

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DOROTHY OCZACHOWSKI,	)	Appeal from the Circuit Court
Independent Administrator of the Estate	)	of Cook County.
Of KAZIMIERZ OCZACHOWSKI, deceased.	)	
	)	
Plaintiff-Respondent-Appellee,	)	No. 16L4503
	)	
v.	)	
	)	The Honorable
MANOR CARE OF PALOS HEIGHTS	)	Moira S. Johnson,
(WEST) IL, LLC., individually and d/b/a	)	Judge Presiding.
MANORCARE HEALTH SERVICES-PALOS	)	
HEIGHTS WEST,	)	
	)	
Defendants-Petitioners-Appellants.	)	

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Mason and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* appeal seeking answer to certified question dismissed. Prior order allowing leave to appeal vacated because answering the certified question would not materially advance the ultimate termination of litigation.

¶ 2 Decedent Kazimierz Oczachowski (“Kazimierz” or “decedent”) suffered a fall while he was a resident of a nursing home and died soon thereafter. Plaintiff Dorothy Oczachowski, independent administrator of Kazimierz’s estate, subsequently filed a complaint against

defendants Manor Care of Palos Heights (West) IL, LLC, individually, and d/b/a Manorcare Health Services-Palos Heights West (collectively, “Manor Care” or “defendants”), the owners and operators of the nursing home where Kazimierz had been a resident at the time of his fall. Plaintiff’s two-count complaint sought to impose liability on Manor Care pursuant to the Nursing Home Care Act (210 ILCS 45/1-101 *et seq.* (West 2014)) and the Wrongful Death Act (740 ILCS 180/0.01 *et seq.* (2014)). Manor Care subsequently sought dismissal of plaintiff’s Wrongful Death Act claim on the grounds that it was not supported by a report completed by a medical professional attesting to the merits of her claim in compliance with section 2-622 of the Illinois Code of Civil Procedure (735 ILCS 5/2-622 (West 2014)). The circuit court denied Manor Care’s motion to dismiss, finding that no 2-622 affidavit was required based on the specific allegations contained in the plaintiff’s complaint. Nonetheless, the court, on Manor Care’s motion, certified the following question for interlocutory review pursuant to Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Jan. 1, 2016)):

“In a case where plaintiff has sued a nursing home under the Wrongful Death Act alleging that defendant failed to provide proper nursing and medical care and treatment to her decedent so as to prevent a fall, injury and death, is plaintiff required to file a report in compliance with 735 ILCS 5/2-622(a)(1) to support her claim?”

¶ 3 In doing so, the circuit court expressly found that the certified question involved “a question of law as to which there is a substantial ground for a difference of opinion” and that “an immediate appeal from th[e] Court’s Order [would] materially advance the ultimate termination of the litigation.”

¶ 4 A different panel of this court accepted the certified question for review over the objection of one dissenting justice.

¶ 5 Upon review, this court concludes that the prior order allowing leave to appeal was improvidently granted. We therefore vacate the prior order and dismiss the instant appeal. In doing so, we emphasize the procedural posture of this case, which is governed by Illinois Supreme Court Rule 308. That rule provides an exception to the normal appeals process and provides, in pertinent part, as follows: “When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion *and that an immediate appeal from the order may materially advance the ultimate termination of the litigation*, the circuit court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court’s own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.” (Emphasis added.) Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016). A proper certified question is one that involves an issue of law and does not seek an application of law to the facts of a specific case. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. As such, if the answer to a certified question turns on the specific facts of a case, a certified question is improper. *Id.* Similarly, a certified question that calls for an answer that is advisory or provisional is likewise improper, and such questions should thus not be reached. *Id.* Ultimately, given the stringent limitations of Rule 308, appeals governed by that rule should be reserved for exceptional circumstances only. *Id.*

¶ 6 The question certified by the circuit court in this case pertains to the applicability of section 2-622’s pleading requirements. It is well-settled that section 2-622’s pleading requirements are not applicable to claims sounding in ordinary negligence (*Walsh v. Barry-Harlem Corp.*, 272 Ill. App. 3d 418, 424 (1995)); rather they only apply to claims predicated on “medical, hospital, or other healing art malpractice” (735 ILCS 5/2-622(a)(1) (West 2014); *Ripes*

*v. Schlecter*, 2017 IL App (1st) 161026, ¶ 14). To determine whether or not a claim is subject to section 2-622's pleading requirements, a court will "examine the underlying allegations or facts" *Fiala v. Bickford Senior Living Group, LLC*, 2015 IL App (2d) 150067, ¶ 29. In this instance, there is no dispute that the circuit court examined the specific facts and allegations contained in plaintiff's two-count complaint and concluded that plaintiff's Wrongful Death Act complaint did not sound in medical healing art malpractice and was not required to be supported by a section 2-622 report. As such, the circuit court denied Manor Care's motion to dismiss. Given the circuit court's factual finding, the certified question calls for an advisory opinion that would not materially advance the ultimate termination of the litigation. We thus find that this court's August 29, 2017, order granting Manor Care's application for leave to appeal was improvidently granted and vacate that order. We decline to consider the certified question at issue and dismiss the instant appeal. See, *e.g.*, *Kincaid v. Smith*, 252 Ill. App. 3d 618, 622 (1993) (finding that leave to appeal was improvidently granted where resolution of the certified question alone would not materially advance the litigation); *Voss v. Lincoln Mall Management Co.*, 166 Ill. App. 3d 442, 443 (1988) (vacating prior appellate order granting leave to appeal where addressing the certified question would not materially advance the ultimate termination of the litigation and dismissing appeal).

¶ 7

## CONCLUSION

¶ 8

Order vacated; appeal dismissed.