2014 IL App (1st) 131329-U

SECOND DIVISION
February 25, 2014

No. 1-13-1329

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INARA CEDRINS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 L 13386
	)	
HEARTLAND ALLIANCE/HEARTLAND HEALTH OUTREACH, INC., NEAR NORTH HEALTH SERVICE CORPORATION, COMMUNITY HEALTH and ST. JUDE MEDICAL CENTER,	)	Honorable
	)	Randye A. Kogan,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in dismissing plaintiff's medical malpractice complaint for plaintiff's failure to comply with section 2-622 of the Code of Civil Procedure.

¶ 2 The *pro se* plaintiff, Inara Cedrins, appeals the dismissal of her medical malpractice complaint against the remaining defendants, Community Health and St. Jude Medical Clinic, S.C (St. Jude) (incorrectly sued as St. Jude Medical Center). She requests this court to reverse and

remand her cause for further proceedings on the merits. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On November 23, 2010, plaintiff filed a *pro se* complaint for medical malpractice against two defendants, Heartland Alliance and Heartland Health Outreach, Inc.(collectively Heartland) Eleven months later, on October 28, 2011, plaintiff filed an amended complaint adding defendants Near North Health Service Corporation (Near North Health), Community Health and St. Jude and sought damages for both medical malpractice and intentional infliction of emotional distress under the doctrine of *res ipsa loquitor* for failure to address her medical needs. On March 8, 2012, the United States filed a notice of removal pursuant to 228 U.S.C. § 2679(d), substituting the United States as the only proper defendant in place of defendants, Heartland and Near North Health. On May 24, 2012, the federal district court dismissed the United States from the suit and remanded the remaining defendants and pending case back to circuit court. On August 1, 2012, the circuit court entered its own order dismissing Heartland and Near North Health and plaintiff appealed that dismissal judgment to this court. On February 5, 2013, plaintiff's appeal was dismissed by this court for want of prosecution. Cedrins v. Heartland Alliance, No. 1-12-2324, (1st Dist., Feb. 5, 2013).

¶ 5 On January 12, 2012, Community Health moved to dismiss plaintiff's amended complaint pursuant to sections 2-619 (a)(9), 2-622 and 2-615 of the Code of Civil Procedure. On August 17, 2012, St. Jude filed its similar motion for plaintiff's failure to comply with the filing requirements for medical malpractice cases. In response, plaintiff took the position that the affidavit and report attached to her original complaint should suffice. After the motions were fully briefed, on February 11, 2013, the circuit court granted the defendants' motions to dismiss

the amended complaint pursuant to section 2-619 (a)(9) and 2-622(b), concluding that the plaintiff's submission with her original complaint failed to meet the requirement of section 2-622. 735 ILCS 5/2-619(a)(9) and 5/2-622 (West 2012). On April 12, 2013, the circuit court granted Community Health's motion to clarify the February 11 order as a dismissal with prejudice, and entered Rule 304 (a) language. Ill. S. Ct. R. 304 (a) (eff. Feb. 26, 2010). On April 29, 2013, plaintiff filed a timely notice of appeal. Ill. S. Ct. R. 303(a) (eff. June 4, 2008).

¶ 6 ANALYSIS

¶ 7 a) Plaintiff's Failure to Comply with Requirements of an Appellate Brief

¶ 8 Initially, we address issues raised regarding plaintiff's brief. In their responsive appellate briefs, both defendants requested that we strike plaintiff's brief and dismiss her appeal, relying on Rule 341(h) and (g). Ill. S. Ct. R. 341(h), (g) (eff. Feb. 6, 2013). Plaintiff never filed a reply brief nor did she file any other responsive pleading to defendants' request.

¶ 9 Rule 341(h) governs the contents of an appellant's opening brief and its provisions are not mere suggestions, but are requirements. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules governing the contents of briefs is to require the parties before the appellate court to present orderly and clear arguments so that this court can properly identify and dispose of the issues raised. *Id*. Plaintiff's brief is not in compliance with Rule 341(h) as it lacks any citation to the record or applicable authority, among other deficiencies. Ill. S. Ct. R. 341(h) (eff. July 1, 2008).

¶ 10 An appellate brief that does not substantially conform to the rules may justifiably be stricken. *Id*.; *In re Guardianship of Tatyanna T.*, 2012 IL App. (1 st) 1122957, ¶ 17. *Pro se* litigants, like the plaintiff in the instant case, have long been required to follow and comply with the rules, including those rules that direct the contents of a brief. *Biggs v. Spader*, 411 Ill. 42, 44-

46 (1951)*; Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2011); *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 574 (1986) ("Although [the] right to appear *pro se* is well established, it is equally well established that when [one] does appear *pro se*, [one] must comply with the established rules of procedure.")

¶ 11 Plaintiff's brief also failed to comply with Rule 341(g) by not including any appendix. Ill. S. Ct. R. 341(g) (eff. Feb. 3, 2013). The required appendix must contain, among other things, a table of contents of the record, a copy of the judgment appealed from, and the notice of appeal, but plaintiff's brief included none of these requirements. See Ill. S. Ct. R, 342(2) (eff. Jan. 1, 2005).

¶ 12 Striking an appellate brief, in whole or in part, is a harsh sanction. An even harsher sanction is dismissal of the appeal. We will strike a brief only when the violations of the rules hinder our effective appellate review. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 15.

¶ 13 In this case, the *pro se* plaintiff undoubtedly violated the rules governing the proper preparation and filing of briefs. We do not condone the plaintiff's failure to comply with the rules. However, because the record is slim and we have the benefit of cogent briefs filed by the defendants who shored up some of plaintiff's deficiencies with their filings, we will not strike plaintiff's brief and deny defendants' request that we impose the sanction of dismissal of plaintiff's appeal. Having ruled as stated, we also state that we will not consider any inappropriate matters or unsupported assertions contained in plaintiff's brief. "Mere contentions, without argument or citation of authority, do not merit consideration on appeal." *Progressive Universal Insurance Co. of Illinois v. Taylor*, 375 Ill. App. 3d 495, 501-02 (2007) (quoting *Elder v. Bryant*, 324 Ill. App. 3d 526,533 (2001)).

¶ 14 b) Plaintiff's Noncompliance with Section 2-622

¶ 15 We review *de novo* a dismissal pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619 (West 2012). A motion under section 2-619 admits the legal sufficiency of the complaint but raises an affirmative defense to the cause of action. *Krueger v. Lewis*, 359 Ill. App. 3d 515, 520 (2005). An affirmative matter is a "defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). Both defendants filed motions to dismiss pursuant to section 2-619 for plaintiff's failure to comply with section 2-622 of the Code of Civil Procedure because plaintiff did not provide the required reports with her amended complaint. Section 2-622 (g) of the Code of Civil Procedure specifically provides that "[t]he failure of the plaintiff to file an affidavit and report in compliance with this Section shall be grounds for dismissal under Section 2-619." 735 ILCS 5/2-622 (West 2012). Based on the facts of the case, a circuit court may allow amendments to the pleadings or may dismiss the complaint with or without prejudice. *Cato v. Attar*, 210 Ill. App. 3d 996, 999 (1991). A circuit court's decision as to which option to implement rests within its sound discretion and will not be reversed absent an abuse of discretion. *Id*.

¶ 16 Shifting our attention to plaintiff's amended complaint which sounds in medical malpractice, we reject plaintiff's argument that the medical evaluation prepared by her mental health professional and attached to her initial complaint complies with section 2-622 for purposes of her amended complaint. We acknowledge case precedent that "Illinois courts liberally construe a physician's certificate of merit in favor of the malpractice plaintiff and recognize that the statute is a tool to reduce frivolous lawsuits by requiring a minimum amount of merit, not a likelihood of success." *Hull v. Southern Illinois Hospital Services*, 356 Ill. App.

3d 300, 305 (2005); *Cato v. Attar*, 210 Ill. App. 3d 996, 998 (1991). Additionally, we acknowledge that section 2-622 should not be applied mechanically to deprive a plaintiff of his or her substantial rights. *Schroeder v. Northwest Community Hospital*, 371 Ill. App. 3d 584, 595 (2006); *Hobbs v. Lorenz*, 337 Ill. App. 3d 566, 569 (2003). However, such liberal construction does not excuse a plaintiff from filing anything when filing an amended complaint

¶ 17 When filing a medical malpractice complaint, a plaintiff must attach an affidavit indicating he/she has consulted with and reviewed the facts of the case with a knowledgeable healthcare professional who has determined, in a written report, that the plaintiff's claim is reasonable and meritorious; or that the plaintiff was unable to obtain the consultation with a healthcare professional because of the statute of limitations, in which case he/she must have the consultation within 90 days after the filing of the complaint; or that the plaintiff has issued a request for the documents from the health care professional but the health care professional has not complied within 60 days of the request. 735 ILCS 5/2-622 (a)(1)-(3) (West 2012).

¶ 18 The attachment to plaintiff's initial complaint was authored and signed by a licensed clinical psychologist, John Sonnenberg, Ph.D. His affidavit, dated November 22, 2010, merely states: "I am familiar with Plaintiff per the attached report and can assert that she suffers from Major Depressive Disorder. Ms. Cedrin's depression is aggravated by situational stress secondary to dissatisfaction with her medical care and legal challenges." The report attached to Dr. Sonnenberg's affidavit, which is also dated November 22, 2010, states: "Ms. Cedrins has been under the care of myself and Scott Feldman, M.D. at our clinic in Chicago. She has been under our care for approximately 5 months. This has included some general medical work up including laboratory studies in addition to more intensive psychiatric diagnosis and treatment. She has been compliant and responsible. Ms. Cedrins is under treatment for Major Depression."

¶ 19 The affidavit and report are woefully inadequate. There is no indication that Dr. Sonnenberg is knowledgeable in the relevant issues involved in plaintiff's allegations of malpractice, or that he has practiced or taught, within the last five years, in the same area of health care or medicine that is at issue in the case, or that he has even reviewed plaintiff's medical records. Dr. Sonnenberg does not indicate in any manner that there is a reasonable and meritorious cause for the filing of plaintiff's action, nor does he make any statement about his knowledge and familiarity with the applicable standard of care or the methods, procedures and treatments relevant to the allegations at issue in the case as to each named defendant. 735 ILCS 5/2-622 (a) 1 (West 2012). All of this and more is required of the plaintiff when filing a medical malpractice case, even "if the plaintiff is proceeding *pro se* ***.." *Id*. at (a).

¶ 20 Here, the plaintiff did not attach an affidavit to her amended complaint in accordance with section 2-622 of the Code of Civil Procedure. She did not provide the requisite medical report. She did not provide any information that any report was forthcoming. She did not provide any information that she had requested a medical report from an appropriate health care provider. Furthermore, plaintiff has not challenged the circuit court's dismissal of the amended complaint with prejudice and has waived it on appeal. Ill. S. Ct. R. 341 (e) (7) (eff. July 1, 2008). Therefore, dismissal pursuant to section 2-619 with prejudice was proper and not an abuse of discretion.

¶ 21 CONCLUSION

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

¶ 23 Affirmed.