Individually and as  
Administrator of the Estate of Krystine  
White, and Pauling Searles, Individually,  
Plaintiffs

v.

MARK S. HARRIS, M.D., NANCY  
FOOTE, SUSAN FARRELL, UPPER  
VALLEY PEDIATRICS, NORTHEAST  
KINGDOM HUMAN SERVICES, INC.,  
RITE M. GELSOMINI GRUBER, M.D.,  
FLETCHER ALLEN HEALTH CARE,  
INC. AND GIAN PAOLO  
BENTIVOGLIO, M.D.,  
Defendants

SUPERIOR COURT

Docket No. 155-6-09 Caw

**DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT  
AS TO DEFENDANT FLETCHER ALLEN HEALTH CARE**

This is a wrongful death action alleging medical malpractice and arising out of the suicide death of 14-year old Krystine White on June 10, 2007. This matter is before the court on Defendant Fletcher Allen Health Care's (FAHC) motion for summary judgment filed December 2, 2009. Plaintiffs Terrence White et al. filed the action claiming the defendants' negligence was the proximate cause of Krystine White's suicide on June 10, 2007. Plaintiffs are represented by Affolter Gannon & Rose, Ltd. Defendant FAHC is represented by Paul Frank + Collins, P.C.

Summary judgment is appropriate when the evidence in record shows "that there is no genuine issue as to any material fact and any party is entitled to a judgment as a matter of law." V.R.C.P. 56(c)(3). In determining whether a genuine issue of material fact exists, the moving party has the burden of proof, and the court views the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. See *Travelers Ins. Cos. v. Demarle, Inc.*, 2005 VT 53, ¶ 3, 178 Vt. 570 (citing *Messier v. Metro. Life Ins. Co.*, 154 Vt. 406, 409, 578 A.2d 98, 100 (1990)). However, summary judgment is mandated where, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an element essential to its case. *Poplaski v. Lamphere*, 152 Vt. 251, 254, 565 A.2d 1326, 1329 (1989).

## FACTS

The undisputed facts relevant to Defendant FAHC's motion for summary judgment are as follows. Krystine suffered from ongoing mental health difficulties. On the recommendation of her case manager, she became involved with a telepsychiatry research study conducted by FAHC doctor Dr. Koutras. As a participant in the study, Krystine and her parents completed pre-assessment documentation and then participated in a one time video-conference discussion. During the approximately ninety minute video-conference on August 31, 2006, Dr. Koutras interviewed the case manager, Krystine, and her parents and spoke with them about treatment options.

There was no subsequent interaction between Dr. Koutras and Krystine or her parents except to specify in writing that there would be no follow-up provided, no medications prescribed, nor need any of his recommendations be followed. Such recommendations were only to be considered by her treatment team.

On June 10, 2007, Krystine White committed suicide. According to the autopsy report, she died from the combined effects of ingesting Propoxyphene, opiates, and Citalopram. None of these medications were either recommended or prescribed by Dr. Koutras.

## CONCLUSIONS

Defendant FAHC argues summary judgment is appropriate for several reasons. First, the contact between FAHC and Krystine was so minimal as to not establish a physician-patient relationship, and consequently no duty existed at the time of her death. Second, even assuming a physician-patient relationship was established, it was terminated subsequent to the video-conference, and consequently no duty existed at the time of her death. FAHC also argues that all claims by Pauline Searles and Terrence White in their individual capacities should be dismissed as they are not properly parties in this wrongful death action and have no standing.

This is essentially a case about duty which "is central to a negligence claim, and its existence is primarily a question of law." *Endres v. Endres*, 2008 VT 124, ¶ 11, 185 Vt. 63. Although the plaintiffs argue that summary judgment should be denied as premature, if no duty existed then no additional discovery to show breach of that duty need take place; breach would be impossible. Consequently, determining the existence of a duty for resolution of a summary judgment motion is not premature.

The court questions whether a physician-patient relationship establishing the alleged duty of care ever existed in this case. It is not clear that a duty existed given the short duration of interaction between Dr. Koutras and Krystine, the limited scope of the single interview, the referral by Krystine's treating physician with whom she had an ongoing relationship, and the absence of a prescribed course of treatment by Dr. Koutras. The court recognizes that a researcher using human subjects may have a duty not to conduct his or her research negligently in a way that will harm the subjects. However, this

researcher's duty cannot be indefinite as it would stifle any progress in medical research; the law recognizes that even the duty between doctor and a patient may be terminated. See e.g. *Bednarz v. Eye Physicians of Cent. Connecticut, P.C.*, 287 Conn. 158, 166, 947 A.2d 291, 296 (2008) (discussing factors to consider in determining when a doctor-patient relationship was terminated). Cf. *Melup v. Morrissey*, 3 A.D.3d 391, 391, 771 N.Y.S.2d 8, 9 (N.Y. 2004) (finding that obtaining a second opinion from another doctor does not terminate the relationship with the first doctor).

It is clear that if any duty existed, it was formally terminated by Dr. Koutras following the interview. As one court has stated when discussing the theory of continuing treatment, "[t]he duty to attend the patient continues so long as required unless the physician-patient relationship is ended by (1) the mutual consent of the parties, (2) the physician's withdrawal after reasonable notice, (3) the dismissal of the physician by the patient, or (4) the cessation of the necessity that gave rise to the relationship." *Weiss v. Rojanasathit*, 975 S.W.2d 113, 119-20 (Mo. 1998). Connecticut courts have repeatedly recognized that

there need not be a formal discharge in order to terminate a physician-patient relationship. Rather, [t]he determination of whether the physician-patient relationship has terminated depends upon several factors. These factors include the subjective views of the parties as to whether their relationship had terminated; the length of their relationship; the frequency of their interactions; the nature of the physician's practice; whether the physician had prescribed a course of treatment for or was monitoring the condition of the patient; whether the patient was relying upon the opinion and advice of the physician with regard to a particular injury, illness or medical condition; and whether the patient had begun to consult with another physician concerning the same injury, illness or medical condition.

*Martinelli v. Fusi*, 290 Conn. 347, 371, n.17, 963 A.2d 640, 653 (Conn.2009) (internal citations omitted).

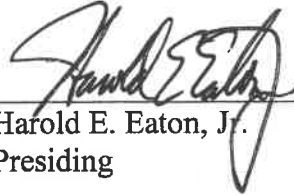
First, Dr. Koutras's letter clearly indicated that there would be no follow-up or continuing relationship, and that any recommendations made as a result of the interview were to be considered by her ongoing team of treating physicians. Second, the Krystine had, previous and subsequent to her meeting with Dr. Koutras, a continuing relationship with other physicians. Third, their relationship was extremely brief and established with the purpose of a one-time consultation. Fourth, Dr. Koutras never reviewed any of medical records. Finally, any of Dr. Koutras's findings or opinions were forwarded to her treatment team for consideration based on their ongoing relationship with and knowledge of Krystine.

Based on the court's conclusion that any hypothetical duty to Krystine was terminated by Dr. Koutras, the question of whether Terrence White and Pauline Searles lack standing to bring this suit individually is moot as to FAHC.

ORDER

Defendant Fletcher Allen Health Care's motion for summary judgment is GRANTED.

DATED April 26, 2010 at St. Johnsbury, Vermont.



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Harold E. Eaton, Jr.  
Presiding