STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF DORINE KILBURN.

SUSAN YOUNG, as Personal Representative of the ESTATE OF DORINE KILBURN,

Plaintiff-Appellee,

v

EATON RAPIDS MEDICAL CENTER and JANE DOE,

Defendants-Appellants.

UNPUBLISHED
May 20, 2021

No. 353525
Eaton Circuit Court
LC No. 19-000453-NH

Before: SAWYER, P.J., and STEPHENS and RICK, JJ.

PER CURIAM.

Defendants, Eaton Rapids Medical Center (ERMC) and Jane Doe, now identified as Debra Ommodt, appeal by leave granted the trial court's opinion and order denying their motion for summary disposition under MCR 2.116(C)(7).[1] We affirm.

I. BACKGROUND

On March 30 2018, 88-year-old Dorine Kilburn (the decedent) was admitted to ERMC for "increased episodes of confusion and weakness." The decedent's family told the triage nurse and attending ER physician, Dr. Thomas Kelly, that the decedent was a "fall risk" and that she "needed her cane for everything, . . . anytime that she was up she needed the cane for assistance." Kelly ordered a CT scan of decedent's head and a chest x-ray. Ommodt, a staff radiology technician at ERMC, performed both tests on decedent. When Ommodt came to retrieve the decedent from her room, she asked the decedent's family whether the decedent could stand on her own. Ommodt

[1] *Estate of Dorine Kilburn v Eaton Rapids Medical Center*, unpublished order of the Court of Appeals, issued July 1, 2020 (Docket No. 353525).

testified that the family said the decedent could stand, but that her legs were not strong enough to walk distances, and she could not walk very far without her cane. Ommodt testified that she assured the family that the decedent would not have to take any steps and that she would have devices to hold onto. Ommodt saw the decedent had her cane with her in the room, but they did not take the cane with them to the imaging department.

In the x-ray room, Ommodt positioned the decedent so that the decedent was standing, facing the control room. Ommodt had the decedent raise her hands above her head and grasp onto a bar; at the decedent's right hip was the gurney, and to her left was the "bucky x-ray machine." There was also a metal bar that came up from the ground for the decedent to hold if she needed. There was nothing behind decedent. When asked, the decedent told Ommodt that she was not dizzy and that she could stand. Ommodt told the decedent to take a deep breath. A radiology student was poised in the control room to take the x-ray. Ommodt made it just to the edge of the control room's half wall, the student took the x-ray, and the decedent suddenly "became very rigid and just fell straight back." Blood splattered from the back of the decedent's head. Decedent was alert on the ground with her eyes open; she informed Ommodt that she had fallen, but that she felt okay.

Kelly ordered an additional CT scan of the decedent's head which revealed a "new acute subarachnoid hemorrhage" that had "developed since the prior CT". The decedent was transferred to Sparrow Hospital where she was diagnosed with "traumatic subarachnoid hemorrhage", "traumatic subdural hematoma", "concussion with loss of consciousness", "laceration of occipital scalp" and seizure. The decedent was discharged to her home where she died approximately two weeks later.

On April 25, 2018, Susan Young, as appointed personal representative of the decedent's estate, filed a two count negligence complaint, one count against ERMC and one count against Ommodt. In Count I, plaintiff alleged ERMC was liable for the negligent acts of its agents and employees. In Count II, plaintiff alleged Ommodt was negligent for failing to properly monitor, observe, and supervise decedent to prevent decedent from falling and suffering multiple injuries leading to decedent's death.

On June 10, 2019, ERMC moved for summary disposition under MCR 2.116(C)(7) and (8). Defendant argued that the facts of plaintiff's claim met the two part-test for medical malpractice claims in *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 422; 684 NW2d 864 (2004), because the claim 1) occurred within the course of a professional relationship, and 2) raised questions of medical judgment beyond the realm of common knowledge. Defendant concluded that because plaintiff's claim sounded in medical malpractice, and plaintiff failed to comply with the filing requirements in MCL 600.2912b to file a notice of intent to sue, and MCL 600.2912d(1) to file an affidavit of merit with the complaint, plaintiff's claim should be dismissed.

Plaintiff filed her response in opposition to summary disposition on April 3, 2020. Plaintiff maintained that her claims sounded in ordinary negligence. Plaintiff argued that this case did not involve one of medical judgment because Ommodt based her decision that the decedent was able to stand after speaking with the decedent's family and observing the decedent's movements – not medical expertise. Plaintiff concluded that Ommodt's actions could therefore, be evaluated by a jury without the use of medical expert testimony.

On April 8, 2020, plaintiff filed a supplemental brief citing *LaFave v Alliance Healthcare Servs*, 331 Mich App 726; 954 NW2d 566 (2020), as newly published case law in opposition to defendants' motion for summary disposition. Plaintiff argued that *LaFave* held that only healthcare professionals licensed and registered under article 15 of the public health code were capable of being sued for medical malpractice and that MRI technicians were not included. Plaintiff asserted that like the MRI technician in *LaFave*, Ommodt was an MRI technician with the same certification, and therefore not in the category of professionals able to be sued in a medical malpractice case.

On April 7, 2020, defendants filed a response to plaintiff's supplemental brief. Defendants argued that *LaFave* was factually distinguishable from the instant case in that the MRI technician in *LaFave* was not an employee of the hospital and the plaintiff was not also suing the hospital. Defendant asserted that under MCL 600.5838a(1), an employee of a licensed health facility who is engaging in medical care and treatment could be the subject of a medical malpractice claim.

On April 10, 2020, the trial court issued an opinion and order finding that plaintiff's claim sounded in ordinary negligence and denying defendants summary disposition.[2] The court found that ERMC was capable of malpractice, but Ommodt was not. Under MCL 600.5838a(1), the court acknowledged that Ommodt was an employee of ERMC, but found that Ommodt was not "engaging or otherwise assisting in medical care and treatment." The court found that Ommodt had no special medical training, held the same certification that the technician did in *LaFave*,[3] and that the *LaFave* Court determined that an MRI technician was not a medical professional capable of malpractice. The court additionally found that plaintiff's claim against Ommodt did not raise questions of medical judgment. The court reasoned that any lay person could talk with the family and personally observe the decedent to determine whether it was safe for the decedent to stand while the x-ray was taken. The trial court concluded that summary disposition was inappropriate because defendants were unable to prove that the claims occurred within the course of a professional relationship and raised questions of medical judgment as to both ERMC and Ommodt.

On appeal, defendants argue that the trial court misapplied the holding in *LaFave* and erred in finding that plaintiff's claims sounded in ordinary negligence and not medical malpractice.

II. STANDARD OF REVIEW

"We review de novo both a trial court's decision to grant or deny a motion for summary disposition and questions of statutory interpretation." *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009). A court determines whether the nature of a claim is ordinary negligence or medical malpractice under MCR 2.116(C)(7). *Bryant*, 471 Mich at 419. "When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all

[2] No hearing was held on ERMC's motion for summary disposition because of the coronavirus pandemic, and the motion was therefore decided without the benefit of oral argument.

[3] The trial court initially correctly cited the *LaFave* case, but thereafter incorrectly referred to *LaFave* as *Larue*.

evidence and pleadings in the light most favorable to the nonmoving party." *McLain v Lansing Fire Dep't*, 309 Mich App 335, 340; 869 NW2d 645 (2015).

III. ANALYSIS

Defendants first argue that the trial court erred by misapplying the holding in *LaFave v Alliance Healthcare Services Inc*, 331 Mich App 726, to find that a radiology technologist could never be sued for malpractice. We agree.

"The first issue in any purported medical malpractice case concerns whether it is being brought against someone who, or an entity that, is capable of malpractice." *Bryant v Oakpointe Villa Nursing Ctr*, 471 Mich 411, 420; 684 NW2d 864 (2004). "A malpractice action cannot accrue against someone who, or something that, is incapable of malpractice." *Adkins v Annapolis Hosp*, 420 Mich 87, 95; 360 NW2d 150 (1984). "Under the common law, only physicians and surgeons were potentially liable for medical malpractice." *Kuznar v Raksha Corp*, 481 Mich 169, 177; 750 NW2d 121 (2008). "With MCL 600.5838a, the Legislature expanded the scope of who may be subject to a medical-malpractice action to include other professionals and entities." *LaFave*, 331 Mich App at 732. Now, under MCL 600.5838a(1),

> a claim based on the medical malpractice of a person or entity who is or who holds himself or herself out to be a *licensed health care professional, licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging in or otherwise assisting in medical care and treatment,* whether or not the licensed health care professional, licensed health facility or agency, or their employee or agent is engaged in the practice of the health profession in a sole proprietorship, partnership, professional corporation, or other business entity, accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim. [Emphasis added].

A "licensed health facility or agency" is "a health facility or agency licensed under article 17 of the public health code ...." MCL 600.5838a(1)(a). MCL 333.20106(1) defines "health facility or agency" as follows:

> (a) An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
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> (b) A county medical care facility.
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> (c) A freestanding surgical outpatient facility.
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> (d) A health maintenance organization.
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> (e) A home for the aged.
>
> (f) A hospital.
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> (g) A nursing home.

(h) A hospice.

(i) A hospice residence.

(j) A facility or agency listed in subdivisions (a) to (g) located in a university, college, or other educational institution.

Because ERMC is a hospital, it can be directly liable for medical malpractice in that capacity.

A "licensed health care professional" is "an individual licensed or registered under article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.16101 to 333.18838 of the Michigan Compiled Laws, and engaged in the practice of his or her health profession in a sole proprietorship, partnership, professional corporation, or other business entity." MCL 600.5838a(1)(b). Ommodt is a radiology technologist. There is no licensure requirement for radiology technologists in the state of Michigan and radiology technologists are not among the professions listed in article 15 of the public health code. *LaFave*, 331 Mich App at 733. The issue of whether a technician, like Ommodt, qualifies as a licensed health care professional was recently discussed by this Court in *LaFave*. There, the plaintiff sued the defendant, an MRI service provider, for the actions of the defendant's employee, Chelsea Perry, an MRI technician, after the plaintiff fell off an MRI table. On appeal, the defendant argued that Perry qualified as a "licensed health care professional" because 1) she was certified by the ARRT, 2) by virtue of her certification, she worked in a "health profession," and 3) she need not have qualified as a "licensed health care professional" so long as the first prong in *Bryant*, that "the particular assistance rendered to that patient involved a professional relationship and implicated a medical judgment", was met. *Id*. at 734-735. As to the defendant's first reason, this Court held that an MRI technician could not be licensed or registered under Article 15 of the public health code. The Court held that under Article 15, the statutory definition of "registrant" was an individual to whom a "specialty certification" was issued, and a "specialty certification" was a title held by someone licensed in a "health profession specialty field." *Id*. at 734. Perry's MRI certification did not qualify as a "specialty certification" under Article 15 because she was not licensed in a health profession specialty field. See *Id.* (Where the defendant conceded that licensure was not available for MRI technicians in Michigan). In response to the second reason, the Court held that the statutory definition of "health profession" was "a vocation, calling, occupation, or employment performed by an individual acting pursuant to a license or registration issued under [Article15]", and again, Perry was not licensed or a registrant. *Id*. at 735. The Court rejected the defendant's last reason with a reminder that the *Bryant* Court also held that whether a person is capable of committing malpractice "is a prefatory condition" to finding that the parties have a "professional relationship." *Id*. The Court "conclude[d] that the Legislature has expressly identified the category of persons or entities who can be subject to a medical-malpractice suit, and if the category is to be expanded to include an MRI technician or MRI provider, then it is the place of the Legislature, not this Court, to make the expansion." *Id*. at 736.

In discussing *LaFave*, the trial court here held:

As noted above, the *Larue* [sic] court did determine that an MRI technician is not a medical professional capable of malpractice. *It follows then* that Ms. Ommodt,

> although an employee of the hospital, was not "engaging in or otherwise assisting in medical care and treatment[.]"

While the court's first sentence is correct, the second it not. *LaFave* held that an MRI technician was not a licensed medical professional under MCL 600.5838a and article 15 of the public health code, but the Court did not reach the issue of whether the MRI technician was engaging in or otherwise assisting in medical care and treatment. Whether 1) an individual is a licensed medical professional or 2) an employee of a health facility engaged in or assisting in medical care and treatment, are two different avenues to argue that the individual would be capable of medical malpractice under MCL 600.5838a. In the first instance, the court does not analyze whether the individual engaged in or assisted in medical care and treatment. In the second instance, the individual's employer is the hospital or licensed medical facility and the court does engage in analyzing whether the individual engaged in or assisted in medical care in treatment. Thus, it *does not follow* from the fact that a technician is not a licensed or registered medical professional, that the technician was also not engaging or otherwise assisting in medical care or treatment.

The next paragraph in the court's opinion and order reads:

> What's more, it is illogical for a person's liability for malpractice to rest on the person's employer's designation. *Two people with identical certifications who perform identical tasks must be, under the law, equally subject to (or not subject to) medical malpractice lawsuits. Ms. Ommodt, as an ARRT certified technician, is not capable of malpractice.* The hospital, on the other hand, clearly is. Defendants met this prong of the test as to Defendant ERMC, but not as to Defendant Ommodt.

In this paragraph, the trial court was comparing the certifications and tasks of the MRI technician in *LaFave* to Ommodt's certification and tasks to conclude that because both the *LaFave* technician and Ommodt were ARRT certified technicians, Ommodt was not capable of malpractice. This reasoning was flawed because the tasks of the MRI technician in *LaFave* were unknown and not discussed, and therefore, the trial court's comparison was unfounded. Further, a plain reading of the trial court's finding that *Ms. Ommodt, as an ARRT certified technician, is not capable of malpractice,* could be interpreted to mean that an ARRT certified radiologist technician could never be held liable for medical malpractice. The trial court's statement appears to rely only on the defendant's certification and does not consider whether an ARRT certified technician who was engaging in or otherwise assisting in medical care and treatment could be capable of medical malpractice. The trial court misapplied the holding in *LaFave*, that an MRI technician could not be a licensed health care professional, to mean that in the instant case, Ommodt was not capable of malpractice.

It is undisputed that Ommodt is not a licensed health facility or agency, and under *LaFave*, Ommodt is not a licensed health care professional. Consequently, Ommodt could only be held capable of medical malpractice if she qualified as an employee of a licensed health facility or agency who was "engaging in or otherwise assisting in medical care and treatment." MCL 600.5838a(1). Ommodt's employer, ERMC, was a hospital and therefore qualified as a licensed health facility or agency. MCL 333.20106(1)(f). However, the trial court held that Ommodt was

not capable of malpractice because she was not engaging in or otherwise assisting in medical care and treatment. We disagree. The court's cited reasons were that Ommodt:

> had no special medical training other than the same training the MRI technician in *Larue* [sic] possessed. She transported the decedent from one area of the hospital to another, she had the decedent lay on a bed and then stand in a specific place in a specific position. None of this could be classified as providing medical care or treatment of the decedent.

Plaintiff's complaint alleged that Ommodt was negligent in preventing the decedent from falling while Ommodt performed the decedent's chest x-ray. This Court has previously acknowledged that x-rays constitute medical care and treatment. See *Winklepleck v Michigan Veterans' Facility*, 195 Mich App 523, 536; 491 NW2d 251 (1992) ("In summary, plaintiff's documents establish no more than that Mr. Winklepleck received medical care, including visitation by physicians, prescription medication, minor surgery and x-rays at the facility's clinic, and daily nursing care."), and *Elliott v Detroit Receiving Hosp*, unpublished opinion of the Court of Appeals, issued July, 12, 1996 (Docket No. 179789) ("Because Woolfork received medical treatment while she was detained, including x -rays and other medical care for her injuries, the Hospital was not deliberately indifferent to Woolfork's medical needs.") Further, a technician's transporting and movement of a patient for the purposes of performing medical care and treatment qualifies as "engaging in or otherwise assisting in medical care and treatment". In *Regalski v Cardiology Assoc, PC*, 459 Mich 891; 587 NW2d 502 (1998), the plaintiff "alleged Elisabeth Regalski was injured because the defendant's technician was negligent in assisting the patient's movement out of a wheelchair and onto the examination table where the technician then performed the cardiac test for which the defendant had been consulted." *Id*. at 891. "Our Supreme Court concluded that the claim sounded in malpractice because the act that formed the basis of the suit constituted the rendering of medical care and treatment." *Id*. See also *Kurc v McLaren Regl Med Ctr*, unpublished opinion of the Court of Appeals, issued November, 8, 2002 (Docket No. 233936) ("The act of transferring plaintiff from a gurney to a bed required training and the exercise of medical judgment both to minimize discomfort and to guard against re-injuring the leg.").

We conclude that both ERMC and Ommodt are capable of medical malpractice; ERMC as a licensed health facility and Ommodt as an employee of a licensed health facility engaged in or assisting with medical care and treatment.[4]

[4] Having found that Ommodt and ERMC are capable of medical malpractice, we find it unnecessary to address defendants' analysis of *Bell v Mikkola*, 193 Mich App 708, 710; 485 NW2d 143 (1992), to assert the same point. We do however note that while *Bell* supports that ERMC and Ommodt are capable of being sued for medical malpractice, because *Bell* did not discuss whether the respiratory therapist was engaged in or assisting with the medical care and treatment of the plaintiff, the case does not also prove that the instant plaintiff's case is one of medical malpractice versus ordinary negligence. That question is answered only after both factors from *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, are resolved: 1) that the claim involved an action that occurred within the course of a professional relationship; and 2) that the

Defendants next argue that the trial court erred in finding that plaintiff's claim sounded in ordinary negligence. We disagree.

"[A] court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or medical malpractice: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience." *Bryant*, 471 Mich at 422. "If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions." *Id.* "A medical-malpractice claim is defined as a claim that arises during the course of a professional relationship and involves a question of medical judgment." *Lockwood v Mobile Med Response, Inc*, 293 Mich App 17, 23; 809 NW2d 403 (2011). "A professional relationship exists if a person or an entity capable of committing medical malpractice was subject to a contractual duty to render professional health-care services to the plaintiff." *Kuznar v Raksha Corp*, 481 Mich 169, 177; 750 NW2d 121 (2008). It follows that a professional relationship also exists between the employee and the patient, if the employee is employed by a licensed health care facility that was under a duty to render professional health care services to their patients. *Bryant*, 471 Mich at 425. Because ERMC was a licensed health facility that was contractually required to render professional health care services to the decedent, ERMC had a professional relationship with the decedent. As an employee of ERMC, Ommodt also had a professional relationship with the decedent.

Second, a medical malpractice claim must "necessarily raise questions involving medical judgment." *Id*. at 422 (citation and quotation omitted). Questions involving medical judgment are those that "raise issues that are [beyond] the common knowledge and experience of the jury" and that require the use of expert witness testimony. *Id*. at 423, 425 (citation and quotation marks omitted). No expert testimony is necessary if "[t]he fact-finder can rely on common knowledge and experience in determining whether defendant ought to have made an attempt to reduce a known risk of imminent harm to one of its charges." *Id*. at 431.

In *Sturgis Bank & Trust Co v Hillsdale Cmty Health Ctr*, 268 Mich App 484, 497-498; 708 NW2d 453 (2005), the plaintiff's claim was that a nurse was negligent in failing to take actions to prevent the plaintiff from falling. The Court stated:

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claim raised questions of medical judgment beyond the realm of common knowledge and experience. *Id*. at 422.

On an additional note, we reject defendants' contention that *Bell* conflicts with *LaFave* and that perhaps *LaFave* overruled *Bell*. *Bell*'s holding does not apply to *LaFave* because the employee in *LaFave* was not employed by a licensed health facility. "If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v Shearson/American Express, Inc*, 490 US 477, 484; 109 S Ct 1917; 104 L Ed 2d 526 (1989). *Bell* does not have direct application to the instant case and therefore does not directly control.

> [P]laintiff alleged in the complaint that defendant's nurses were negligent in failing to prevent Walling's fall, in permitting her to arise unassisted, in failing to protect her from falling, and in otherwise failing to exercise such measures when the nurses knew, or should have known, of Walling's risk of falling. The complaint also alleged that, at the time of the fall, Walling was lethargic, in pain, uncooperative, noncompliant, and had labored breathing. There was documentary evidence indicating that Walling was restless, somewhat disoriented, in pain, being medicated with morphine for pain, and instructed not to get out of bed.
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> .... It is clear from the deposition testimony that a nursing background and nursing experience are at least somewhat necessary to render a risk assessment and to make a determination regarding which safety or monitoring precautions to utilize when faced with a patient who is at risk of falling. While, at first glance, one might believe that medical judgment beyond the realm of common knowledge and experience is not necessary when considering Walling's troubled physical and mental state, the question becomes entangled in issues concerning Walling's medications, the nature and seriousness of the closed-head injury, the degree of disorientation, and the various methods at a nurse's disposal in confronting a situation where a patient is at risk of falling. The deposition testimony indicates that there are numerous ways in which to address the risk, including the use of bed rails, bed alarms, and restraints, all of which entail to some degree of nursing or medical knowledge.... In sum, we find that, although some matters within the ordinary negligence count might arguably be within the knowledge of a layperson, medical judgment beyond the realm of common knowledge and experience would ultimately serve a role in resolving the allegations contained in this complaint. Accordingly, we find that the trial court did not err in dismissing the ordinary negligence claim.
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> Here, plaintiff alleged the following allegations against both ERMC and Ommodt:
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> a. Failing to properly monitor, observe, and attend to Ms. Kilburn to prevent her from falling;
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> b. Failing to appropriately attend to Ms. Kilburn given her reported confusion and weakness;
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> c. Failing to provide Ms. Kilburn with supervision and hands-on assistance, while she was undergoing imaging studies;
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> d. Failing to prevent Ms. Kilburn's fall by leaving her unattended and in a standing position during imaging studies especially given her complaints of confusion and weakness;
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> e. Failing to supervise Ms. Kilburn to prevent her from falling; and
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> f. Failing to exercise the degree of attention required under the circumstances.

The trial court held that plaintiff's claims did not "require more than a common-sense understanding". We agree. Unlike in *Sturgis*, the decedent here did not present with any

complicated medical diagnoses. The decedent's noted confusion was not a diagnosis, but an observable fact made by the decedent's family, that at the time, was not linked to any underlying complicated disease. Confusion is also a common condition that a lay person could understand without an explanation from a medical professional. The fact that the decedent also relied on a cane for mobility was also an observable fact. Members of decedent's family testified that they told the triage nurse and attending ER physician that decedent needed a cane to stand and walk, and that decedent was a fall risk. Ommodt's testimony was that the family told her that decedent needed the cane to walk because the decedent's legs were weak, but that decedent could stand. Ommodt testified that she made her own determination of the decedent's balance after talking to the family, asking the decedent whether she could stand, and observing the decedent move unaided in the CAT scan and x-ray rooms. Ommodt's decision to not have the decedent use her cane was not based on any special training, the application of a protocol, or medical assessment. Ommodt admitted that at the time, ERMC did not have a fall risk protocol in place. She did what any lay person would do; she spoke to the family and personally observed the decedent. Despite the decedent's weakness[5] and confusion, once in the x-ray room, Ommodt did not take any additional medical precautions for this decedent. It appears that despite the assistive devices available, Ommodt performed the x-ray as normal, having the decedent raise her hands above her head. Ommodt admitted that she could have had someone stand behind the decedent, she could have had the decedent hold onto the bar that protruded from the ground, or had the decedent sit for the x-ray. A jury will be able to rely on common knowledge and experience, just as Ommodt did, to evaluate whether Ommodt's decision was reasonable "to reduce a known risk of imminent harm to one of its charges." *Id*. at 431.

In contrast to *Sturgis Bank*, the complaints alleged here did not involve questions of medical judgment that would require the assistance of an expert for the jury to understand. Accordingly, because defendant has not met the second prong of *Bryant* this case sounded in ordinary negligence and was not subject to the notice of intent requirements in MCL 600.2912b and MCL 600.2912d for a medical malpractice action.

Affirmed.

/s/ David H. Sawyer
/s/ Cynthia Diane Stephens
/s/ Michelle M. Rick

[5] Defendants argue that there was no evidence that the decedent additionally suffered from weakness. We disagree. An emergency department record from ERMC states that the decedent had a chief complaint of confusion with associated symptoms of weakness.