

FIFTH DIVISION  
MAY 9, 2008

No. 1-06-2157

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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RAYMOND T. TOPCZEWSKI, as Special	)	Appeal from the
Administrator of the Estate of HELEN	)	Circuit Court of
TOPCZEWSKI,	)	Cook County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 03 L 010057
	)	
CLAREMONT NURSING CENTER, INC., <i>et al.</i> ,	)	
	)	
Defendant-Appellee.	)	Honorable
	)	Donald J. Suriano,
	)	Judge Presiding.

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ORDER

Plaintiff Raymond T. Topczewski, special administrator of the estate of Helen Topczewski, appeals from an order of the circuit court granting Claremont Nursing Center, Inc.'s (The Claremont), §2-619(a)(9) motion to dismiss plaintiff's amended Count III of his third amended complaint.

Plaintiff's decedent, Helen Topczewski, was a resident at The Claremont's nursing home, Claremont Rehab and Living Center. Plaintiff's original and first amended complaint brought claims for common law negligence and a violation of the Nursing Home Care Act (210 ILCS 45/1-101 *et seq.* (West 2004)). Plaintiff alleged that his mother was permanently disabled and

suffered from severe dementia. It was alleged that in August of 2001, The Claremont negligently breached their duties by failing to properly position, secure or transport his mother, resulting in injuries to her left leg. He also alleged that she ultimately died from her injuries. Plaintiff initially sought to add Kenneth R. Browning, M.D., Andreas Seidler, M.D., and Francis Lamberta, M.D., who were originally respondents in discovery, as defendants. Plaintiff subsequently moved to withdraw his motion to convert as to Drs. Browning and Seidler, which was granted.

Plaintiff filed a second amended complaint, stating claims for premises liability, violation of the Nursing Home Care Act, medical malpractice against The Claremont, *res ipsa loquitur*, and medical malpractice against Dr. Lamberta. Plaintiff sought to hold the Claremont vicariously liable for medical malpractice allegedly committed by Drs. Browning and Seidler (Count III). Plaintiff alleged that Drs. Browning and Seidler were "agents" and "contractual directors" of The Claremont, and that they were negligent in their care of decedent.

The Claremont then filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2004). As to Count III, the Claremont argued that it could not be held vicariously liable for the alleged medical malpractice of Drs. Browning and Seidler. The Claremont then argued that plaintiff failed to plead any specific facts which would establish actual or apparent agency. The circuit court granted in part and denied in part the motion to dismiss, with Count III being dismissed with leave to replead.

Plaintiff subsequently filed a third amended complaint. Count III of the third amended

