

**IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA**

**BRENDA L. KELLER,**  
Plaintiff,

vs.

**THOMAS N. TAVARONE, M.D.,**  
Defendant.

Case No. 10737

**ORDER DENYING MOTION  
FOR SUMMARY JUDGMENT**

**DATE OF HEARING:** May 21, 1999.

**DATE OF DECISION:** June 3, 1999.

**APPEARANCES:**

For plaintiff: Mark Kozisek without plaintiff.  
For defendant: Robert W. Wagoner without defendant.

**SUBJECT OF ORDER:** defendant's motion for summary judgment.

**FINDINGS:** The court finds and concludes that:

1. The defendant seeks a summary judgment that he was at all relevant times an employee of the Cherry County Hospital, that the Cherry County Hospital is a political subdivision of the State of Nebraska, that the plaintiff's exclusive remedy derives from the Political Subdivisions Tort Claims Act, that as an employee of the political subdivision the defendant is protected by that Act, that the plaintiff failed to comply with the procedural requirements of the Act, and that the defendant is entitled to summary judgment by reason thereof.

2. The court need only consider the first link in the defendant's chain of logic.

3. The applicable principles of law are well-known:

a. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts

and that the moving party is entitled to judgment as a matter of law. *Parker v. Lancaster Cty. School Dist. No. 001*, 256 Neb. 406, \_\_\_ N.W.2d \_\_\_ (1999).

b. The court views the evidence in a light most favorable to the party against whom the judgment is sought and gives such party the benefit of all reasonable inferences deducible from the evidence. *Id.*

c. On a motion for summary judgment, the question is not how a factual issue is to be decided but whether any real issue of material fact exists. *Id.*

d. Where reasonable minds may differ as to whether an inference supporting an ultimate conclusion can be drawn, summary judgment should not be granted. *Id.*

4. The plaintiff urges that inferences supporting an independent contractor relationship flow from the evidence. The defendant argues that the evidence demonstrates an employment relationship. However strongly the defendant's contentions might appeal to a finder of fact, the function of this court on a motion for summary judgment is not to decide disputes of fact. The court is required to view the evidence in the light most favorable to the nonmoving party. If an ultimate inference in favor of the nonmoving party obtains when so viewed, summary judgment may not properly be granted. That is the situation here.

5. When viewed *most favorably* to the plaintiff and giving the plaintiff the *benefit of every reasonable inference*, reasonable minds may differ regarding the existence of an inference supporting an independent contractor relationship. This raises an issue of fact. This court cannot determine the issue as a matter of law when a factual issue exists.

**ORDER:**

IT IS THEREFORE ORDERED AND ADJUDGED  
that:

1. The motion for summary judgment is denied.

2. The telephone progression conference is rescheduled for **July 13, 1999**, at **1:15 p.m.** The **plaintiff's attorney** shall be responsible to initiate the call. The conference will be held upon the same provisions specified in the previous order setting telephone progression conference.

Entered: June 3, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.
- : Note the decision on the trial docket as: 6/3/99 Signed "Order Denying Motion for Summary Judgment" entered denying defendant's motion for summary judgment and setting continued telephone progression conference for 7/13/99 at 1:15 p.m.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge