2015 IL App (2d) 140906-U
No. 2-14-0906
Order filed March 13, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BRUCE E. PARHAM,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-L-0325
	)	
ROCKFORD MEMORIAL HOSPITAL and	)	
ROCKFORD HEALTH SYSTEMS,	)	Honorable
	)	Lisa R. Fabiano,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly dismissed certain of plaintiff's claims as moot, as defendants' affidavit in support of their section 2-619 motion, averring that plaintiff had already received the relief he requested, was not contradicted by a counteraffidavit from plaintiff and thus was properly taken as true; (2) the trial court properly dismissed plaintiff's claim that defendants administered unnecessary medications and thus should not have charged him: in alleging that the medications were unnecessary, plaintiff was alleging an error of medical judgment and thus was required to, but did not, comply with section 2-622; (3) without an official account of the relevant hearing, we could not say that the trial court abused its discretion in dismissing plaintiff's complaint with prejudice.

¶ 2 At issue in this appeal is whether the complaint that plaintiff, Bruce E. Parham, filed against defendants, Rockford Memorial Hospital and Rockford Health Systems, for allegedly

charging excessive fees was properly dismissed. For the reasons that follow, we conclude that it was. Accordingly, we affirm.

¶ 3 The following facts are necessary to resolving the issue raised. [1] On November 12, 2011, plaintiff was injured in an automobile accident. As a result of the accident, plaintiff sustained injuries to, among other things, his left hip, pelvis, back, head, left leg, and left foot.

¶ 4 Defendants treated plaintiff immediately after the accident. Because space was limited at the hospital, defendant was admitted to an oncology room instead of a medical surgical room after he left the emergency room. When plaintiff, who did not have cancer, left the hospital, he was given a bill in excess of what he claimed he should have been charged.

¶ 5 Accordingly, plaintiff sued defendants, alleging that he and others similarly situated were charged a room rate, a sequential compression device set-up charge (SCD charge), and a prescription fee in excess of what they would have been assessed had they been properly placed in a medical surgical room. Defendants moved to dismiss (see 735 ILCS 5/2-619(a) (West 2012)). They claimed, among other things, that (1) plaintiff failed to attach to his complaint an affidavit and a report of a healthcare professional (see 735 ILCS 5/2-622(g) (West 2012)) and (2) plaintiff's claims were moot, as the charges had already been adjusted to reflect what plaintiff should have been charged had he been admitted to a medical surgical room. In support of their claims, defendants submitted an affidavit prepared by Nancy Harvey, the risk manager for Rockford Memorial Hospital, who had personal knowledge of the fees that were charged and should have been charged to plaintiff. Harvey attested that the bill for plaintiff's stay at the hospital was adjusted to reflect the correct room charge, but that the SCD charge and the

[1] All of the facts are taken from the common-law record, as no report of proceedings or substitute for a report of proceedings was filed in this court.

prescription fee were not adjusted, as these charges would have been the same regardless of where plaintiff was placed in the hospital. Concerning the prescription fee, Harvey specifically noted that the medications given to plaintiff were "medically necessary" to treat his preexisting conditions.

¶ 6 Plaintiff never submitted an affidavit and a report of a healthcare provider attesting to the merit of his claims or an affidavit or other materials contradicting Harvey's statements. The court granted defendants' motion to dismiss, but it allowed plaintiff to file an amended complaint. Although plaintiff filed a second amended complaint advancing different causes of action, he alleged the same essential facts, failed to attach an affidavit and a report of a healthcare provider, and did not attach any affidavit or other materials contradicting Harvey's affidavit. The trial court dismissed plaintiff's second amended complaint with prejudice, finding that plaintiff's allegations were moot and were not supported by an affidavit and a healthcare provider's report. This timely appeal followed.

¶ 7 At issue in this appeal is whether the dismissal of plaintiff's complaint was proper. Ordinarily, this court reviews *de novo* the dismissal of a complaint under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)). *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). Where the issue is whether a dismissal with prejudice is appropriate, this court generally considers whether the trial court abused its discretion. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 28. In this case, plaintiff takes issue with the bases of the dismissal, *i.e.*, mootness and the necessity of an affidavit and healthcare provider's report, rather than with the dismissal with prejudice. Accordingly, as these issues concern questions of law, our review is *de novo*. See *Benz v. Department of Children & Family Services*, 2015 IL App (1st) 130414, ¶ 31 (whether a claim is moot is reviewed *de novo*); *Ayon v. Balanoff*,

308 Ill. App. 3d 900, 903 (1999) (whether the plaintiff was required to comply with section 2-622 of the Code was reviewed *de novo*). In reviewing the appropriateness of the dismissal, we note too that we may affirm the dismissal on any basis, even one on which the trial court did not rely. See *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 261 (2004) (when reviewing a section 2-619 dismissal, we can affirm "on any basis present in the record").

¶ 8 "A motion to dismiss under section 2-619(a) [of the Code] admits the legal sufficiency of a plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. "When ruling on the motion, the court should construe the pleadings and supporting documents in the light most favorable to the nonmoving party." *Id.* "The court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that may reasonably be drawn in plaintiff's favor." *Id.* "The question on appeal is 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Id.* (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)).

¶ 9 Here, the trial court dismissed the complaint because it found that (1) the claims were moot and (2) plaintiff failed to attach an affidavit and report of a healthcare provider as required by section 2-622(a)(1) of the Code (735 ILCS 5/2-622(a)(1) (West 2012)). Concerning the dismissal based on mootness, "[a] cause of action is deemed moot if no actual controversy exists or if events occur that make it impossible for the court to grant effectual relief." *Tully v. McLean*, 2013 IL App (1st) 113663, ¶ 16. "A 'moot case is one which seeks to determine an abstract question or a judgment which when rendered cannot have any practical legal effect on

the controversy.' " *Id.* (quoting *Betts v. Ray*, 104 Ill. App. 3d 168, 171 (1982)). We determine that plaintiff's claim with regard to the room-rate charge is indeed moot.

¶ 10 According to plaintiff's response to defendants' motion to dismiss, "[t]he basis of this lawsuit in its entirety is simply to have this Court reduce the bill of these [d]efendants for the charges for an oncology room and oncology supply charges, when [plaintiff] had personal injuries arising from an automobile accident and not cancer." That was accomplished in this case. Harvey's affidavit indicates that adjustments were made and that plaintiff's original bill of $34,752.44 was reduced to $33,816.44 based on the reduced rate charged to patients staying in a medical surgical room. Plaintiff never submitted any documentation indicating that the room charge should have been further reduced. Without a counteraffidavit, we must take as true the statements in Harvey's affidavit indicating that the proper adjustments were made. *G. Chicoine v. Contractors, Inc. v. John Marshall Building Corp.*, 77 Ill. App. 2d 437, 440-41 (1966) (noting that, when a defendant files a motion to dismiss supported by an affidavit and the plaintiff does not file a counteraffidavit, facts alleged in the defendant's affidavit must be taken as true). Thus, we conclude that plaintiff's claim regarding the room charge is moot.

¶ 11 Similarly, we determine that dismissal of plaintiff's claim concerning the SCD charge was proper. Harvey's affidavit indicates that the amount assessed against plaintiff would have been the same regardless of whether he was placed in an oncology room or a medical surgical room. Her statements, which were not contradicted, defeat plaintiff's claim that his SCD charge was excessive. See *id.*

¶ 12 Last, plaintiff alleged that he should not have been assessed "[p]rescription charges for unrelated conditions that were not caused by the automobile accident (amount unknown)." To

support this claim, plaintiff needed to attach to his complaint an affidavit and a report from a healthcare professional.

¶ 13 Section 2-622 of the Code requires the plaintiff to file with the complaint an affidavit of merit stating that the affiant has consulted and reviewed the facts of the case with a health professional who, after reviewing the medical records and other relevant materials and preparing a written medical report, has determined that there is a "reasonable and meritorious" cause for filing the action. 735 ILCS 5/2-622(a)(1) (West 2012). A copy of the medical report must be attached to the affidavit and must clearly identify 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." *Id.*; see also *Moyer v. Southern Illinois Hospital Service Corp.*, 327 Ill. App. 3d 889, 902 (2002).

¶ 14 A plaintiff must attach an affidavit and a healthcare professional's report when "the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice." 735 ILCS 5/2-622(a) (West 2012). "The term 'medical, hospital or other healing art malpractice' must be construed broadly." *Woodard v. Krans*, 234 Ill. App. 3d 690, 703 (1992). In construing these terms broadly, courts have determined that " 'healing art' " deals with the "entire branch of learning dealing with the restoration of physical or mental health" and that "malpractice" implies the lack of skill in practicing the profession. *Lyon v. Hasbro Industries, Inc.*, 156 Ill. App. 3d 649, 654 (1987). Further, section 2-622 applies "[i]n any [cause of] action, whether in tort, contract or *otherwise*." (Emphasis added.) 735 ILCS 5/2-622(a) (West 2012).

¶ 15 Although, at first blush, it might appear as if plaintiff's claim regarding the prescriptions he was given would not need this type of support, Harvey attested that the "medications were

administered because [plaintiff's] healthcare providers judged that it was medically necessary to treat [plaintiff's] preexisting medical conditions during the time of his admission." Plaintiff submitted nothing to contradict Harvey's statements that the medication given to plaintiff was "medically necessary." Because what is "medically necessary" is not something that a layperson can determine, plaintiff had to attach to his second amended complaint a healthcare report and an affidavit. See *Schindel v. Albany Medical Corp.*, 252 Ill. App. 3d 389, 398-99 (1993) (the plaintiff claimed that her case, brought for injuries she sustained when her fallopian tubes ruptured during an ectopic pregnancy, sounded in ordinary negligence, but the court found otherwise, noting that what was needed to resolve the case was "technical, medical knowledge which is not within the common knowledge of jurors untrained in the medical profession").

¶ 16 Moreover, in contrast to plaintiff's view, an affidavit and a healthcare report are necessary in cases sounding in things other than "medical malpractice." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 93. For example, in *Lyon*, an affidavit and a report from a healthcare provider were required when the plaintiff sued an ambulance service, alleging that the equipment necessary to treat the plaintiff's child was not found in the ambulance. *Lyon*, 156 Ill. App. 3d at 651, 655. An affidavit and a healthcare report were required because what equipment was necessary to treat a person in the plaintiff's son's condition was "inherently one of medical judgment." *Id.* at 655. Here, as in *Lyon*, the decision of what prescriptions should have been given to plaintiff, who had preexisting conditions and had just been in a serious automobile accident, is "inherently one of medical judgment." *Id.* Accordingly, in order to support his claim that he should not have been given unspecified prescriptions, plaintiff needed to attach to his second amended complaint an affidavit and a report from a healthcare provider. Because an

affidavit and a report were not attached, dismissal of plaintiff's second amended complaint was warranted.

¶ 17 As a final matter, we briefly mention that, to the extent that plaintiff claims that the trial court abused its discretion in dismissing his second amended complaint with prejudice (*Razor Capital*, 2012 IL App (2d) 110904, ¶ 28), we disagree. As noted, plaintiff has not filed with this court a report of proceedings or substitute. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Thus, we do not know why the trial court dismissed the second amended complaint with, rather than without, prejudice. On a discretionary matter, when we do not know why the court ruled the way it did, we must presume that the order was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Accordingly, we affirm the court's decision to dismiss plaintiff's second amended complaint with prejudice. *Id.*

¶ 18 For these reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.