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2016 IL App (3d) 141005-U

Order filed February 1, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

TOBIAS J. CAMPOLATTARA,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	
)	Appeal No. 3-14-1005
CLAUDINE S. FELICIANO, D.O.;)	Circuit No. 13-AR-1369
ELSY A. DEVASSY, M.D.; and)	
PRESENCE HOSPITALS PRV d/b/a/)	
PRESENCE ST. JOSEPH)	
MEDICAL CENTER,)	Honorable
)	Barbara N. Petrungaro,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted defendants' motion to dismiss.
- ¶ 2 After plaintiff, Tobias J. Campolattara, was hospitalized pursuant to an involuntary commitment order, he filed a complaint against Dr. Claudine S. Feliciano, Dr. Elsy A. DeVassy, and Presence St. Joseph Medical Center, alleging claims of false imprisonment. Plaintiff appeals

the dismissal of his complaint for failure to attach a healthcare professional's report under section 2-622(a) of the Code of Civil Procedure (Code). 735 ILCS 5/2-622(a) (West 2012). We affirm.

¶ 3

FACTS

¶ 4

On Friday, December 9, 2011, plaintiff's wife, Karen Campolattara, filed a "Petition for Involuntary/Judicial Admission." The petition alleged that plaintiff was "a person with mental illness who, because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed" and "in need of immediate hospitalization for the prevention of such harm." Specifically, the petition stated:

"Respondent *** previously diagnosed and hospitalized for Bi-Polar, Depression, and ADHD[; Respondent] not taking heart medications or psychotropic meds, and has expressed generally he wanted to commit suicide[; Respondent] has increasingly shown erratic behavior. On 12/8/11, [Respondent] was specific on his suicidal thoughts and stated he wanted to 'slit his throat,' while standing by kitchen knives[; Respondent] refuses, after repeatedly being asked, to go to hospital for treatment. Petitioner fears for her, their children, and [Respondent's] safety[.]"

¶ 5

A hearing was held the same day, and the court entered an "Order for Examination," in which the court found, in relevant part, that:

"Respondent has not been provided notice, however, Petitioner has alleged facts showing that an emergency exists such that immediate hospitalization is necessary and has testified before the Court as to the factual basis for the allegations (405 ILCS 5/3-701(b))[.]

* * *

Upon inquiry, reasonable grounds exist to believe the facts stated in the Petition are true and reasonable grounds exist to believe the Respondent is a "person subject to involuntary admission" as defined in the Mental Health and Developmental Disabilities Code [(Mental Health Code)] (405 ILCS 5/3-701(b)).]

*** No Certificate of a physician, qualifies examiner, clinical psychologist, or psychiatrist accompanies the Petition (405 ILCS 5/3-702(b)).]

The court, therefore, ordered that:

"Respondent submit to an examination by a physician, or clinical psychologist, or qualified examiner, as defined by the [(Mental Health Code)] (405 ILCS 5/3-703),
*** at St. Joseph Hospital Joliet, IL.

The clerk issue a Writ directing a peace officer to take custody of the Respondent and transport the Respondent to the nearest Emergency Room for Examination[.] Respondent shall be released upon completion of the examination or 24 hours, whichever is earlier, unless the physician or clinical psychologist or qualified examiner executes a Certificate pursuant to the [(Mental Health Code)] (405 ILCS 5/3-704).]"

¶ 6 Later that evening (Friday, December 9, 2011), plaintiff was taken into custody and transported to the emergency room at St. Joseph Medical Center. Around 4 a.m. on Saturday, December 10, 2011, plaintiff was examined by defendant, Dr. Claudine S. Feliciano, a physician in the emergency department. During the examination, plaintiff admitted to Feliciano that he

previously told his wife, "I should kill myself, I should just slit my throat." Based on her examination, Feliciano executed an "Inpatient Certificate." On the form, Feliciano checked boxes stating that it was her opinion that plaintiff was "[a] person with mental illness who, because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed" and "[i]s in need of immediate hospitalization for the prevention of such harm[.]" The form next said, "I base my opinion on the following (including clinical observations, factual information)." In that space, Feliciano wrote, "Tobias was brought to the [Emergency Department] by police after a judicial petition was placed. Per the petition, he voiced suicidal thoughts to his wife and said he would use a knife to slit his throat. His wife was concerned about not only his safety but hers also." Feliciano further checked a box that said, "I believe that the individual is subject to [j]udicial inpatient admission and is in need of immediate hospitalization."

¶ 7 Based on the recommendations of Feliciano, plaintiff was admitted to the hospital and transferred to a psychiatric floor. Plaintiff told members of the hospital staff that he was being falsely imprisoned because his wife had made false statements in the petition. Specifically, plaintiff said that his wife lied when stating that plaintiff had not been taking his medication. Plaintiff told hospital staff that the lab reports would prove that she was lying. The nurse informed plaintiff that all of his prescribed medications were present in his lab results.

¶ 8 Around 9 a.m. on December 10, 2011, plaintiff was examined by, defendant psychiatrist, Dr. DeVassy. DeVassy did not execute a certificate, but told plaintiff that the earliest she would release him would be Monday, December 12, 2011. Plaintiff was released December 12, after a family session with his wife, which was required by the hospital for release.

¶ 9 On December 10, 2013, plaintiff filed a *pro se* "Complaint for Violation of Rights Pursuant to the [Mental Health Code] and Medical Malpractice" against Feliciano, DeVassy, and Presence St. Joseph Medical Center, alleging that he suffered damages in connection with an involuntary admission to the hospital on or about December 10, 2011. Plaintiff thereafter amended his complaint to only include claims of false imprisonment against defendants.

¶ 10 The amended complaint alleged false imprisonment by Feliciano, stating that Feliciano: (1) refused to release plaintiff upon her examination; (2) "failed to execute a Certificate pursuant to the [Mental Health Code] (405 ILCS 5/3-704)"; (3) "failed to identify any 'CLINICAL OBSERVATIONS' or 'FACTUAL INFORMATION' in her Inpatient Certificate in which she claimed that the Plaintiff was mentally ill and in need of immediate hospitalization[.] *** Since her opinion was not of a medical nature No valid Inpatient Certificate was issued"; and (4) based her opinion "on the unsubstantiated claims in the petition and that the police brought the Plaintiff to the hospital with a Judicial Order, which she assumes was difficult to obtain[.] No medical opinion existed claiming that the Plaintiff was mentally ill and in need of immediate hospitalization." These actions resulted in plaintiff being falsely imprisoned.

¶ 11 The complaint further claimed false imprisonment by DeVassy, alleging that DeVassy: (1) "refused to release the Plaintiff, stating 'the earliest I will release you is Monday' " and (2) "failed to issue an inpatient certificate," the lack of which required the hospital to release plaintiff.

¶ 12 Lastly, the complaint alleged false imprisonment by the hospital, stating: (1) "Plaintiff repeatedly notified the hospital staff that his rights were being violated[.] He voiced his concerns to nurses and the people hosting group sessions[.] At one point, even asking to speak to a supervisor[.] Still, the hospital refused to take his claims seriously"; (2) "The hospital had

evidence that the court issued the judicial order for examination based upon false information when they received the lab results"; (3) "One member of the hospital staff intimidated the Plaintiff by arguing that if the plaintiff continued to express his concerns that he would 'begin to believe that his wife was telling the truth[.]' This caused the Plaintiff to fear that the staff could recommend that he be held even longer"; (4) "The hospital staff refused to release the Plaintiff until he had a family session with his wife[.] This caused a tremendous hardship to the Plaintiff as this gave his wife undue power and caused further humiliation"; and (5) this caused plaintiff to be falsely imprisoned.

¶ 13 All three defendants filed motions to dismiss arguing that the complaint should be dismissed because: (1) it failed to comply with the requirements of section 2-622(a) of the Code (735 ILCS 5/2-622(a) (West 2012)); (2) false imprisonment claims do not exist for detentions made pursuant to a lawful court order; and (3) they had civil immunity under section 6-103(a) of the Mental Health Code (405 ILCS 5/6-103(a) (West 2012)).

¶ 14 On August 15, 2014, the court granted defendants' motions and entered an order dismissing the complaint without prejudice. The court found that the complaint failed to comply with the requirements of section 2-622(a), as the complaint did not include a healthcare professional report, which is necessary for an action alleging medical malpractice. The court granted plaintiff leave to file a "Second Amended Complaint" by October 14, 2014.

¶ 15 Plaintiff did not file a "Second Amended Complaint," but instead filed a "Motion to Vacate" on September 12, 2014. The "Motion to Vacate" alleged that plaintiff would be unable to comply with the requirements of section 2-622(a), as he could not afford to have a doctor complete the healthcare professional report. Plaintiff further argued that he was not required to comply with section 2-622(a) because he was not questioning the medical judgment of

defendants, but was only alleging a question of law pertaining to violations of the Mental Health Code.

¶ 16 On November 25, 2014, the court denied the "Motion to Vacate." The court stated:

"In the Motion to Vacate, Plaintiff argues that he is not questioning the Defendants' medical judgment. Plaintiff cites *Chadwick v. Al-Basha*, 295 Ill. App. 3d 75 (1998). However, that case involved allegations of specific violations of the Mental Health Code, specifically regarding the use of restraints and the requirements of written restraint orders. ***

*** The allegations in this case, however, involve whether Dr. Feliciano issued a valid certificate, whether there was a valid medical opinion claiming Plaintiff was mentally ill; whether Dr. DeVassy should have released the Plaintiff and whether Dr. DeVassy executed a valid certificate; and whether the hospital staff acted properly. These claims fall within 735 ILCS 5/2-622 and as such, the Motion to Vacate is DENIED."

The court struck all future court dates in the case.

¶ 17 ANALYSIS

¶ 18 On appeal, plaintiff argues that the trial court erred in granting the motions to dismiss as his claim of false imprisonment "is a question of an alleged law violation, not a question of medical judgment" and therefore does not fall within the purview of section 2-622(a) of the Code. 735 ILCS 5/2-622(a) (West 2012). Because we find that plaintiff's claim does fall under section 2-622(a) and defendants have immunity pursuant to section 6-103(a) of the Mental Health Code (405 ILCS 5/6-103 (West 2012)), we reject plaintiff's contention.

¶ 19 Section 2-622(a) states in relevant part:

"(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:

*** [t]hat [a] reviewing health professional has determined in a written report, after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of such action; and that the affiant has concluded on the basis of the reviewing health professional's review and consultation that there is a reasonable and meritorious cause for 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) (West 2012).

Although not every injury a patient sustains at a hospital results from "healing art malpractice," the term is broadly construed. *Woodard v. Krans*, 234 Ill. App. 3d 690, 703 (1992). When the allegations in a complaint "encompass matters of medical judgment" they are "appropriately addressed as healing art malpractice." *Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167, 183 (2010). "An affidavit may be required under the Healing Art Malpractice Act even where a complaint does not allege medical malpractice on its face, if the determination at issue 'is inherently one of medical judgment.'" *Thomas v. Cook County Sheriff*, 401 F. Supp. 2d 867, 877 (N.D. Ill. 2005) (quoting *Lyon v. Hasbro Industries, Inc.*, 156 Ill. App. 3d 649, 655 (1987)).

¶ 20 Here, plaintiff's amended complaint alleged claims of false imprisonment against each of the defendants. Although he does not allege medical malpractice, his claims concern issues of medical judgment, and therefore, fall under the purview of section 2-622(a) of the Code. 735 ILCS 5/2-622(a) (West 2012). Specifically, count 1 against Feliciano alleged that Feliciano failed to release plaintiff after examination, failed to execute a valid certificate, and based her medical opinion on "unsubstantiated claims." Count 2 against DeVassy claimed that DeVassy failed to issue a certificate and should have released defendant upon the completion of her examination. Count 3 against the hospital concerned whether or not the hospital acted properly in failing to release plaintiff and in the way plaintiff was treated during his stay. All of these claims concern defendants' medical judgments in their examination and treatment of plaintiff, as well as their determination that plaintiff needed to continue his hospitalization. Therefore, plaintiff's complaint falls under the scope of the Healing Art Malpractice Act, and without a healthcare professional's report pursuant to section 2-622(a) of the Code, plaintiff's complaint was properly dismissed.

¶ 21 In coming to this conclusion, we reject plaintiff's reliance on *Chadwick v. Al-Basha*, 295 Ill. App. 3d 75 (1998). In *Chadwick*, the plaintiff was a voluntary patient at a mental health center. *Id.* at 77. A psychiatrist at the mental health center changed the plaintiff's treatment plan, and the plaintiff refused to sign the new plan because she disagreed with the restrictions. *Id.* A discussion about the treatment plan with the plaintiff's therapist became emotional, and the plaintiff broke a window. *Id.* Afterwards, the psychiatrist ordered the plaintiff into seclusion and, after expressing her displeasure to staff members, the plaintiff was verbally ordered to be placed in restraints. *Id.* The plaintiff brought a false imprisonment claim against the psychiatrist alleging that the psychiatrist had violated specific provisions of the Mental Health Code. *Id.* at

78. These provisions required that all restraints and seclusion orders be in writing and prohibited the use of restraints to punish or discipline a patient. *Id.* Because of this, the plaintiff alleged that she was unlawfully restrained and secluded against her will. *Id.*

¶ 22 The trial court dismissed the plaintiff's complaint for failing to supply an affidavit pursuant to section 2-622(a) of the Code. *Id.* On appeal, the court held that the plaintiff was not required to comply with section 2-622(a) as "the [psychiatrist] was not at liberty to exercise his own medical judgment[;] *** he was obligated to observe the specific requirements codified by the legislature as to the appropriate manner and use of restraints and seclusion as medical treatments." *Id.* at 81. Stated another way, the plaintiff was not required to supply a section 2-622(a) affidavit because her complaint only alleged violations of the Mental Health Code.

¶ 23 Like the plaintiff in *Chadwick*, plaintiff contends his complaint only alleges violations of the Mental Health Code. However, plaintiff's claims clearly require a determination of medical judgment. The trial court correctly found that plaintiff's claims concerning "whether Dr. Feliciano issued a valid certificate, whether there was a valid medical opinion claiming Plaintiff was mentally ill; whether Dr. DeVassy should have released the Plaintiff and whether Dr. DeVassy executed a valid certificate; and whether the hospital staff acted properly" all necessitated medical judgment and therefore fall under the purview of section 2-622(a) of the Code.

¶ 24 Alternatively, even if plaintiff was not required to attach an affidavit and report pursuant to section 2-622(a) of the Code, defendants have civil immunity under section 6-103(a) of the Mental Health Code, which states:

"(a) All persons acting in good faith and without negligence in connection with the preparation of applications, petitions, certificates or other documents, for the

apprehension, transportation, examination, treatment, habilitation, detention or discharge of an individual under the provisions of this Act incur no liability, civil or criminal , by reason of such acts." 405 ILCS 5/6-103(a) (West 2012).

Neither plaintiff's complaint nor his brief on appeal asserts that defendants acted in bad faith or with negligence. Further, our review of the record fails to find any indication that defendants acted in any way that could be construed as such. Therefore, plaintiff's action is further barred by civil immunity.

¶ 25

CONCLUSION

¶ 26

The judgment of the circuit court of Will County is affirmed.

¶ 27

Affirmed.