

1 Present: Carrico, C.J., Compton, Lacy, Hassell, Keenan, and
2 Kinser, JJ., and Poff, Senior Justice
3

4 JANIE MAE BENJAMIN, ADMINISTRATOR
5 OF THE ESTATE OF YUKEMA DENISE
6 BENJAMIN, DECEASED
7

8 v. Record No. 962261 OPINION BY JUSTICE ELIZABETH B. LACY
9 October 31, 1997

10 UNIVERSITY INTERNAL MEDICINE
11 FOUNDATION, ET AL.
12

13 FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND
14 Melvin R. Hughes, Jr., Judge
15

16 Eighteen-year-old Yukema Denise Benjamin went to the
17 Emergency Room at the Medical College of Virginia (MCV)
18 Hospital on October 25 and 28, 1994, complaining of headaches
19 and neck pain. On both occasions, Yukema was directed to the
20 Hospital's Episodic Care Clinic (ECC) and, after examination,
21 was discharged with prescriptions for medication to treat her
22 headaches. On October 31, 1994, Yukema died from the effects
23 of intracranial pressure due to failure of a fluid shunt which
24 had been placed in her head as an infant.

25 Janie Mae Benjamin, administrator of Yukema's estate,
26 filed a motion for judgment against Julie Ann Samuels, M.D.,
27 the medical director of the ECC, and University Internal
28 Medicine Foundation (UIMF). The motion for judgment alleged
29 that when Yukema was treated, Dr. Samuels, as the medical
30 director of the ECC, was in charge of, and responsible for, the
31 physicians in the unit and was acting as the agent, servant,
32 and employee of UIMF.

33 Dr. Samuels filed a plea of sovereign immunity. Following
34 an evidentiary hearing on the plea, the trial court issued an

1 opinion letter deciding that Dr. Samuels was acting as an
2 administrator of a state-run public health facility and,
3 applying the four-prong test enunciated in Messina v. Burden,
4 228 Va. 301, 313, 321 S.E.2d 657, 663 (1984), was entitled to
5 sovereign immunity.

6 UIMF then filed a motion for summary judgment based on the
7 trial court's determination in its opinion letter that Dr.
8 Samuels was acting "for the state as an administrator" of the
9 ECC. This determination, UIMF asserted, eliminated any basis
10 upon which UIMF could be vicariously liable because Dr. Samuels
11 was not acting as an agent, servant, or employee of UIMF at the
12 time of Yukema's treatment in the ECC. After hearing argument
13 of counsel on the summary judgment motion, the trial court
14 entered a final order sustaining Dr. Samuels' plea of sovereign
15 immunity and UIMF's motion for summary judgment. Benjamin
16 filed an appeal challenging both the grant of sovereign
17 immunity with respect to Dr. Samuels and the entry of summary
18 judgment in favor of UIMF.

19 I.

20 SOVEREIGN IMMUNITY

21 Sovereign immunity determinations must be made on a case
22 by case basis, balancing factors identified in a test
23 established in James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864,
24 869 (1980), and further enunciated in Messina, 228 Va. at 313,

1 321 S.E.2d at 663.¹ We have previously held that
2 administrators of state-run institutions are entitled to
3 sovereign immunity for actions taken in their administrative
4 capacities because the state has a substantial interest in the
5 efficient management of its entities and facilities, and
6 administrators must exercise discretion in the performance of
7 those duties. Id. at 310-11, 321 S.E.2d at 662; Banks v.
8 Sellers, 224 Va. 168, 173, 294 S.E.2d 862, 865 (1982); Lawhorne
9 v. Harlan, 214 Va. 405, 407, 200 S.E.2d 569, 571-72 (1973).
10 The trial court reached the same conclusion in this case.
11 Applying the Messina test, the trial court determined that the
12 ECC is a state-run facility, that there is "a heavy state
13 interest and involvement" in its administration, and that the
14 administrator of the ECC is required to exercise "a
15 considerable amount of judgment and discretion." The trial
16 court sustained Dr. Samuels' sovereign immunity plea because,
17 during the events in question, she was acting as the
18 administrative director for the ECC rather than as an attending
19 medical staff member of MCV Hospital to whom the physicians in
20 the ECC were responsible and accountable.

21 Benjamin assigns error to the trial court's factual

¹ The four factors of the test are: (1) the nature of the function performed by the employee; (2) the extent of the state's interest and involvement in the function; (3) the degree of control and direction exercised by the state over the employee; and (4) whether the act complained of involved the use of judgment and discretion. Messina, 228 Va. at 313, 321 S.E.2d at 663.

1 determination that Dr. Samuels was acting as an administrative
2 director of the ECC. In reviewing this determination, we will
3 not disturb the trial court's findings unless they are plainly
4 wrong or without evidence to support them. Code § 8.01-680;
5 Norfolk Airport Authority v. Nordwall, 246 Va. 391, 393, 436
6 S.E.2d 436, 437 (1993).

7 The testimony established that Dr. Samuels was a
8 physician, board-certified in internal medicine, and a full-
9 time faculty member with an appointment as an Assistant
10 Professor at MCV. In 1991, she was asked to assume the
11 position of medical director of the ECC in addition to her
12 teaching responsibilities. She received \$35,000 annually for
13 her work as medical director. These funds came from the
14 state.²

15 Dr. Samuels' duties as medical director included arranging
16 for physician coverage of the ECC, responding to complaints
17 with respect to the operation of the ECC, and reviewing patient
18 charts in connection with the administrative management of the
19 ECC. She did not hire or fire the physicians or any other
20 personnel in the ECC and was not designated as an attending or
21 admitting physician for ECC patients. There was no requirement
22 that Dr. Samuels approve or be consulted about treatment
23 decisions for the patients in the ECC. The ECC was not part of

² This amount was included in MCV Hospital's budget, but it was delivered to Dr. Samuels as part of the compensation she received from the Department of Internal Medicine.

1 any training program or residency rotation for medical students
2 at MCV. Thus, even though the title "medical director" implies
3 responsibility for the medical care of patients, the record
4 supports the trial court's determination that Dr. Samuels, as
5 medical director of the ECC, performed administrative functions
6 for the state in the operation of the ECC and was not
7 performing the duties of an attending physician in that
8 capacity.

9 Accordingly, we will affirm the trial court's
10 determination that Dr. Samuels was an administrative agent for
11 a state institution, exercising substantial discretion in
12 carrying out her administrative duties, and was, therefore,
13 entitled to sovereign immunity.³

14 II.

15 SUMMARY JUDGMENT

16 Benjamin also assigns error to the entry of summary
17 judgment in favor of UIMF, arguing that whether Dr. Samuels was
18 UIMF's agent in the operation of the ECC was a material fact in
19 issue and, therefore, summary judgment was inappropriate. We
20 disagree.

21 Resolution of Benjamin's challenge to the summary judgment

³ We do not address Benjamin's argument that the trial court erred in finding that no doctor-patient relationship existed between Dr. Samuels and Yukema because that argument is also based on Benjamin's theory that Dr. Samuels was acting in the capacity of an attending physician, like Dr. Hakala in James and Dr. Bourgeois in Lee v. Bourgeois, 252 Va. 328, 477 S.E.2d 495 (1996).

1 order requires a review of the procedural development of the
2 case. An evidentiary hearing was held on the sovereign
3 immunity plea. At that hearing, ore tenus testimony was
4 presented by both Dr. Samuels and Benjamin. Benjamin also
5 introduced deposition testimony. Dr. Samuels produced evidence
6 showing that UIMF is a private, non-profit corporation, tax
7 exempt under § 501(c)(3) of the Internal Revenue Code and
8 organized for the private practice of medicine by faculty in
9 the Internal Medicine Department of the Medical College of
10 Virginia. The members of the corporation are those physicians
11 on the faculty of the Department who also engage in private
12 practice. UIMF bills the private patients of members for
13 services received and pays the members for services they render
14 to the private patients. Dr. Samuels was a member of UIMF and
15 was paid for her services to private patients by UIMF. This
16 payment was separate from the compensation she received from
17 the Department.

18 The evidence also established that the ECC is a non-acute
19 care facility maintained by MCV Hospital for the treatment of
20 non-emergency, walk-in patients, many of whom are indigent. In
21 1994, the ECC was staffed by two full-time physicians and by
22 physicians who worked in the ECC at night or on weekends,
23 generally referred to as "moonlighting" physicians.
24 Moonlighting physicians were paid directly by the Hospital.

25 John C. Girtman, III, Executive Director of UIMF,

1 testified that UIMF receives no benefit from Dr. Samuels'
2 service as medical director of the ECC, does not bill for
3 patients seen in the ECC, receives no financial benefit from
4 the ECC, and is not involved in any way in the daily operation
5 of the ECC.

6 Benjamin introduced two letters which she argued
7 contradicted this evidence and supported the conclusion that
8 Dr. Samuels was acting as an agent for UIMF, not for the state,
9 in her capacity as medical director of the ECC. Both letters
10 were written by a Hospital administrator to Girtman. The first
11 letter, dated April 8, 1992, stated that two full-time
12 physician positions in the ECC "will be set up and recruited
13 for by U.I.M.F." and stated that the positions were being
14 "created through UIMF." The second, dated January 29, 1993,
15 recited "commitments" of the Hospital for staffing and
16 direction of the ECC: \$35,000 annual salary support for the
17 medical director of the ECC, a sum of \$125,000 annually for
18 salaries for two full-time physicians in the ECC, and the
19 continuation of hourly pay for the moonlighting "senior
20 residents, fellows and attendings" who worked in the ECC at
21 nights and on weekends. The letter went on to state that
22 billing for the medical director position and full-time
23 positions would be "through memo to me," but the moonlighting
24 physicians would be paid directly at the hourly rate.

25 Girtman testified that, although these letters were

1 written to him in his capacity as the executive director of
2 UIMF, he was negotiating on behalf of the Internal Medicine
3 Department to insure that sufficient funds were budgeted for
4 the positions.

5 After considering this evidence and argument of counsel,
6 the trial court resolved any conflicts in the evidence in favor
7 of Dr. Samuels and found that Dr. Samuels was acting in an
8 administrative capacity as the medical director of a state-run
9 medical facility, the ECC. This determination was made in a
10 June 4, 1996 opinion letter. Six days later, UIMF filed its
11 motion for summary judgment, asserting that this determination
12 eliminated any factual dispute regarding whether Dr. Samuels
13 was the agent, servant, or employee of UIMF while acting as the
14 medical director of the ECC. Thus, UIMF concluded, there was
15 no basis for imposing vicarious liability on UIMF for Dr.
16 Samuels' actions.

17 At the hearing on the motion for summary judgment, the
18 trial court read portions of Girtman's ore tenus testimony from
19 the evidentiary hearing on the sovereign immunity plea
20 concerning the lack of UIMF's involvement, financially or
21 otherwise, in the "operations, upkeep or fundings of the ECC."
22 The trial court specifically asked Benjamin's counsel if he had
23 any evidence to "counter" Girtman's testimony. Benjamin's
24 counsel did not identify any such evidence, but argued only
25 that he was not prepared to put on evidence that day. The

1 trial court subsequently entered the order sustaining UIMF's
2 motion for summary judgment.

3 Under these circumstances, we conclude that the trial
4 court did not err in entering summary judgment in favor of
5 UIMF. It is true that, during the consideration of the
6 sovereign immunity plea, no issue or finding specifically
7 addressed whether an agency relationship existed between Dr.
8 Samuels acting as medical director of the ECC and UIMF.
9 Nevertheless, one of the theories offered by Benjamin to defeat
10 the sovereign immunity plea was that UIMF was directly involved
11 in the ECC by setting up the ECC, recruiting physicians for the
12 ECC, and billing MCV Hospital for the physician and medical
13 director positions in the ECC. The letters written by the
14 Hospital administrator to Girtman were introduced to support
15 this theory. Benjamin's counsel also argued that a contract
16 existed between the Hospital and UIMF relating to the payment
17 of Dr. Samuels' salary as medical director. The trial court's
18 determination that Dr. Samuels was acting for the state in
19 administering the ECC and that the ECC was a state-run health
20 facility necessarily rejected Benjamin's theory, evidence, and
21 argument that UIMF had a connection or contract with the ECC or
22 with Dr. Samuels, as medical director of the ECC. While
23 Benjamin may not have agreed, she was not entitled to a
24 relitigation of that determination, especially given her
25 inability to suggest additional evidence that could place a

1 material fact in dispute.⁴

2 Accordingly, for the reasons cited above, we will affirm
3 the judgment of the trial court.

4 Affirmed.

⁴ Benjamin also assigned as error the use of the depositions she introduced in the sovereign immunity hearing to decide the motion for summary judgment, absent her agreement. Rule 3:18. The ore tenus evidence cited above, however, supports the trial court's conclusions and there is nothing in the record to indicate the trial court used the depositions in deciding the summary judgment motion. Therefore, this assignment of error is without merit.