No. 2—10—0518
Order filed May 24, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHELLE EVA McDONALD,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09—L—907
	)	
DR. EUGENE G. LIPOV, d/b/a Advanced Pain Centers, d/b/a Alexian Brothers Medical Center, DR. JAYDEEP JOSHI, d/b/a Advanced Pain Centers, d/b/a Alexian Brothers Medical Center, SARAH SANDERS, d/b/a Advanced Pain Centers, d/b/a Alexian Brothers Medical Center, VIREN GOHIL, d/b/a Alexian Brothers Medical Center, JEANNIE YCARRO, d/b/a, Alexian Brothers Medical Center, DR. BARRY BIKSHORN, d/b/a Northwest Neurology, d/b/a Alexian Brothers Medical Center, DR. JERRY ANDREWS, d/b/a Alexian Brothers Medical Center, d/b/a IPC-Hospitalists of Chicago, DR. SZYMON ROSENBLATT, d/b/a Chicago Institute of Neurosurgery,	)	Honorable
	)	Hollis L. Webster,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: Where plaintiff filed a complaint alleging claims of medical malpractice and medical battery, the trial court did not abuse its discretion in dismissing the malpractice claim with prejudice for plaintiff's noncompliance with section 2—622 of the Code of Civil Procedure. The battery allegations could be dismissed for failing to state a claim, but the court abused its discretion in dismissing them with prejudice.

Plaintiff, Michelle Eva McDonald, is a young woman who suffers from back pain and ailments in her lower extremities. She filed a *pro se* amended complaint for injuries that allegedly arose from medical care provided by defendants in 2007. The trial court gave plaintiff three extensions of time to comply with the affidavit and health professional's report requirements of section 2—622 of the Code of Civil Procedure (Code) (735 ILCS 5/2—622 (West 2008)). Defendants filed motions to dismiss on the grounds that plaintiff's filings do not meet the requirements (see 735 ILCS 5/2—619, 2—622(g) (West 2008)) and that the allegations do not state a claim (see 735 ILCS 5/2—615 (West 2008)). The court eventually dismissed plaintiff's amended complaint with prejudice.

On appeal, plaintiff argues that the trial court erred in determining that (1) all of plaintiff's claims sound in medical malpractice, which requires her to comply with section 2—622 of the Code; (2) plaintiff did not substantially comply with section 2—622; (3) all of defendants' motions to dismiss could be granted in a combined ruling; (4) the amended complaint should be dismissed with prejudice; and (5) plaintiff's motion for summary judgment was premature.

We conclude that plaintiff's claims of medical malpractice required her to comply with section 2—622, plaintiff failed to comply with section 2—622, and the trial court did not abuse its discretion in dismissing with prejudice the malpractice claims. Moreover, the medical battery allegations failed to state a claim and should have been dismissed under section 2—615, but the

court abused its discretion in dismissing the battery allegations with prejudice and should have afforded plaintiff the opportunity to cure the defect. We affirm in part, reverse in part, and remand the cause for further proceedings.

FACTS

Plaintiff's amended complaint was dismissed with prejudice for her noncompliance with section 2—622 of the Code. Section 2—622 was enacted to curtail frivolous medical malpractice lawsuits and to eliminate such actions at the pleading stage before the expenses of litigation mount. *DeLuna v. St. Elizabeth's Hospital*, 147 Ill. 2d 57, 65 (1992). Section 2—622(a)(1) requires a plaintiff, if proceeding *pro se*, or his attorney to file an affidavit of merit with the complaint stating that the affiant has consulted and reviewed the facts of the case with a health professional who, in a written medical report—after a review of the medical records and other relevant material—has determined that there is a "reasonable and meritorious" cause for filing the action. 735 ILCS 5/2—622(a)(1) (West 2008). A copy of the medical report must be attached to the affidavit and the report 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 ***." 735 ILCS 5/2—622(a)(1) (West 2008); *Moyer v. Southern Illinois Hospital Service Corp.*, 327 Ill. App. 3d 889, 902 (2002). Section 2—622(a)(2) prescribes a 90-day extension for filing the report, allowing the plaintiff to file with the complaint an affidavit stating that he was unable to obtain the health professional's consultation because a statute of limitations would impair the action and the consultation could not be obtained before the expiration of the statute of limitations. 735 ILCS 5/2—622(a)(2) (West 2008).

On July 20, 2009, plaintiff filed a 15-count complaint, vaguely alleging that her claims arise from treatment received in 2007. On the following day, plaintiff filed an affidavit indicating that she was unable to secure a health professional's report under section 2—622 before filing the complaint and that a delay would impair her action. See 735 ILCS 5/2—622(a)(1) (West 2008). On September 17, 2009, plaintiff sought and received an extension to December 10, 2009, to file the health professional's report. Another extension was granted until January 7, 2010, which was nearly six months after the complaint was filed.

On January 7, 2010, plaintiff filed an affidavit and report that purportedly comply with section 2—622. In the affidavit, plaintiff states that she has consulted and reviewed "the facts of this case with an agency and health professional," and that she believes there is a reasonable and meritorious cause of action. Appended to the affidavit is a letter from the Social Security Administration (SSA) denying plaintiff's application for disability benefits. The letter recounts plaintiff's assertion that she had become disabled because of "back injury, head injury, losing use of right leg, numbness in left leg, and possible blood clotting in veins." The letter incorporates an "Internal Medicine Consultive Evaluation," which is a report prepared by Dr. Debbie L. Weiss for the purpose of determining whether plaintiff is disabled. The evaluation discusses plaintiff's physical condition and medical history as of February 28, 2009, but it does not mention or assess any treatment provided by defendants or assert that there is a reasonable and meritorious cause for filing the action.

On January 25, 2010, plaintiff filed an amended complaint presented in one count consisting of 65 paragraphs of allegations. Neither an affidavit nor a health professional's report is attached to the amended complaint. The amended complaint asserts that defendants committed medical

malpractice at various times from May 2007 to November 2007. Plaintiff alleges that (1) the doctors owed her a duty under the Medical Licensing Act, (2) Advanced Pain Centers (APC) owed her a duty under the Ambulatory Surgical Treatment Center Act, and (3) Alexian Brothers Medical Center (ABMC) owed her a duty under the Hospital Licensing Act.

Plaintiff alleges that, on May 25, 2007, ABMC, Dr. Lipov, and Dr. Joshi committed a battery by making an incision in plaintiff's lumbar area without her consent. Plaintiff alleges that APC and Sanders, a physician's assistant, negligently charted plaintiff's condition. Plaintiff also alleges that ABMC and Ycarro, a nurse, violated the Medical Patients Rights Act by questioning plaintiff about her employment.

Plaintiff alleges that, on June 8, 2007, ABMC and Dr. Gohil violated the Emergency Medical Treatment and Active Labor Act, Hospital Emergency Service Act, and Medical Patients Rights Act by improperly discharging her from the emergency room. Plaintiff also alleges that, on June 12, 2007, Ycarro committed a battery by administering drugs without plaintiff's consent. Plaintiff alleges that she suffered injuries including headaches, vomiting, slight incontinence, and inability to perform daily activities that required a three-day hospital admission from June 11-13, 2007. She also alleges that ABMC violated the Medical Patients Rights Act by failing to disclose the names of treating physicians and descriptions of her treatment during the hospital stay. Plaintiff alleges that ABMC, Dr. Bikshorn, and Dr. Andrews violated the Emergency Medical Treatment Act by improperly discharging her on June 13, 2007. Plaintiff alleges that defendants' failure to provide remedial medical treatment in June 2007 caused her to need intrusive injections in her lumbar spinal cord and her greater occipital lobe at the back of her skull on July 19, 2007.

Plaintiff alleges that, from October 25-26, 2007, Dr. Rosenblatt violated the Emergency Medical Treatment and Active Labor Act and the Hospital Emergency Service Act in that he failed to stabilize plaintiff in the emergency room to prevent the collapse of her right glute region. ABMC also allegedly violated the Hospital Licensing Act by failing to preserve plaintiff's medical records and willfully and wantonly allowing spoliation of evidence to conceal her injury and obstruct her medical malpractice claims.

Finally, plaintiff alleges that Dr. Lipov, Dr. Joshi, Sanders, and APC violated the Medical Licensing Act by abandoning plaintiff's medical treatment on November 15, 2007, and concealing pertinent medical information to hinder care provided by other physicians.

Defendants filed various motions to dismiss the amended complaint. On January 28, 2010, Dr. Bikshorn moved to dismiss under section 2—615 for failure to state a claim and under section 2—622 of the Code. On February 8, 2010, Dr. Lipov, Dr. Joshi, Sanders, and APC moved to dismiss under sections 2—615, 2—622, and 2—603(b) of the Code. On February 10, 2010, ABMC and Ycarro each filed a motion to dismiss under section 2—619 for plaintiff's failure to comply with the physician's report and affidavit requirements of section 2—622 and under section 2—615 for failing to plead separate causes of action in separate counts and for failing to state a claim. On February 16, 2010, Dr. Andrews moved to join ABMC's motion to dismiss. On February 25, 2010, plaintiff filed a combined motion for summary judgment (see 735 ILCS 5/2—1005 (West 2008)) and a memorandum in opposition to the motions to dismiss.

On March 17, 2010, the trial court determined that the entire amended complaint sounds in medical malpractice, thus requiring a physician's report and an affidavit under section 2—622. The court struck plaintiff's January 7, 2010, affidavit and attachments, finding that they do not comply

with section 2—622. The court granted plaintiff a final extension to April 30, 2010, to file a proper health professional's report and affidavit. The extension set a deadline three months after the amended complaint and nine months after the original complaint were filed. The court also concluded that plaintiff's motion for summary judgment was premature. On April 30, 2010, plaintiff filed a new affidavit, but she did not file a new health professional's report.

On May 5, 2010, the trial court found that plaintiff had failed to file an adequate health professional's report as required by section 2—622. The court dismissed plaintiff's amended complaint with prejudice and found her summary judgment motion to be moot because of the dismissal. Plaintiff filed a timely notice of appeal on May 17, 2010.

ANALYSIS

Plaintiff argues on appeal that the trial court erred in determining that (1) all of plaintiff's claims sound in medical malpractice and she must comply with section 2—622 of the Code; (2) plaintiff did not substantially comply with section 2—622; (3) all of defendants' motions to dismiss could be granted in a combined ruling; (4) the amended complaint should be dismissed with prejudice; and (5) plaintiff's motion for summary judgment was premature.

On appeal, plaintiff asks us to reverse the trial court's dismissal of the amended complaint, entered pursuant to section 2—619 of the Code. 735 ILCS 5/2—619 (West 2008). "A motion to dismiss, pursuant to section 2—619 of the Code, admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006); *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). For a section 2—619 dismissal, our standard of review is *de novo*. *Solaia Technology*, 221 Ill. 2d at 579.

When reviewing a dismissal under section 2—619, a court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that can reasonably be drawn in the plaintiff's favor. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008). In ruling on a motion to dismiss under section 2—619, the trial court may consider pleadings, depositions, and affidavits. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004). Even if the trial court dismissed on an improper ground, a reviewing court may affirm the dismissal, if the record supports a proper ground for dismissal. *Raintree*, 209 Ill. 2d at 261 (when reviewing a section 2—619 dismissal, we can affirm "on any basis present in the record").

A. The Health Professional's Report and Affidavit Requirement

Implying that defendants have improperly invoked section 2—622 as a substantive defense to bar a valid claim, plaintiff argues that she has set forth "several claims" that do not require compliance with section 2—622. Specifically, plaintiff construes her amended complaint as alleging that defendants failed to obtain her informed consent and that defendants performed an "unconsented procedure" that amounts to a medical battery.

Without argument, plaintiff concludes that her original complaint and amended complaint "did not consist solely of claims that would fall into the gambit of the section 2—622 affidavit, and [she] was making attempts to comply with the requirement of filing, but was unable to afford the service of obtaining a section 2—622 physicians report and a firewall of physicians that were willing." First, it is well established that a claim that a health professional acted without the informed consent of the patient is a type of medical malpractice claim. A plaintiff must prove four elements in a malpractice action based upon the doctrine of informed consent: " '(1) the physician had a duty to disclose material risks; (2) he failed to disclose or inadequately disclosed those risks;

(3) as a direct and proximate result of the failure to disclose, the patient consented to treatment she otherwise would not have consented to; and (4) plaintiff was injured by the proposed treatment.' " *Davis v. Kraff*, 405 Ill. App. 3d 20, 28-29 (2010) (quoting *Coryell v. Smith*, 274 Ill. App. 3d 543, 546 (1995)).

Second, a corollary to the consent requirement is that a patient has the right to refuse medical treatment, even if the patient's life is in jeopardy (*In re Estate of Longeway*, 133 Ill. 2d 33, 45 (1989)) and that a common-law battery is the unauthorized touching of the person of another (*In re Estate of Allen*, 365 Ill. App. 3d 378, 385 (2006)). At the crossroads of these well-established medical malpractice principles exists the tort of medical battery, which is among the causes of action pursued by plaintiff in this case. In a medical-battery case, an injured party can recover by establishing either that there was no consent to the medical treatment performed, that the treatment was against the injured party's will, or that the treatment substantially varied from the consent granted. *Estate of Allen*, 365 Ill. App. 3d at 385. Under such circumstances, a battery has occurred because the person administering the medical care intentionally touched the person of another without authorization. *Estate of Allen*, 365 Ill. App. 3d at 385.

Thus, this court has held that a lack of consent to medical procedures gives rise to two causes of action: one based on negligence and the other based on battery. *Gragg v. Calandra*, 297 Ill. App. 3d 639, 645 (1998); see also *Doe v. Noe*, 293 Ill. App. 3d 1099, 1113 (1997) ("The law distinguishes between a total lack of consent for the contested act (battery) and the lack of informed consent (negligence)"). Where an unauthorized surgeon operates, he commits a technical trespass to the patient resulting in the intentional tort of battery. It is not the hostile intent of the defendant but

rather the absence of consent by the plaintiff that is at the core of an action for battery. *Gragg*, 297 Ill. App. 3d at 645.

An examination of the amended complaint reveals that plaintiff has alleged that certain defendants acted with a total lack of consent, which is different from acting without informed consent. Paragraphs 4, 7, and 14 of the amended complaint allege that, on May 25, 2007, ABMC, Dr. Lipov, and Dr. Joshi committed a battery by making an incision in plaintiff's lumbar area that was "unconsented contact with her person." Paragraphs 20 and 21 of the amended complaint allege that, on June 12, 2007, Ycarro committed a battery by administering drugs with "no consent" from plaintiff. Paragraph 60 alleges that Dr. Lipov, Dr. Joshi, Ycarro, APC, and ABMC committed acts that are "inclusive of battery." These claims are based on battery rather than negligence, and the nature of a plaintiff's claim determines whether section 2—622 is implicated. Section 2—622 does not apply to medical battery claims, and therefore, that statute is not a proper basis for dismissing those claims in this case. See *Cohen v. Smith*, 269 Ill. App. 3d 1087, 1093 (1995).

That said, defendants moved to dismiss the medical battery claims under section 2—615 of the Code, which provides an alternative basis for dismissal. A section 2—615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). A cause of action should not be dismissed pursuant to a section 2—615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004). In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered. *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995). We accept as true all

well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall*, 222 Ill. 2d at 429. However, a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). We review *de novo* an order granting a section 2—615 motion to dismiss. *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003). In this case, the medical battery claims contain only conclusions of law and factual conclusions that are unsupported by specific facts, and therefore, they could be dismissed under section 2—615 for failing to state a claim. The battery claims are practically devoid of any factual detail.

B. Plaintiff's Noncompliance with Section 2—622

Shifting our attention to the remainder of the amended complaint, which sounds in medical malpractice, we reject plaintiff's argument that the Internal Medicine Consultive Evaluation prepared by Dr. Weiss substantially complies with section 2—622. "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). Section 2—622 should not be applied mechanically to deprive a plaintiff of his substantive rights. *Schroeder v. Northwest Community Hospital*, 371 Ill. App. 3d 584, 595 (2006).

On January 7, 2009, plaintiff submitted the Internal Medicine Consultive Evaluation in an attempt to satisfy section 2—622. However, Dr. Weiss prepared the report to determine whether plaintiff is disabled and eligible for benefits from the SSA. The evaluation discusses plaintiff's physical condition and medical history as of February 28, 2009, but it does not mention or assess any treatment provided by defendants or assert that there is a reasonable and meritorious cause for filing

the action. To comply with section 2—622, a report must clearly identify "the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists ***." See 735 ILCS 5/2—622(a)(1) (West 2008); *Moyer*, 327 Ill. App. 3d at 902. We conclude that Dr. Weiss's report does not comply with section 2—622.

Plaintiff also argues that the affidavit she filed on April 30, 2010, complies with section 2—622(a)(3) and excuses her failure to file an adequate health professional's report. Section 2—622(a)(3) allows a medical malpractice plaintiff to file an affidavit stating "[t]hat a request has been made by the plaintiff or his attorney for examination and copying of records pursuant to Part 20 of Article VIII of this Code and the party required to comply under those Sections has failed to produce such records within 60 days of the receipt of the request." 735 ILCS 5/2—622(a)(3) (West 2008). If an affidavit is executed pursuant to section 2—622(a)(3), the affidavit and written report shall be filed within 90 days following receipt of the requested records. 735 ILCS 5/2—622(a)(3) (West 2008).

Plaintiff's affidavit states that, pursuant to her request, plaintiff received various documents related to the case on September 21, 2009. The affidavit states that the documents are "inconsistent with services received" and "altered, with documents added and removed" from a prior disclosure; but the affidavit does not state that plaintiff was awaiting delivery of any other documents that had delayed a health professional's consultation. The affidavit is substantively inadequate as well as untimely. See, *e.g.*, *Hobbs v. Lorenz*, 337 Ill. App. 3d 566, 569 (2003) (a section 2—622(a)(3) affidavit must state that the party to whom the request was made failed to comply within 60 days, whereupon the plaintiff is granted 90 days from the time the records are received to file the required report).

C. Dismissal With Prejudice

Plaintiff next argues that any noncompliance with section 2—622 did not warrant dismissal of the amended complaint under section 2—619 of the Code. To determine whether the trial court erred in dismissing the amended complaint with prejudice, we must consider the law in effect at the time it was filed. At the time plaintiff filed her amended complaint, sections 2—622(a)(1) and (a)(2) of the Code provided that the affidavit and the health professional's report must be filed with the medical malpractice complaint or within 90 days thereafter if the complaint is filed just before the expiration of the statute of limitations. 735 ILCS 5/2—622(a)(1), (a)(2) (West 2008). When plaintiff filed her amended complaint, section 2—622(a)(2) of the Code also provided, in relevant part, that "[n]o additional 90-day extensions pursuant to this paragraph shall be granted, except where there has been a withdrawal of the plaintiff's counsel." 735 ILCS 5/2—622(a)(2) (West 2008). Section 2—622(g) of the Code provided 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." (Emphasis added.) 735 ILCS 5/2—622(g) (West 2008). These provisions of sections 2—622(a)(2) and (g) were added by Public Act 94—677 (Pub. Act 94—677, §330, eff. August 25, 2005).

Given the specific language of sections 2—622(a)(2) and (g) in effect as of August 25, 2005, the appellate court held that the statute expressly prohibited additional extensions once the original 90-day extension to file the applicable affidavit and health professional's report had passed. *Knight v. Van Matre Rehabilitation Center, LLC*, 404 Ill. App. 3d 214, 216 (2010) (citing *Jackson v. Victory Memorial Hospital*, 387 Ill. App. 3d 342, 349 (2008)). However, the law has been changed.

On February 4, 2010, our supreme court, in addressing the constitutionality of the statute limiting the recovery of noneconomic damages in a medical malpractice action, held Public Act

94—677 " 'invalid and void in its entirety.' " *Knight*, 404 Ill. App. 3d at 216 (quoting *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 250 (2010)). As a result, the parts of section 2—622 that Public Act 94—677 had amended reverted to the versions in effect before August 25, 2005. *Knight*, 404 Ill. App. 3d at 216.

Before August 25, 2005, section 2—622(a)(2) provided that "[i]f an affidavit is executed pursuant to this paragraph, the certificate and written report required by paragraph 1 shall be filed within 90 days after the filing of the complaint." 735 ILCS 5/2—622(a)(2) (West 2004). However, section 2—622(a)(2) did not prohibit a trial court from granting additional 90-day extensions. Section 2—622(g) provided that "[t]he failure to file a certificate required by this Section shall be grounds for dismissal under Section 2—619." 735 ILCS 5/2—622(g) (West 2004); *Knight*, 404 Ill. App. 3d at 216-17.

In interpreting section 2—622 as it existed before August 25, 2005, courts found that noncompliance with section 2—622 did not require a trial court to dismiss the complaint with prejudice. *Knight*, 404 Ill. App. 3d at 217 (citing *Wasielewski v. Gilligan*, 189 Ill. App. 3d 945, 950 (1989)). For instance, if the plaintiff failed to file the affidavit and report within the 90-day statutory period, the trial court could grant the plaintiff another extension of time to file them if the plaintiff could establish good cause for not filing them within 90 days. *Knight*, 404 Ill. App. 3d at 217 (citing *Tucker v. St. James Hospital*, 279 Ill. App. 3d 696, 704 (1996)). The decision to grant or deny another extension was deemed to be within the trial court's sound discretion and was not disturbed absent a manifest abuse of that discretion. *Knight*, 404 Ill. App. 3d at 217 (citing *McCastle v. Sheinkop*, 121 Ill. 2d 188, 194 (1987)).

We conclude that the trial court did not abuse its discretion in dismissing the medical malpractice claims with prejudice. The three extensions from July 20, 2009 to April 30, 2010, gave plaintiff ample time to file a proper health professional's report and affidavit. The court set the deadline three months after the amended complaint was filed and nine months after the original complaint was filed. When granting the final extension, the court informed plaintiff that she would receive no additional time, which eliminated any risk of surprise. On April 30, 2010, plaintiff filed another affidavit but she did not file a new health professional's report. Under these circumstances, we conclude that the trial court did not abuse its discretion in dismissing the malpractice claims with prejudice.

While the trial court repeatedly informed plaintiff of the need to comply with section 2—622 to preserve her malpractice claims, the court did not consider whether the medical battery claims were subject to dismissal under section 2—615. Plaintiff lacked notice that the battery claims needed additional factual detail to avoid dismissal for failing to state a claim, and plaintiff's noncompliance with section 2—622 does not provide a basis for dismissing them with prejudice. Under these circumstances, dismissing the battery claims with prejudice was an abuse of discretion. We conclude that, on remand, the trial court should afford plaintiff the opportunity to replead her medical battery claims.

D. Defendants' Motions to Dismiss

Plaintiff argues that the trial court erred in considering defendants' various motions to dismiss all at once. Plaintiff's noncompliance with section 2—622 was grounds for her medical malpractice claims to be dismissed under section 2—619. See 735 ILCS 5/2—622(g) (West 2004); *Knight*, 404 Ill. App. 3d at 216-17. Several defendants moved to dismiss under section 2—615 for

failure to state a claim, and plaintiff never objected in the trial court and forfeited any argument that the court should not dismiss the amended complaint in its entirety. Furthermore, those defendants refer to plaintiff's noncompliance with section 2—622, and ABMC and Dr. Andrews specifically cited section 2—619 as the basis for dismissing the amended complaint. Moreover, each defendant cited 2—615 as an alternative basis for dismissal. Even if the trial court dismissed parts of the amended complaint on an improper ground, we may affirm the decision because the record supports dismissing the amended complaint in its entirety under sections 2—619, 2—622(g), and 2—615. See *Raintree*, 209 Ill. 2d at 261 (when reviewing a section 2—619 dismissal, we can affirm "on any basis present in the record").

E. Plaintiff's Summary Judgment Motion

Finally, we address plaintiff's argument that the trial court erroneously determined that her motion for summary judgment was premature. A motion for summary judgment assumes that a cause of action has been stated, and the trial court should entertain a motion for summary judgment only when a legally sufficient cause of action has been stated. *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 315 (2007); *Janes v. First Federal Savings & Loan Ass'n of Berwyn*, 57 Ill. 2d 398, 406 (1974). In this case, several defendants moved to dismiss the amended complaint on the ground that plaintiff had failed to state a cause of action. See 735 ILCS 5/2—615 (West 2008). Because defendants were challenging the adequacy of the amended complaint, the trial court correctly declined to hear plaintiff's motion for summary judgment until the motions to dismiss were ruled upon. The court correctly found plaintiff's summary judgment motion to be moot because the medical malpractice claims were properly dismissed with prejudice for plaintiff's noncompliance

with section 2—622 and because the medical battery claims could be dismissed without prejudice under section 2—615 for failing to state a claim.

For the preceding reasons, the judgment of the circuit court of Du Page County is affirmed in part and reversed in part, and the cause is remanded for further proceedings.

Affirmed in part, reversed in part, and remanded.