

**IN THE COURT OF APPEALS OF IOWA**

No. 7-496 / 06-1696  
Filed November 15, 2007

**TRACY HOWELL, AARON HOWELL,  
Individually, and ELIZABETH HOWELL, by  
TRACY HOWELL, as Parent and Next Friend  
of Elizabeth Howell,  
Plaintiffs-Appellants,**

**vs.**

**METROPOLITAN MEDICAL LABORATORY, P.L.C.,  
Defendant-Appellee.**

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Appeal from the Iowa District Court for Scott County, James E. Kelley,  
Judge.

The plaintiffs appeal from the district court's grant of summary judgment  
on their professional negligence claim. **REVERSED.**

Daniel D. Bernstein and William J. Bribiesco of William J. Bribiesco &  
Associates, Bettendorf, for appellants.

Greg A. Egbers and Jean Dickson Feeney of Betty, Neuman & McMahon,  
P.L.C., Davenport, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**EISENHAUER, J.**

The narrow question presented for our review in this case is whether Metropolitan Medical Laboratory, P.L.C. (Metropolitan Medical) is shielded from liability under Iowa Code section 232.73 (2005) for its alleged negligent performance of a urine analysis test. Because we find it is not, we reverse the district court's grant of summary judgment on the plaintiffs' medical malpractice claim.

***I. Background Facts and Proceedings.*** On September 3, 2003, five-year-old Elizabeth was evaluated by Dr. Samuel Sandberg for symptoms her mother, Tracy Howell, believed were indicative of a urinary tract infection. Following an examination, Dr. Sandberg ordered a urinalysis, which was performed by Metropolitan Medical. The analysis was conducted on September 8, 2003. The lab reported to Dr. Sandberg the presence of trichomonad parasites in the child's urine, an indication of trichomoniasis, which may be transmitted through sexual contact.

Upon receiving the lab report, Dr. Sandberg, who also believed trichomonads were present in the urine sample, notified the Iowa Department of Human Services of suspected child abuse. The allegations were investigated. It was later determined that there had been no trichomonad infestation.

The child and her parents brought suit against Dr. Sandberg, his employer, and Metropolitan Medical claiming medical or professional negligence. The plaintiffs later voluntarily dismissed the charges against Dr. Sandberg and his employer, conceding the doctor's actions were mandated by Iowa Code

section 232.69(1)(a) as a mandatory reporter, and therefore immunity was conferred under section 232.73.

On July 7, 2006, Metropolitan Medical filed a motion for summary judgment, which the district court granted September 25, 2006. The court found the defendant was participating in the making of a child abuse report, or aiding and assisting in the assessment of that report, and therefore was immune from liability under section 232.73. The court dismissed the plaintiffs' claim and assessed costs to them.

**II. Scope and Standard of Review.** We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.*

Summary judgment is appropriate only when the entire record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). We review the evidence in the light most favorable to the nonmoving party. *Id.* A party resisting a motion for summary judgment cannot rely on the mere assertions in his pleadings but must come forward with evidence to demonstrate that a genuine issue of fact is presented. *Id.* The record on summary judgment includes the pleadings, depositions, affidavits, and exhibits presented. *Id.*

**III. Analysis.**

Iowa Code section 232.73 provides in pertinent part:

A person participating in good faith in the making of a report, photographs, or X rays, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B, shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed.

The plaintiffs contend the district court erred in finding Metropolitan Medical participated in good faith in making a child abuse report.

The determination of whether a person is acting in good faith in making or assisting in the making of a child abuse report is a subjective one. *Garvis v. Schloten*, 492 N.W.2d 402, 404 (Iowa 1992). It rests on whether the defendant believes they are aiding and assisting in the investigation of a child abuse report. *Id.* The plaintiffs contend there is no basis for which the district court could have found the defendant believed it was aiding or assisting in the investigation of a child abuse report. We agree.

The evidence shows Metropolitan Medical simply ran a test as requested by Dr. Sandberg, who at the time had no suspicion of child abuse. Testing for the presence of trichomonads in the urine is part of a routine urinalysis. Nothing in the summary judgment record supports a finding the lab had a good faith belief it was aiding or assisting in the investigation of a child abuse report at the time the test was conducted. Accordingly, the district court erred in granting summary judgment in favor of Metropolitan Medical.

**REVERSED.**