[Cite as *Sibera v. Kordes*, 2010-Ohio-6574.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

SHARYN L. SIBERA, et al.,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009-T-0129**
- vs -	:	
LINDA KORDES, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2007 CV 00528.

Judgment: Affirmed.

Michael J. McGee and Matthew G. Vansuch, Harrington, Hoppe & Mitchell, LTD, 108 Main Avenue, S.W., #500, Warren, OH 44481 (For Plaintiff-Appellant).

Larry D. Wilkes and Enzo C. Cantalamessa, Davis & Young, L.P.A., 972 Youngstown-Kingsville Road, STE. G, P.O. Box 740, Vienna, OH 44473 (For Defendant-Appellee, Linda Kordes).

W. Scott Fowler, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, #926, Youngstown, OH 44503-1811 (For Defendant-Appellee, Forum Health-Trumbull Memorial Hospital).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Sharyn L. Sibera, appeals the summary judgment of the Trumbull County Court of Common Pleas on her claim for intentional infliction of emotional distress against her and in favor of her sister, appellee Linda Kordes, and

appellee, Forum Health-Trumbull Memorial Hospital. We are asked to consider whether any genuine issues of material fact exist on Sharyn's claims. For the reasons that follow, we affirm.

{¶2} The statement of facts that follows is based on the deposition testimony of the parties and their witnesses presented in support of and in opposition to summary judgment. Sharyn testified she has three siblings, her sister Linda and two brothers Don Kordes and Jeff Kordes. Their parents are Howard and Mary Kordes. The family resided in Warren, Ohio. Each of the children, who are now adults, lives with his or her family in Warren.

{¶3} Sharyn does not get along with any of her siblings. Her relationship with Linda has been strained for many years. Sharyn testified that her recent problems with Linda began in 2000 when Sharyn and her husband sold their home in Warren. They temporarily moved into a duplex and needed a place to store their belongings. Linda said they could store them in her basement and Sharyn agreed.

{¶4} Sometime later, Linda and her handicapped child needed a ride to the airport in Pittsburgh. Linda asked their mother to call Sharyn to see if she would give them a ride. When Mary asked Sharyn if she would give them a ride, Sharyn said she would, but only if Linda called Sharyn personally and asked her. Linda did not call her so Sharyn did not drive them to the airport.

{¶5} Later that year, there was a rain storm in the Warren area and many of Sharyn's things were damaged when Linda's basement flooded. According to Sharyn, Linda refused to allow her to take her things so Sharyn hired a local attorney James

Brutz to accomplish the return of Sharyn's property to her. Mr. Brutz sent a demand letter to Linda, which did nothing to improve the sisters' relationship.

{¶6} Meanwhile, as Howard became elderly, he developed a series of medical problems. Although Sharyn remained estranged from her siblings, they all shared in taking care of their father. In July 2006, Sharyn unilaterally decided that, because her mother was elderly, she should sign a power of attorney in Sharyn's favor. Although Howard and Mary had their own attorney, William McGuire, on July 11, 2006, Sharyn took Mary to see Sharyn's attorney Mr. Brutz. Sharyn had him prepare a power of attorney, and Mary signed it appointing Sharyn as her attorney-in-fact. Sharyn did not tell any of her siblings or Mr. McGuire about this appointment.

{¶7} Two weeks later, on July 26, 2006, Howard began having difficulty breathing and was taken by ambulance to Trumbull Memorial emergency room. He was diagnosed with pneumonia and admitted to the intensive care unit that day. Mary and all four children visited him at the hospital without incident.

{¶8} On the following day, July 27, 2006, Sharyn visited Howard, who was still in the intensive care unit, with Linda and Mary. Linda has been employed by Trumbull Memorial as a social worker for 23 years and was on duty at that time. When visiting hours were over at about 12:30 p.m., Sharyn told Mary it was time for them to leave. Linda objected, however, and said that Mary was not going with her. Linda said Sharyn should leave, but not with Mary. An argument between the sisters ensued, during which they were yelling at each other in front of their father in the intensive care unit.

{¶9} At some point during this bickering, Sharyn noticed that her parents' attorney Mr. McGuire was in the room. Sharyn asked him why he was there, and he

said that Mary had called him and asked him to come. Sharyn told him she had a power of attorney for her mother and after she showed it to him, he left the hospital.

{¶10} Sharyn then went to the hospital's administrative offices and met with its chief executive officer Kevin Spiegel. Sharyn complained that Linda had instructed her to leave the intensive care unit, and he told her she would have no more problems visiting with her father.

{¶11} Later that day, Mary went to Mr. McGuire's office and instructed him to revoke her power of attorney in favor of Sharyn and to prepare a power of attorney in favor of her son Jeff. After Mary signed this document, Mr. McGuire wrote a letter to Sharyn, advising her that her mother had revoked her power of attorney and that Mary had signed a power of attorney in favor of Jeff.

{¶12} Thereafter, from July 28, 2006 until August 2, 2006, Sharyn visited her father daily at the hospital without any problems. Then, on August 2, 2006, while Sharyn, Mary, and Linda were visiting Howard, who was now on the intermediate care floor, another confrontation occurred between the sisters. Sharyn and Howard were discussing a scholarship her daughter had received. Howard asked her if they had received the money "up front." Linda said, "I'm sure she got it up front." Sharyn said, "Excuse me?" Linda said, "Did I say something?" and walked out of the room.

{¶13} Later that day, Howard's treating physician Christopher Chuirazzi, M.D., prepared a physician's order that he included in Howard's chart. It stated, "Daughter, Sharyn is not to visit, nor is she to be given any info on pt. Place new face sheet [with] Linda Kordes as contact person." Sharyn testified she was unaware of this physician's

order until one week before her deposition when she reviewed her father's medical chart.

{¶14} Sharyn testified that on August 3, 2006, Mary called her and told her not to come to the hospital anymore because the family was angry with her for having taken her to Sharyn's attorney to sign a power of attorney. Sharyn testified that she did not go back to the hospital to visit her father because she wanted to abide by her mother's instruction.

{¶15} After this conversation, Sharyn called the hospital about her father. A nurse on her father's floor, identified only as Monia, told Sharyn she was not permitted to visit him. Sharyn asked on whose authority, and Monia said, "Per Linda Kordes." Sharyn then called Mr. Spiegel to discuss the matter. He referred her to the hospital's risk manager Elizabeth Johnson. Ms. Johnson was aware the sisters were fighting. She said she would look into the matter and advised Sharyn to seek legal counsel.

{¶16} Ms. Johnson testified that after talking to Sharyn, she went to Howard's room and found that Mary was there visiting. Ms. Johnson reviewed Howard's chart and saw Dr. Chuirazzi's August 2, 2006 order. Ms. Johnson asked Mary if she had requested that Sharyn be restricted from visiting Howard, and Mary said, "yes." Mary told her she did not want to upset her husband with family fights, and it was best to resolve it this way. Charlotte Matash, a care coordinator in the intensive care unit, testified that on August 2, 2006, she discussed the matter with Mary. Ms. Matash said Mary knew what she was doing, and told her she did not want Sharyn to visit Howard or receive any information about his care.

{¶17} Sharyn testified that about two weeks later, Mary called her and said she wanted her to visit Howard. Mary told her that Howard had been transferred to Mahoning Valley Hospital. Sharyn went to the hospital, and, after Mary told the nurse that she had given Sharyn permission to see her father, she and Mary visited him.

{¶18} Four days later, on or about August 20, 2006, Don Kordes telephoned Sharyn and told her that their father had had a heart attack and to come to the hospital quickly. By the time she arrived, however, Howard had passed away.

{¶19} Sharyn testified that the only evidence she has that Linda denied her access to her father or information concerning his condition was Sharyn's telephone conversation with the nurse Monia.

{¶20} In support of her allegation that she suffered severe emotional distress, Sharyn testified that she saw a Dr. FNU Rose two or three times, who was referred to her by a girlfriend. Sharyn did not know what, if any, degree this person has. Sharyn said her treatment consisted of talking with her a few times. When asked to describe her emotional distress, Sharyn said, "I miss my father." She said she talked with Dr. Rose mostly regarding the loss of her father, rather than Linda's conduct or Sharyn's inability to see her father at the hospital. Dr. Rose did not administer any tests and did not prescribe any medication for Sharyn. The doctor's diagnosis was depression due to her father's death.

{¶21} Sharyn filed a disciplinary complaint against Linda with the Ohio Counselor, Social Worker and Marriage and Family Therapist Board. After investigating the matter, the board found there was no evidence to support Sharyn's request for disciplinary action against her sister, and dismissed the complaint on January 22, 2007.

{¶22} One month later, on February 23, 2007, Sharyn filed a complaint against appellees alleging they prevented her from visiting her father while he was a patient in the hospital resulting in the intentional infliction of severe emotional distress. Sharyn sued appellees for over $25,000 in compensatory damages and $500,000 in punitive damages.

{¶23} On February 8, 2008, following the exchange of discovery, Trumbull Memorial filed a motion for summary judgment. On September 9, 2008, Linda filed a separate motion for summary judgment. In their motions appellees argued there was no evidence in support of any of the elements of intentional infliction of emotional distress. On September 23, 2008, Sharyn filed her brief in opposition to the hospital's summary-judgment motion. She did not, however, file a brief in opposition to Linda's motion. On March 10, 2009, the trial court entered summary judgment in favor of Trumbull Memorial and Linda.

{¶24} Thereafter, Sharyn filed a motion in the trial court for relief from judgment with respect to the court's dismissal of her claims against Linda only due to Sharyn's failure to oppose Linda's motion. Sharyn also filed a brief in opposition to Linda's summary-judgment motion. At that time, Sharyn also filed an appeal of the trial court's March 13, 2009 summary judgment. This court remanded the case to the trial court to allow the court to rule on Sharyn's motion to vacate.

{¶25} On June 25, 2009, the trial court granted Sharyn's motion for relief and vacated its March 3, 2009 summary judgment in favor of Linda. Thereafter, on Sharyn's motion, filed July 31, 2009, this court dismissed her appeal. On December 2, 2009, the trial court once again entered summary judgment in favor of Linda. The trial court found

there were no genuine issues of material fact in support of Sharyn's claim. Specifically, the court found there was no evidence that Linda caused Mary or Dr. Chuirazzi to bar Sharyn from visiting Howard. The court found that, instead, the evidence was undisputed that Mary and the doctor, both of whom are not parties to this action, had made the decision not to allow Sharyn access to Howard.

{¶26} Sharyn appeals the trial court's judgment, asserting two assignments of error. For her first assigned error, she contends:

{¶27} "The trial court erred when it entered summary judgment in favor of defendant-appellee LINDA KORDES on the intentional infliction of emotional distress claim brought against her by plaintiffs-appellees SHARYN L. AND VICTOR J. SIBERA." (Emphasis sic.)

{¶28} Summary judgment is a procedural device intended to terminate litigation and to avoid trial when there is nothing to try. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358, 1992-Ohio-95. This court has held that summary judgment is proper when: "(1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party, that party being entitled to have the evidence construed most strongly in his favor." *Frano v. Red Robin International, Inc*., 181 Ohio App.3d 13, 17-18, 2009-Ohio-685, citing *Leibreich v. A.J. Refrigeration, Inc*., 67 Ohio St.3d 266, 268, 1993-Ohio-12.

{¶29} The party seeking summary judgment on the ground that the nonmoving party cannot prove his case bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record that demonstrate the

absence of a genuine issue of material fact on the essential elements of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107.

{¶30} The moving party must point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support his claim. *Dresher*, supra, at 293.

{¶31} If this initial burden is not met, the motion for summary judgment must be denied. Id. However, if the moving party has satisfied his initial burden, the nonmoving party then has a reciprocal burden, as outlined in Civ.R. 56(E), to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against him. *Dresher*, supra.

{¶32} Since a trial court's decision whether or not to grant summary judgment involves only questions of law, we conduct a de novo review of the trial court's judgment. *DiSanto v. Safeco Ins. of Am.*, 168 Ohio App.3d 649, 655, 2006-Ohio-4940. "A de novo review requires the appellate court to conduct an independent review of the evidence before the trial court without deference to the trial court's decision." Id., citing, *Brown v. Cty. Commrs. of Scioto Cty.* (1993), 87 Ohio App. 3d 704, 711.

{¶33} A claim for intentional infliction of emotional distress lies where "[o]ne who by extreme and outrageous conduct intentionally *** causes serious emotional distress to another." *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, at syllabus. "In a case for intentional infliction of emotional distress, a plaintiff must prove (1) that the defendant intended to cause the plaintiff serious emotional distress, (2) that the defendant's conduct was extreme and outrageous, *and* (3) that the defendant's conduct was the

proximate cause of plaintiff's serious emotional distress." *Phung v. Waste Mgt., Inc.*, 71 Ohio St.3d 408, 410, 1994-Ohio-389 (Emphasis added and citation omitted).

{¶34} In describing extreme and outrageous conduct, the Supreme Court in *Yaeger*, supra, stated:

{¶35} "'*** It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice" ***. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

{¶36} "'The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt. ***.'" Id., at 374-375, quoting Restatement of the Law 2d, Torts (1965) 73, Section 46, comment d.

{¶37} Additionally, the mental anguish suffered by the plaintiff must be so severe and debilitating that "a reasonable person, normally constituted, would be unable to cope adequately with the mental distress engendered by the circumstances of the

case." *Paugh v. Hanks* (1983), 6 Ohio St.3d 72, 78. "A non-exhaustive litany of some examples of serious emotional distress should include traumatically induced neurosis, psychosis, chronic depression, or phobia." Id. (citation omitted); accord, *Kovacic v. Eastlake*, 11th Dist. No. 2005-L-205, 2006-Ohio-7016, at ¶94.

{¶38} Sharyn has failed to reference any evidence in this record in support of any of the elements of her intentional-infliction claim. Our review of the record demonstrates that no such evidence exists.

{¶39} First, there is no evidence that Linda intended to cause Sharyn serious emotional distress. The evidence reveals that Mary and Dr. Chuirazzi, rather than Linda, restricted Sharyn's access to her father. It is undisputed that Mary was concerned that the sisters' fighting and yelling in Howard's presence was upsetting him, and she decided the best way to stop it was by restricting Sharyn's visits with her father. Consequently, she asked Dr. Chuirazzi to prohibit Sharyn's access to him.

{¶40} Sharyn testified that Mary called her and told her not to come to the hospital because the family was angry with her. Sharyn said that she stayed away from the hospital out of respect for her mother's wishes. Thus, the reason Sharyn did not visit her father had nothing to do with anything Linda did. Sharyn's deposition testimony contradicts her present argument that Linda manipulated her mother into making this decision. Obviously, if Sharyn did not believe this was her mother's decision, she would not have stayed away from the hospital.

{¶41} Sharyn argues that because Linda has been employed by the hospital for 23 years and that over the years her parents have relied on Linda's advice regarding hospital-related issues, this is evidence that Linda improperly influenced her mother's

decision to restrict her access to Howard. We do not agree. In light of Linda's status as a licensed social worker at the hospital, it seems reasonable her parents would rely on her advice in matters related to her profession. In any event, there is no evidence in this record that Linda exerted any influence over Mary or played any role in her decision to restrict Sharyn's visits with her father. In fact, hospital staff testified that on August 2, 2006, Mary knew what she was doing when she told them she did not want Sharyn to visit Howard or receive any information about his care. Sharyn's reference to her mother as a "ventriloquist's puppet" is simply not supported by the evidence. Contrary to Sharyn's argument, there is no evidence that Mary was incapable of making health care decisions for her husband.

{¶42} Further, Dr. Chuirazzi, Howard's treating physician, entered an order on Howard's chart preventing Sharyn from visiting her father and obtaining medical information about him. Sharyn failed to present any evidence that Linda had anything to do with Dr. Chuirazzi's decision to enter this order. Sharyn's argument that Linda had a role in procuring this order is nothing more than mere speculation, which is insufficient to avoid summary judgment.

{¶43} Sharyn testified the only evidence she had that Linda had denied her access to her father and his medical information was her telephone conversation with the nurse Monia, who said that she was not to see Howard "Per Linda Kordes." Since Monia did not testify, it is impossible to determine how she obtained this information. The only inference that can be drawn from the record is that Monia had seen Dr. Chuirazzi's order barring Sharyn, which also listed Linda as the contact person, in

Howard's chart. In any event, the nurse's comments were hearsay and thus not proper to oppose summary judgment.

{¶44} Sharyn's reliance on *Treadway v. Free Pentecostal Pater Ave. Church of God, Inc.*, 12th Dist. No. CA2007-05-139, 2008-Ohio-1663, is misplaced because in that case there was no allegation or evidence that non-parties had restricted visitation rights.

{¶45} Second, there is no evidence Linda's conduct was extreme and outrageous because there is no evidence she was in any way responsible for her mother's instruction to Sharyn not to visit her father or Dr. Chuirazzi's order. While her yelling at Sharyn in the hospital can hardly be called professional, civilized, or mature, an intentional infliction claim is not directed at such rude behavior.

{¶46} Third, there is no evidence that Sharyn sustained serious emotional distress, as required to prove an intentional-infliction claim. Sharyn fails to reference any facts in evidence showing she suffered mental anguish as a result of Linda's acts that was so severe and debilitating a reasonable person would be unable to cope with the distress, which is required to prove such claim. *Paugh*, supra. There is no evidence she suffered traumatically-induced neurosis, psychosis, depression or phobia as a result of Linda's conduct. Id. In fact, when Sharyn was asked in deposition whether her talks with Dr. Rose centered on the loss of her father or Linda's conduct, Sharyn said they concerned the loss of her father.

{¶47} Because there exist no genuine issues of material fact with respect to Sharyn's intentional-infliction claim directed against Linda, we hold the trial court did not err in entering summary judgment in her favor.

{¶48} Sharyn's first assignment of error is overruled.

{¶49} For her second assignment of error, Sharyn contends:

{¶50} "The trial court erred when it entered summary judgment in favor of defendant-appellee FORUM HEALTH-TRUMBULL MEMORIAL HOSPITAL on the intentional infliction of emotional distress claim brought against it by plaintiffs-appellees SHARYN L. AND VICTOR J. SIBERA." (Emphasis sic.)

{¶51} As a preliminary matter, we note that at oral argument an issue was raised concerning whether this court has jurisdiction over Sharyn's appeal of the trial court's judgment granting Trumbull Memorial's motion for summary judgment.

{¶52} On March 10, 2009, the trial court entered summary judgment in favor of Linda and Trumbull Memorial in one entry. Appellant later moved to vacate the court's summary judgment as to Linda only. However, when the trial court granted appellant's motion to vacate on June 25, 2009, the court did not specify in its order to vacate that it was limited to Linda. The court purported to vacate its March 10, 2009 summary judgment in its entirety. Thus, when the court again granted summary judgment in favor of Linda on December 2, 2009, it could be argued that there was no ruling granting summary judgment in favor of the hospital.

{¶53} Trumbull Memorial has filed a supplemental brief on the issue; however, appellant has not filed a brief in opposition. In its brief Trumbull Memorial argues the trial court did not have authority to vacate the summary judgment in its favor because appellant's motion to vacate asked only that the summary judgment in favor of Linda be vacated. It argues that the judgment against Trumbull Memorial remained as an interlocutory order until the court again awarded summary judgment to Linda, which then resulted in a final order. As additional support, Trumbull Memorial cites *Deutsche*

Bank Trust Company Americas v. Pearlman, 162 Ohio App.3d 164, 2005-Ohio-3545. In that case, after the trial court had entered a judgment of foreclosure in favor of the bank, the trial court sua sponte vacated that judgment, although none of the parties had filed a motion to vacate. The Ninth District held that the trial court did not have authority to sua sponte vacate its prior foreclosure entry because Civ.R. 60(B) does not give the trial court such authority. Id. at 168. However, that case does not apply because, here, appellant filed a motion to vacate. Also, the trial court in *Deutsche intended* to vacate the foreclosure judgment, while, here, the trial court did not intend to vacate its prior summary judgment in favor of Trumbull Memorial.

{¶54} In any event, construing the trial court's June 25, 2009 order to vacate as a whole, it is clear that the order applied only to Linda. First, in that order the trial court stated: "The Court finds [appellant's] Civ.R. 60(B) motion to be well taken." Since appellant in that motion requested only that the court's prior summary judgment in favor of Linda be vacated and the trial court in its order did not mention Trumbull Memorial, the trial court obviously meant to limit its order to vacate to the summary judgment in favor of Linda. Second, in its order to vacate, the trial court stated: "The Court will await further instruction from the Eleventh District Court of Appeals prior to proceeding to address *the motion of the Defendant* which judgment was herein vacated." (Emphasis added.) Since the trial court stated in its order to vacate that it would be addressing only the motion for summary judgment of the defendant whose summary judgment it had vacated and that defendant was Linda, the court thus indicated that it had only vacated its previous summary judgment as to Linda. The summary judgment in favor of Trumbull Memorial remained as an interlocutory order. Then, when the court

again entered summary judgment in favor of Linda on December 2, 2009, that entry disposed of the entire case, resulting in a final, appealable order. It is worth noting that neither party has challenged the finality of this order.

{¶55} While we hold that the trial court's June 25, 2009 order vacating its March 10, 2009 summary judgment applied only to Linda, the trial court's order to vacate is far from a model of clarity. The court should have expressly stated in the order that it operated to vacate only the trial court's previous summary judgment in favor of Linda. The trial court should now so clarify its order to vacate via a nunc pro tunc entry.

{¶56} Turning to the merits of appellant's second assigned error, Sharyn argues that the hospital is vicariously liable for the intentional infliction of emotional distress because its employees wrongfully influenced Dr. Chuirazzi to enter his order barring Sharyn from visiting her father. Sharyn conceded at her deposition that she was unaware of Dr. Chuirazzi's order until one week prior to taking her deposition. Since Sharyn was unaware of this order until long after she filed her suit, even if the hospital's employees had induced the doctor to put on his order, because Sharyn was not aware of it at the time, it could not have proximately resulted in the intentional infliction of serious emotional distress, as required to prove this tort.

{¶57} Next, Sharyn argues that Trumbull Memorial's investigation of her complaint about Linda was inadequate. However, she does not argue that any lapse on the part of hospital staff in investigating her complaint contributed to the infliction of emotional distress. Her argument is therefore irrelevant.

{¶58} Further, although Sharyn argues that "numerous inconsistencies" in the witnesses' testimony created fact issues for the jury, the only alleged inconsistency she

references is between the testimony of risk manager Elizabeth Johnson and another hospital employee Charlotte Matash. Ms. Johnson said that Dr. Chuirazzi had already entered his order before she investigated Sharyn's complaint, while Ms. Matash said that Ms. Johnson was involved in the discussion with Mary Kordes and Ms. Matash that led to the doctor's order. While there may be an inconsistency on this issue, it did not create a genuine issue of *material* fact. Material facts are those that might affect the outcome of the suit under the governing law of the case. *Turner v. Turner*, 67 Ohio St.3d 337, 340, 1993-Ohio-176. Whether Dr. Chuirazzi entered his order before or after Ms. Johnson investigated the matter has no bearing on whether hospital staff improperly influenced him to enter his order.

{¶59} Finally, there is no evidence that any employee of the hospital influenced Dr. Chuirazzi to enter his order. It does not escape our attention that Sharyn did not take Dr. Chuirazzi's deposition or present his affidavit addressing whether any employee of the hospital influenced the issuance of his order. Since he prepared the order, he would have been in the best position to address this issue.

{¶60} Because Sharyn failed to demonstrate the existence of a genuine issue of material fact on her claim against the hospital, we hold the trial court did not err in entering summary judgment in its favor.

{¶61} Sharyn's second assignment of error is overruled.

{¶62} For the reasons stated in the Opinion of this court, the assignments of error are without merit. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.