

No. 1-13-2129

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRANCES ENDENCIA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 L 11388
)	
RUSH BEHAVIORAL HEALTH and)	
STAFFORD HENRY, M.D.,)	Honorable
)	Eileen M. Brewer,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* Dismissal of plaintiff's complaint with prejudice affirmed where plaintiff's claim sounded in psychiatric malpractice and plaintiff failed to file a section 2-622 certificate.

¶ 2 Plaintiff Frances Endencia filed an action against Rush Behavioral Health (RBH) and Dr. Stafford Henry (defendant) in relation to a psychiatric report authored by defendant. Plaintiff, *pro se*, now appeals the trial court's order granting defendant's motion to dismiss plaintiff's complaint with prejudice.

¶ 3 The record shows that plaintiff filed the complaint at issue on October 5, 2012, and listed RBH as the sole defendant. Therein, she alleged that on August 29, 2008, the Illinois Department of Financial and Professional Regulation (IDFPR) suspended her veterinary license based on a psychiatric report authored by defendant. Plaintiff further alleged that the report was not based on science or facts, but upon "medical slander," and she sought "removal of print and internet reports" and payment for her loss of monthly income. Summons was issued against defendant in relation to this case on October 5, 2012, and he was personally served on January 11, 2013.

¶ 4 Plaintiff filed an affidavit on March 1, 2013. Therein, she alleged, *inter alia*, that she was seen by defendant at RBH from April 19, 2006 through mid-August 2006, at the request of the IDFPR, and that defendant, RBH, and its staff "created evidence as quack doctors," and made a "creative psychiatric diagnosis" of her, which was then reported to the IDFPR.

¶ 5 On March 12, 2013, plaintiff filed a "motion to dismiss," requesting that the court enter an order of default against defendant. On April 10, 2013, defendant filed an appearance in this case, as well a motion to vacate any and all default judgments against him. On that same date, the court granted his motion to vacate default judgments and granted defendant an extension of time to answer or otherwise plead.

¶ 6 On April 24, 2013, defendant filed a motion to dismiss plaintiff's complaint pursuant to sections 2-619(a)(9) and 2-622 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) and 5/2-622 (West 2012)). Therein, defendant argued that plaintiff's cause of action against him is based upon psychiatric malpractice, and thus, pursuant to section 2-622 of the Code, plaintiff was required to file the report of a healthcare professional certifying that there is a reasonable and meritorious cause for filing a medical malpractice complaint. Defendant argued that

plaintiff's failure to comply with section 2-622 was grounds for dismissal under section 2-619 of the Code, and thus requested that the court dismiss plaintiff's complaint with prejudice.

¶ 7 On April 29, 2013, plaintiff filed a "Motion to Amend Defendant," in which she sought to "amend the defendant to Stafford Henry, since he is the author of the assessment provided to IDFPR." On that same date, the trial court entered and continued defendant's motion to dismiss and ordered that plaintiff file a section 2-622 report on or before June 12, 2013.

¶ 8 On May 6, 2013, plaintiff filed a "Motion to Objection to Requirement 735 ILCS 5/2-622(a)1," in which she stated that she was "asserting [her] *Miranda* rights to self-incrimination and refus[ing] to comply" with section 2-622 of the Code. Therein, she argued, *inter alia*, that psychiatrists are "medical tattlers" who are trained to create brain pathology and to create toxic opinions for financial gain. She further claimed that defendant was unprofessional and unethical for writing his report.

¶ 9 On May 20, 2013, the circuit court ordered plaintiff to file her section 2-622 report on or before June 12, 2013, or defendant's motion to dismiss her complaint would be granted. On June 12, 2013, plaintiff filed the medical report of Dr. Ibrahim Sadek. Therein, Dr. Sadek specified that his report was limited to the subject of plaintiff's general physical health and condition. Dr. Sadek further specified that he could not "make any comments regarding any mental/personality diagnosis" as it would be outside the scope of his practice.

¶ 10 On June 26, 2013, plaintiff filed a "Response to the Requirement to Rule 2-622." Therein, she argued that the case at issue is not a medical malpractice case, but rather, is a case for defamation, libel and slander, and thus the Code's section 2-622 requirement should be waived. On that same date, the court entered and continued defendant's motion to dismiss to July

1, 2013, for a determination of whether the complaint sounded in defamation or medical negligence. On July 1, 2013, the circuit court granted defendant's motion to dismiss plaintiff's complaint with prejudice. Plaintiff now appeals from that order.

¶ 11 We first address defendant's request that we strike plaintiff's statement of facts and dismiss this appeal. Defendant correctly points out that plaintiff's statement of facts fails to comply with Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013), which requires that an appellant's brief contain a statement of facts stated accurately and fairly without argument or comment with appropriate references to pages of the record on appeal. Here, plaintiff's statement of facts consists of argumentative assertions and fails to include citations to the record on appeal or a recitation of facts necessary for an understanding of the case.

¶ 12 We further note that plaintiff has failed to set forth a cogent argument in her brief, and instead, devotes her argument to discussing her contention that RBH creates medical conditions and illusions, as well as listing allegations related to the admissibility of scientific evidence and expert testimony, the applicability of the exclusionary rule, and whether defendant's report was illegally obtained and its admission into evidence unconstitutional "under 'self incrimination.' "

¶ 13 Plaintiff's mere listing of conclusory and confusing allegations of error is not argument, and does not satisfy the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010). Plaintiff's *pro se* status does not excuse her from complying with supreme court rules governing appellate procedure (*Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010)), and she is expected to meet a minimum standard before this court can adequately review the decision of the circuit court (*Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993)). Plaintiff has not done so here.

¶ 14 That said, striking an appellate brief, in whole or in part, is a harsh sanction, and one which we will undertake only where the litigant's violation of the rules hinders our effective appellate review of the case. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15. Here, plaintiff has undoubtedly violated the rules governing the proper preparation and filing of appellate briefs. However, the record in this case is slim and we have the benefit of a cogent brief filed by defendant, which identifies the relevant issue in this appeal. Accordingly, we deny defendant's motion to strike plaintiff's statement of facts and dismiss her appeal.

¶ 15 As defendant points out, the issue on appeal is the propriety of the trial court's order dismissing plaintiff's complaint with prejudice. In general, we review a trial court's ruling on a section 2-619 motion to dismiss *de novo*. *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 436 (2008). However, we review a trial court's dismissal of a complaint with prejudice due to plaintiff's failure to comply with section 2-622 of the Code for an abuse of discretion. *Hobbs v. Lorenz*, 337 Ill. App. 3d 566, 569 (2003). An abuse of discretion will be found only where no reasonable person would take the view adopted by the court. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 21.

¶ 16 Section 2-622 of the Code provides, in pertinent part, as follows:

"(a) In any action, whether in tort, contract or otherwise, in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice, the plaintiff's attorney or the plaintiff, if the plaintiff is proceeding *pro se*, shall file an affidavit, attached to the original and all copies of the complaint, declaring one of the following:

1) That the affiant has consulted and reviewed the facts of the case with a health

professional who the affiant reasonably believes: (i) is knowledgeable in the relevant issues involved in the particular action; (ii) practices or has practiced within the last 6 years or teaches or has taught within the last 6 years in the same area of health care or medicine that is at issue in the particular action; and (iii) is qualified by experience or demonstrated competence in the subject of the case; that the reviewing health care professional has determined in a written report *** that there is a reasonable and meritorious cause for the filing of such action. *** A copy of the written report, clearly identifying the plaintiff and the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists must be attached to the affidavit ***." 735 ILCS 5/2-622 (a)(1) (West 2012).

The failure to file a section 2-622 certificate is grounds for dismissal under section 2-619 of the Code. 735 ILCS 5/2-622 (g) (West 2012). Here, the parties disagree as to the type of action plaintiff raised against defendant. Defendant argues that plaintiff's claim is one for psychiatric malpractice, whereas plaintiff maintains that it is one for defamation, libel and slander, and is thus not subject to the section 2-622 certificate requirement.

¶ 17 The term "medical, hospital, or other healing art malpractice" must be broadly construed. *Woodard v. Krans*, 234 Ill. App. 3d 690, 703 (1992), citing *Bernier v. Burris*, 113 Ill. 2d 219, 226-27 (1986). In determining whether the section 2-622 certificate requirement applies to a particular case, courts look to the following factors: (1) whether the standard of care involves procedures not within the grasp of an ordinary lay juror; (2) whether the activity in question was inherently one of medical judgment; and (3) the type of evidence that would be

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necessary to establish plaintiff's case. *Jackson v. Chicago Classical Janitorial & Cleaning Service*, 355 Ill. App. 3d 906, 909 (2005).

¶ 18 Here, in her complaint, plaintiff claimed that following a psychiatric evaluation, defendant negligently authored a psychiatric report, which he then gave to the IDFPR; which agency then suspended her veterinary license based on the contents of that report. Plaintiff further alleged that defendant did not base his report on science or facts but on medical slander, and that he created a medical condition "out of abstract pictures and put abnormal meaning to these." In a non-section 2-622 affidavit that plaintiff filed in support of her claim, plaintiff further alleged that defendant "created evidence as a quack doctor" and made a "creative psychiatric diagnosis" of her. These allegations reflect that plaintiff's claim centers upon the report written by defendant, and the manner in which he evaluated her in order to arrive at the conclusions and recommendations that he included in that report.

¶ 19 Bearing that in mind, we turn to the first factor; whether the standard of care involves procedures not within the grasp of an ordinary lay juror. It has been held that where determining the standard of care requires distinctive medical knowledge or principles, however basic, plaintiff must comply with section 2-622. *Woodard*, 234 Ill. App. 3d at 705-06. Here, defendant employed specialized knowledge distinctive to his field of practice in order to evaluate plaintiff and arrive at his conclusions regarding her psychiatric state. We find that such specialized knowledge is not within the grasp of an average lay juror. See *Jackson*, 355 Ill. App. 3d at 911 (finding that the specialized knowledge and skill acquired by occupational therapists is not within the grasp of an average lay juror).

¶ 20 The second factor is whether defendant's activity in question was inherently one of medical judgment. Here, the activity at issue is defendant's actions in evaluating plaintiff in relation to her psychiatric state, which conclusions were reflected in the report that he gave to the IDFPR. We find that there is no question that defendant's actions in undertaking a psychiatric evaluation of plaintiff, and the conclusions and recommendations at which he arrived, were inherently ones of medical judgment. Evaluating a person and arriving at particular conclusions and recommendations regarding their current psychiatric state are determinations that can only properly be made by individuals with certain training and expertise. See *Jackson*, 355 Ill. App. 3d at 912 (stating this proposition in relation to occupational therapists).

¶ 21 The third and final factor is the type of evidence that would be necessary to establish plaintiff's case. In general, in a medical malpractice case, a plaintiff must offer expert testimony to establish the applicable standard of care, unless the subject or treatment is so common that a lay person could readily understand it. *Jackson*, 355 Ill. App. 3d at 912, citing *Kolanowski v. Illinois Valley Community Hospital*, 188 Ill. App. 3d 821, 824 (1989). As noted above, here, the applicable standard of care is one which entails specialized knowledge that is beyond the understanding of the average lay juror. Accordingly, plaintiff will need to present expert testimony on that subject. *Jackson*, 355 Ill. App. 3d at 913.

¶ 22 Based on the foregoing, we find that the allegations in plaintiff's complaint sounded in psychiatric malpractice, and thus it was necessary for her to provide a section 2-622 certificate. Although plaintiff did file the medical report of Dr. Sadek, we find that the report did not satisfy the requirements of section 2-622 of the Code. Dr. Sadek specified that his report was limited to plaintiff's general physical health and that he could not make any comments regarding any

mental/personality diagnosis because it would be outside the scope of his practice. Most importantly, Dr. Sadek did not opine that there was a reasonable and meritorious cause for filing plaintiff's action. Accordingly, Dr. Sadek's report did not meet the requirements of section 2-622 of the Code. 735 ILCS 5/2-622(a)(1) (West 2012). Additionally, the record shows that the trial court continued defendant's motion to dismiss several times, giving plaintiff the opportunity to file the requisite section 2-622 certificate, but plaintiff failed to do so. Under these circumstances, we find that the trial court did not abuse its discretion in dismissing plaintiff's complaint with prejudice.

¶ 23 In reaching this determination, we note that the record on appeal does not contain any transcripts or any substitute report of proceedings of what transpired at the hearing that was held on July 1, 2013, the date the trial court dismissed plaintiff's complaint with prejudice. We resolve any doubts which may arise due to this incompleteness against plaintiff. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.