

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1716**

Randi Rock,
Appellant,

vs.

Ahmed Abdullah, M.D.,
Respondent,

Essentia Health,
Respondent.

**Filed July 18, 2022
Affirmed
Larkin, Judge**

St. Louis County District Court
File No. 69DU-CV-21-1000

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Essentia Health)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-patient challenges the district court's grant of summary judgment to respondent-corporation in appellant's medical-malpractice action, which was based on the alleged negligence of a doctor who performed appellant's plastic surgery at a hospital

operated by respondent. The doctor had surgical privileges at the hospital, but was not an employee or independent contractor of the hospital. Because the undisputed facts show that respondent is not vicariously liable for the alleged negligence of the doctor under a theory of either respondeat superior or apparent authority, we affirm.

FACTS

In August 2017, Dr. Ahmed Abdullah performed a surgical procedure on appellant Randi Rock at a hospital in Fargo, North Dakota. The hospital was operated by respondent Essentia Health (Essentia). Essentia is a Minnesota nonprofit corporation that supports organizations providing hospital, clinic, and other healthcare services in Minnesota, North Dakota, and Wisconsin. Essentia does not employ healthcare providers or contract with physicians. Accordingly, Dr. Abdullah was not an employee of Essentia. Dr. Abdullah operated his own plastic surgery establishment in Fargo named the Plastic Surgery Institute, and he had surgical privileges at multiple hospitals, including Essentia's Fargo hospital.

Rock sued Essentia and Dr. Abdullah for medical malpractice related to her surgical procedure. She argued that Essentia was vicariously liable for Dr. Abdullah's negligence based on the doctrines of respondeat superior and apparent authority. Essentia moved for judgment on the pleadings or summary judgment, asserting that Rock's claim of vicarious liability failed as a matter of law. The district court agreed and granted Essentia's motion for summary judgment.

Rock appeals.¹

DECISION

Summary judgment is appropriate if the moving party shows that “there is no genuine issue as to any material fact” and that the moving party is “entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. “We review a grant of summary judgment de novo.” *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). In doing so, we “view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law.” *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014).

“Summary judgment is inappropriate [if] reasonable persons might draw different conclusions from the evidence presented.” *Henson*, 922 N.W.2d at 190 (quotation omitted). But “[a] defendant is entitled to summary judgment as a matter of law [if] the record reflects a complete lack of proof on an essential element of the plaintiff’s claim.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

In granting summary judgment in this case, the district court concluded that Rock failed to establish a genuine issue of material fact regarding both her respondeat-superior and apparent-authority theories of vicarious liability. Under the doctrine of respondeat superior, “an employer is vicariously liable for the torts of an employee committed within

¹ The district court dismissed the claims against Dr. Abdullah for lack of personal jurisdiction. Rock does not challenge that ruling, and Dr. Abdullah is not a party to this appeal.

the course and scope of employment.” *Schneider v. Buckman*, 433 N.W.2d 98, 101 (Minn. 1988). The district court concluded that the record does not support a finding of vicarious liability based on a respondeat-superior theory because there is no evidence that Dr. Abdullah was employed by Essentia. Rock does not assign error to that conclusion. Instead, Rock challenges the district court’s conclusion that there is no genuine issue of material fact regarding her apparent-authority theory of vicarious liability.

Under an apparent-authority theory of vicarious liability, a principal may be liable for the negligence of its agent if it holds the agent out as having authority or knowingly permits the agent to act on its behalf. *Popovich v. Allina Health Sys.*, 946 N.W.2d 885, 890-91 (Minn. 2020). Apparent authority “applies to any set of circumstances under which it is reasonable for a third party to believe that an agent has authority, so long as the belief is traceable to manifestations of the principal.” Restatement (Third) of Agency § 2.03 cmt. c (2006).

In *Popovich*, the supreme court considered—for the first time—“whether hospitals should be exempt from vicarious liability where a plaintiff seeks to hold a hospital responsible for the medical malpractice of an independent contractor based on a theory of apparent authority.” 946 N.W.2d at 890. The supreme court held that “a plaintiff may assert a claim against a hospital to hold the hospital vicariously liable for the negligence of a non-employee based on a theory of apparent authority.” *Id.* at 895. Next, the *Popovich* court considered “the appropriate legal standard for apparent authority” in that context, noting it had “never addressed apparent authority in the context of medical malpractice and the hospital emergency room.” *Id.* at 895-96.

As to the appropriate standard, the supreme court began with the two basic requirements for establishing a claim based on apparent authority. *Id.* at 895. First, the principal must “have either held the agent out as having authority or knowingly permitted the agent to act on its behalf.” *Id.* (quotations omitted). Second, there must be reliance, that is, the plaintiff must have been aware of and relied on the principal’s representations of authority. *Id.* The supreme court held that in the context of a claim against a hospital for the medical malpractice of an independent contractor, a plaintiff states a claim for vicarious liability based on the doctrine of apparent authority if “(1) the hospital held itself out as a provider of emergency medical care; and (2) the plaintiff looked to the hospital for care and relied on the hospital to select the personnel to provide services to the plaintiff.” *Id.* at 897. The supreme court noted that its newly adopted standard “mirrors” the traditional elements of apparent authority: holding out and reliance. *Id.*

Rock heavily relies on *Popovich* as support for her apparent-authority claim. Although *Popovich* specifically involved emergency medical care, we assume without deciding that its newly articulated apparent-authority standard applies in a medical-malpractice case stemming from non-emergency hospital care.

Under the first element of the *Popovich* standard, we consider “whether the hospital represented itself in the community as a location where members of the public could seek [the relevant] treatment from qualified medical personnel.” *Id.* In her affidavit opposing summary judgment, Rock stated, “When I looked at the Essentia Health website I saw they had a plastic surgery department.” Rock submitted a screenshot of Essentia’s website showing that Essentia listed the Fargo hospital at which Rock received her surgery as one

of its locations for plastic and reconstructive surgery. Another screenshot is from the website of Innovis Health, a limited liability company of which Essentia is the sole member. That website provides information about the Fargo hospital and identifies Dr. Abdullah as a doctor specialist who is available at the Fargo hospital.² Finally, a screenshot of an advertisement for Essentia declares, “Compare Dr. Abdullah with our nearby Cosmetic, Plastic & Reconstructive Surgery Specialists at Essentia Health.”

Essentia’s representations on its website are sufficient to raise a genuine issue of material fact regarding the first element of apparent authority under the *Popovich* standard. *See id.* at 897-98 (concluding that a hospital’s advertisements of the quality of its care were sufficient to satisfy the holding-out element).

As to the second element of the *Popovich* standard, the supreme court explained that

“reliance,” focuses on the beliefs of patients and considers whether the patient *looked to the hospital, rather than to a particular doctor, to provide care. Specifically, the fact-finder should determine if the plaintiff relied on the hospital to select the physician and other medical professionals to provide the necessary services.* This reliance standard reflects the reality that most people who go to the emergency room do not know which medical professionals will treat them once they arrive. Instead, they rely on the hospital to select the professionals for them. That is precisely what happened here—*Allina assigned the doctors who provided care to Mr. Popovich.* The amended complaint specifically alleges that Mr. Popovich went to Unity Hospital seeking emergency medical care and relied on the hospital to provide “an appropriate health care provider.”

Id. at 898 (emphasis added) (footnotes omitted).

² Specifically, the website states, “In addition, you can meet the career of doctors specialists such as Dr. Ahmed Abdullah. All Medical specialists who attend you delighted in Innovis Health.”

Unlike the circumstances in *Popovich*, Essentia did not assign the doctor who treated Rock. It is undisputed that Rock visited Dr. Abdullah's Plastic Surgery Institute in October 2016, and again in May 2017, to discuss her options for plastic surgery. It is also undisputed that Rock decided that Dr. Abdullah would perform her surgical procedure and that Dr. Abdullah told Rock that the surgery would occur at Essentia.

Nonetheless, Rock argues that her affidavit raises a genuine issue of material fact regarding reliance under *Popovich*. Her affidavit states, "I was given a reasonable impression that Dr. Abdullah was affiliated with Essentia Health and based on that I hired Dr. Abdullah to perform my surgery." Her affidavit further states that "Dr. Abdullah informed me that my surgery would take place at Essentia Health, thereby representing himself as a doctor affiliated with them." Although Dr. Abdullah's affiliation with Essentia may have influenced Rock's decision to choose Dr. Abdullah as her surgeon, the undisputed facts show that Rock—and not Essentia—selected Dr. Abdullah to perform Rock's surgery.

In *Popovich*, the supreme court explained that its context-specific rule regarding reliance "reflects the reality that most people who go to the emergency room do not know which medical professionals will treat them once they arrive" and "rely on the hospital to select the professionals for them." *Id.* Indeed, the supreme court observed that "a claim might fail if the patient went to the emergency room to meet the patient's personal physician or arranged in advance to consult with a particular emergency room doctor." *Id.* at 898 n.21. That is very similar to what happened here. As the district court reasoned,

in this case, Ms. Rock had several visits with Dr. Abdullah at the Plastic Surgery Institute and was only told that the surgery would be in the Fargo hospital. The Court finds that this makes the present case distinguishable from *Popovich*. As the Supreme Court said in *Popovich*, “The second element, ‘reliance,’ focuses on the beliefs of the patients and considers whether the patient looked to the hospital, rather than a particular doctor, to provide care.” Here, Ms. Rock went to a particular doctor, at his clinic, and was advised that the surgery would be done at the hospital. That is very different from someone who goes to a hospital and is told there which doctors will be providing care.

Rock’s arguments regarding reliance stray from the context-specific standard set forth in *Popovich*. Under that standard, the district court correctly concluded that there was no genuine issue of material fact regarding whether Essentia selected the surgeon who treat Rock. On this record, reasonable people could not disagree that Rock—and not Essentia—selected Dr. Abdullah to perform Rock’s surgery. Thus, Rock’s claim that Essentia is vicariously liable for Dr. Abdullah’s actions based on apparent authority under the *Popovich* standard fails as a matter of law. We therefore affirm the district court’s grant of summary judgment for Essentia.

Affirmed.