2016 IL App (1st) 150935-U

FIRST DIVISION
June 6, 2016

No. 1-15-0935

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

THEODORA W. WESTON	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	
ADVOCATE CHRIST MEDICAL CENTER,	)	No. 13 L 2231
	)	
and	)	
	)	
SHAYLA GARRETT-HAUSER, M.D.,	)	Honorable
	)	William E. Gomolinski,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's grant of defendants' motion for summary judgment on plaintiff's claim of intentional infliction of emotional distress is affirmed where the evidence failed to show that plaintiff suffered severe emotional distress, and defendants' conduct was not outrageous such that the conduct itself is evidence that plaintiff suffered severe emotional distress.

¶ 2 Plaintiff Theodora Weston, proceeding *pro se*, appeals the order of the circuit court granting defendants, Advocate Christ Medical Center (Advocate) and Shayla Garrett-Hauser, M.D.'s motion for summary judgment against her claim of intentional infliction of emotional distress. On appeal, plaintiff contends (1) the trial court erred in granting summary judgment because plaintiff did not need to seek medical treatment in order to establish severe emotional distress; (2) the trial court erred in denying plaintiff's motion for summary judgment; and (3) plaintiff was denied due process during the proceedings. For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court entered its order granting summary judgment on February 3, 2015. Plaintiff filed a motion for reconsideration which the trial court denied on February 26, 2015. Plaintiff filed her notice of appeal on March 27, 2015. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and 303 (eff. May 30, 2008) governing appeals from final judgments entered below.

¶ 5 BACKGROUND

¶ 6 Plaintiff's sister, Evelyn D. White, was diagnosed with lung cancer in August 2009, and was treated for the disease through 2009 and 2010. In October of 2012, White continued to receive medical treatment for a variety of conditions. On October 14, 2012, plaintiff and her son Jamel Weston drove White to Advocate's emergency room. While in the emergency room, White was treated by a number of medical personnel under the supervision of Dr. Garrett-Hauser. White suddenly lapsed into respiratory failure and Dr. Garrett-Hauser advised plaintiff that White had requested a do not resuscitate (DNR) order prior to her emergency room admission. As a result, plaintiff did not insist that medical personnel attempt to resuscitate White. White died in the arms of plaintiff.

¶ 7 White subsequently filed a complaint against Advocate and Dr. Garrett-Hauser, alleging wrongful death and intentional infliction of emotional distress.[1] In her second-amended complaint, plaintiff alleged that White did not have a DNR order or living will filed, and that Dr. Garrett-Hauser's conduct in leading her and her son to believe that White did not want to be resuscitated was "extreme and outrageous." Plaintiff alleged that if not for Dr. Garrett-Hauser's misrepresentation, she "would have demanded the resuscitation of [White]." As a result, plaintiff "suffered grievous emotional distress, pain as well as suffering, mental anguish and a host of ill-gotten issues" including "protracted probate litigation, loss of earning potential as well as suffering the loss of life; the anguish of not having remaining time with sister; suffer the anguish of constantly dreaming about people dying in arms; struggle to reconcile financial/personal area of decedents/petitioner's home; experiencing heart aches and feelings of dread; lack of sleep; suffer the anguish of trying to understand apathy; defending against predatory advances concerning assets/liabilities."

¶ 8 Defendants filed a motion to dismiss pursuant to sections 2-619 and 2-622 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619; 2-622 (West 2012). After a hearing, the trial court denied the motion to dismiss and ordered the parties to return on May 30, 2014, for a case management conference. When plaintiff failed to appear on that date, the case was dismissed for want of prosecution (DWP). Within a week plaintiff filed a motion for default judgment and/or summary judgment because defendants' motion to dismiss "act[ed] as an admission of the material facts in the plaintiff's [complaint]." A few days later, plaintiff filed a motion to vacate the DWP which the trial court granted.

[1] Plaintiff's wrongful death claim is not an issue in this appeal.

¶ 9 Defendants filed a motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) for failure to state a cause of action for intentional or negligent infliction of emotional distress. At the hearing to address both plaintiff's motion for summary judgment and defendants' motion to dismiss, the trial court denied plaintiff's motion and denied defendants' motion as to the intentional infliction of emotional distress claim.

¶ 10 In the fall of 2014, the cause rose above the "Black Line," appearing on the Cook county law division trial call. Plaintiff did not appear on this court date and counsel for defendants informed the presiding judge of the early status of discovery. The cause was ordered returned to Judge Gomolinski.

¶ 11 At plaintiff's deposition, when asked whether she was ever hospitalized, received outpatient therapy by a psychiatrist or psychologist, treated by a social worker, or prescribed medication for her emotional injuries as a result of White's death, plaintiff answered, "No." She stated that she "had no per se damages for [her] emotional distress in regard of me trying to get health care or mental health care, no." Plaintiff stated that her emotional damages were "significant" but she could not afford medical care and had "to just do without." However, she came up with her "own remedy" and decided to take a job at UPS. The job "gave [her] a release of some sort" because for "four hours [she] worked and [she] sweated, and [she] couldn't think about anything."

¶ 12 Plaintiff filed a fourth-amended complaint, adding a new wrongful death count and a request for punitive damages to her claim of intentional infliction of emotional distress. Defendants filed a motion for summary judgment. Regarding the intentional infliction of emotional distress claim, defendants argued that plaintiff's deposition testimony disproved the severe emotional distress element. As to the wrongful death count, defendants argued that

plaintiff lacked standing to bring such a claim and her past position that it was not based on medical negligence precluded her claim for wrongful death. Defendants also argued that plaintiff had not obtained leave of court to file a claim seeking punitive damages in violation of Illinois law.

¶ 13 In response, plaintiff addressed only defendants' intentional infliction of emotional distress argument and did not respond to their arguments regarding wrongful death and punitive damages. After a hearing, the trial court granted summary judgment in favor of defendants, reasoning that "the only basis for which you say that you're going forward on this claim is that this doctor lied about a DNR resuscitation order. That's not a basis to file an intentional infliction of emotional distress. It would mean that anybody who lies to somebody else would then be liable under this tort for an injury." Plaintiff filed a motion to reconsider which the trial court denied. Plaintiff filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 Initially, we note defendants' contention that plaintiff's brief is in violation of Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) and therefore her appeal should be dismissed. Although appearing *pro se*, plaintiff is not relieved of compliance with the supreme court rules. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. However, it is within this court's prerogative to consider plaintiff's appeal, even in light of any Rule 341 violations, and we choose to do so here. *Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004).

¶ 16 Plaintiff contends that the trial court erred in granting summary judgment in favor of Advocate. Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c)

(West 2010). In reviewing a motion for summary judgment, we construe the record in the light most favorable to the nonmoving party and strictly against the moving party. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Although a party need not prove their entire case at the summary judgment stage, they must present facts showing they are entitled to judgment. *Wallace v. Alexian Brothers Medical Center*, 389 Ill. App. 3d 1081, 1086 (2009). We review the trial court's ruling on a summary judgment motion *de novo*. *Williams*, 228 Ill. 2d at 417.

¶ 17 To state a cause of action for intentional infliction of emotional distress, plaintiff must show that (1) the conduct involved was extreme and outrageous; (2) the conduct was intended to inflict severe emotional distress, or the actor knew there was a high probability that the conduct would cause severe emotional distress; and (3) the conduct in fact caused severe emotional distress. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 269 (2003). All three elements are necessary to sustain the cause of action. *Id*. at 268.

¶ 18 Defendants argue that summary judgment was appropriate because in her deposition, plaintiff acknowledges that she did not experience severe emotional distress. As our supreme court found in *Feltmeier*, although emotional distress "includes all highly unpleasant mental reactions," emotional distress that is actionable " 'is so severe that no reasonable man could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity.' [citations omitted.]" *Id*. at 276. Plaintiff may also satisfy this third element by showing that defendants' conduct was so outrageous in character that the conduct itself is important evidence that plaintiff was severely distressed. *Id*. at 276-77.

¶ 19 Plaintiff stated in her deposition that she "had no per se damages for [her] emotional distress in regard of me trying to get health care or mental health care." Although her emotional damages were "significant" she could not afford medical care and had "to just do

without." Her "remedy" was to take a job at UPS which "gave [her] a release of some sort" because for "four hours [she] worked and [she] sweated, and [she] couldn't think about anything." Plaintiff was never hospitalized, never received outpatient therapy by a psychiatrist or psychologist, never treated by a social worker, or prescribed medication for her emotional injuries as a result of White's death. There is no evidence that plaintiff suffered the severe emotional distress required under *Feltmeier* to sustain a claim for intentional infliction of emotional distress.

¶ 20 Plaintiff argues that Dr. Garrett-Hauser's conduct in lying to her about the DNR order was outrageous and therefore severe emotional distress can be presumed, citing *Wall v. Pecaro*, 204 Ill. App. 3d 362 (1990) as support. In *Wall*, which was a case on appeal from a motion to dismiss rather than summary judgment, this court found that the plaintiff's complaint alleged sufficient facts to state a cause of action. *Id*. at 368. The plaintiff alleged that the defendant intentionally misdiagnosed her condition and "urgently recommended that she submit to unnecessary treatment-the surgical removal of significant portions of her head's internal structures and tissues, as well as the abortion of her five and on-half month old fetus-and repeatedly told her that if she failed to undergo these procedures, her cancer would spread quickly." *Id*. at 364. Plaintiff alleged that the defendant's conduct was not only calculated to cause severe emotional distress, but also "specifically intended to cause emotional distress so as to overbear her will and cause her to agree to the procedures he desired to perform." *Id*. at 365. The plaintiff subsequently received a proper diagnosis and suffered no physical injury from the misdiagnosis. *Id*. The court in *Wall* found that the third element of an actionable claim for intentional infliction of emotional distress, whether the plaintiff suffered severe emotional

distress, could be inferred from the outrageous character of the misconduct; that the "conduct is in itself evidence that [the plaintiff] experienced severe emotional distress." *Id*. at 369.

¶ 21 Unlike the character of the alleged misconduct in *Wall*, the misconduct plaintiff alleges here is not clearly outrageous. Although if true, the allegation that Dr. Garrett-Hauser lied about the DNR order is unsettling. However, such conduct does not rise to the level of egregiousness necessary to render the conduct itself as evidence that plaintiff suffered severe emotional distress. Since no genuine issue of material fact exists that plaintiff suffered severe emotional distress as a result of defendants' outrageous conduct, the trial court properly granted summary judgment in favor of defendants.

¶ 22 Plaintiff's second contention is that the trial court erred in denying her motion for summary judgment where the court also denied defendants' sections 2-615 and 2-619 motions to dismiss and the dismissal, "along with the absence of any affirmative defense resulted in uncontroverted proof that [Dr. Garrett-Hauser's misconduct] caused the severe emotional distress of plaintiff." In support of her argument, plaintiff cites *Barber-Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill. App. 3d 1065 (1992). In *Barber-Colman*, the court found that a section 2-619 motion to dismiss could be used to raise the affirmative defense of statute of limitations even if the defect did not appear on the face of the pleadings. *Id*. at 1067. In the opinion, the court discussed motions to dismiss under sections 2-615 and 2-619, as well as summary judgment, and how the nature of each affected their determination of the issue at hand. *Id*. at 1078-79. *Barber-Colman* is inapposite, and plaintiff does not provide any other authority to support her contention. Accordingly, we find plaintiff's claim here without merit.

¶ 23 Finally, plaintiff argues that she was denied due process and a fair adjudication, listing numerous trial court errors including its arbitrary denial of discovery, conduct of ex parte

communications, and failure to enforce an order for discovery. Plaintiff's argument contains conclusory and unsupported allegations, with no citation to authority, in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of record relied on"). Ill-defined and insufficiently presented issues, made in violation of Rule 341(h)(7), are considered waived on appeal. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010).

¶ 24 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 25 Affirmed.