2011 IL App (2d) 110133-U
No. 2-11-0133
Order filed November 9, 2011



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| PHILIP J. PATTI,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>GAIL J. DANIELS,<br><br>Defendant<br><br>(Heartland Blood Centers, Defendant-Appellee). | ) | Appeal from the Circuit Court of Du Page County.<br><br>No. 10-L-125<br><br>Honorable Kenneth L. Popejoy, Judge, Presiding. |

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

*Held*: The trial court properly dismissed plaintiff's medical-malpractice complaint, as he was a third-party nonpatient who had no special relationship with the patient and no direct relationship with the defendant medical provider.

¶ 1 Plaintiff, Philip J. Patti, brought suit against defendants, Gail J. Daniels and Heartland Blood Centers (Heartland), for damages resulting from a car accident with Daniels. The trial court dismissed plaintiff's complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), finding that plaintiff failed to adequately allege

that Heartland owed a duty to plaintiff. Plaintiff now appeals. Daniels, having settled with plaintiff, was dismissed from the suit and is not a party to this appeal. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff alleged the following in his complaint. On January 18, 2010, Daniels donated blood at a Heartland location in Naperville. While at Heartland, Daniels informed Heartland that she had experienced problems in the past when she donated blood and her hemoglobin level was at or near 12.5. After donating blood but before leaving Heartland, Daniels informed Heartland that her current hemoglobin level was similar to the level at which she had previously experienced problems. Daniels then left Heartland. While driving her vehicle, Daniels, as a result of giving blood, became lightheaded, crossed into plaintiff's lane, and caused the accident in which plaintiff suffered injury.

¶ 4 Plaintiff alleged that Heartland was negligent in one or more of the following respects: (1) improperly releasing Daniels after she had given blood, (2) improperly releasing Daniels with a low hemoglobin level, (3) failing to properly advise Daniels against driving a motor vehicle within a short period of time after giving blood, (4) failing to properly advise Daniels against driving with a low hemoglobin level, (5) allowing Daniels to drive with a low hemoglobin level, and (6) otherwise being negligent when releasing Daniels from the center after she had given blood.

¶ 5 Heartland filed a motion to dismiss plaintiff's complaint pursuant to sections 2-615, 2-619, and 2-622 of the Code (735 ILCS 5/2-615, 2-619, 2-622 (West 2010)). In the motion, Heartland argued that, under section 2-615 of the Code, plaintiff failed to adequately allege that Heartland owed a duty to plaintiff. Over Heartland's objection, the trial court granted plaintiff leave to conduct limited discovery on the issues presented in the motion to dismiss. Accordingly, plaintiff took the depositions of Daniels and Dr. Dominique Bazile, medical director of Heartland.

¶ 6 During her deposition, Daniels testified as follows. She donated blood four times per year. In 2008, Daniels was unable to complete a donation because she experienced problems during the donation process, including discomfort and overheating. At that appointment, her hemoglobin level was 12.5. Before January 18, 2010, she had never experienced any dizziness as a result of giving blood. On January 18, 2010, she had an appointment to donate blood at Heartland. A hemoglobin test conducted before Daniels donated indicated that her hemoglobin level was 12.6. She informed the employee testing the blood that she experienced problems once when her hemoglobin level was 12.5. The employee asked Daniels whether she wanted to continue, and Daniels stated that she wanted to try. Daniels did not experience any problems while donating, and she ate a snack and sat for a period of time before leaving. Three Heartland employees asked Daniels if she was feeling alright before she left, and she stated that she felt good. Daniels then left. Although she felt fine during the beginning portion of her trip home, Daniels began to feel lightheaded when she turned onto Route 53. Seconds after she began feeling lightheaded, Daniels passed out. She did not regain consciousness until after the accident.

¶ 7 Bazile testified as follows during her deposition. To donate blood, the donor's hemoglobin level must be at least 12.5. On January 18, 2010, Daniels had a hemoglobin level of 12.6. On occasion, donors become dizzy and pass out after giving blood.

¶ 8 At the hearing on its motion, Heartland argued that plaintiff could not state a claim of negligence against Heartland because the supreme court held in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 531 (1987), that a third-party nonpatient may not maintain a medical malpractice action against a medical provider absent a special relationship between the plaintiff and the patient or a direct relationship between the plaintiff and the medical provider. The trial court agreed and granted Heartland's motion based on section 2-615 of the Code. The trial

court explicitly stated that it was not ruling on Heartland's motion based on sections 2-619 and 2-622 of the Code. Plaintiff brought this timely appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, plaintiff argues that the trial court erred in granting Heartland's motion to dismiss. "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 160-61 (2009). We accept as true the well-pleaded facts and reasonable inferences in the complaint and construe the allegations in the light most favorable to the plaintiff. *Tedrick*, 235 Ill. 2d at 161. "Given these standards, 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." *Tedrick*, 235 Ill. 2d at 161. Our standard of review is *de novo*. *Tedrick*, 235 Ill. 2d at 161.

¶ 11 Initially, Heartland argues that we should consider only those facts alleged in plaintiff's complaint and that consideration of any of the evidence obtained during the limited discovery allowed by the trial court would be improper. Judge Bongiorno was the trial judge who permitted plaintiff to conduct limited discovery on the issues presented in Heartland's motion to dismiss. Judge Popejoy, the trial judge who decided the motion to dismiss, took into consideration the evidence obtained during discovery, because he felt obliged to do so given that Judge Bonaguro had granted plaintiff leave to conduct the discovery. Because a section 2-615 motion to dismiss attacks the legal sufficiency of a complaint, our analysis is typically limited to those facts and allegations contained within the complaint and its attachments. *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 133 (2007). We do not need to decide whether the trial court erred in considering the evidence obtained during discovery, because even if it is taken into consideration, the complaint was properly dismissed.

¶ 12 According to plaintiff, the trial court erred in concluding that, based on *Kirk*, Heartland did not owe a duty to plaintiff. We disagree. "In deciding whether a duty exists in a particular case, a court will consider the foreseeability of the plaintiff's injury, the likelihood of the occurrence, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant." *Doe v. McKay*, 183 Ill. 2d 272, 278 (1998).

¶ 13 In *Kirk*, the plaintiff suffered damages while riding as a passenger in a car driven by the patient. *Kirk*, 117 Ill. 2d at 514. The patient had been a psychiatric patient at Michael Reese Hospital and Medical Center and was treated by Dr. Tracer and Dr. Fine. *Kirk*, 117 Ill. 2d at 514. As part of his treatment, the patient was prescribed certain medications. *Kirk*, 117 Ill. 2d at 514. After his discharge from Michael Reese, the patient consumed an alcoholic drink. *Kirk*, 117 Ill. 2d at 514. Later that day, while the patient was driving the vehicle in which the plaintiff was a passenger, the vehicle left the road and collided with a tree. *Kirk*, 117 Ill. 2d at 514. The plaintiff brought suit against the hospital and doctors, alleging that they were negligent in failing to warn the patient that the prescribed medications would diminish the patient's mental and physical abilities. *Kirk*, 117 Ill. 2d at 514-15. The trial court dismissed the complaint on the defendants' motion. *Kirk*, 117 Ill. 2d at 513-14.

¶ 14 In reviewing the plaintiff's claim that the hospital and doctors owed him a duty, the supreme court held that, absent a special relationship between the plaintiff and the patient or a direct relationship between the plaintiff and the medical provider, a third-party nonpatient may not maintain a medical malpractice action against the medical provider. *Kirk*, 117 Ill. 2d at 531. The supreme court concluded not only that the plaintiff's injury was not reasonably foreseeable, but also that the burden of liability on the hospital would be too great and that extending medical providers' duty to the general public would create an "indeterminate class of potential plaintiffs." *Kirk*, 117

Ill. 2d at 526-27, 532. The court also noted that the legislature had enacted a comprehensive medical malpractice law to reduce the burden of medical malpractice litigation on health care professionals and that expanding the class to whom medical providers owed a duty beyond direct patients would be contrary to the legislature's goal. *Kirk*, 117 Ill. 2d at 527, 532. Accordingly, the court concluded that medical providers do not owe a duty of due care to third-party nonpatients absent a special relationship between the plaintiff and the patient or a direct relationship between the plaintiff and the medical provider. *Kirk*, 117 Ill. 2d at 531. This rule has been applied in numerous cases following *Kirk*. See *Doe*, 183 Ill. 2d at 284 (physician and her practice did not owe a duty to the patient's father for negligent treatment of the patient); *Charleston v. Larson*, 297 Ill. App. 3d 540, 553-54 (1998) (doctor did not owe a duty to warn nurse of the patient's dangerous tendencies); *Heigert v. Riedel*, 206 Ill. App. 3d 556, 563 (1990) (doctors did not owe nurse a duty for the negligent failure to diagnose the patient with tuberculosis).

¶ 15 Although plaintiff does not contend that he had a special relationship with Daniels or that he had a direct relationship with Heartland, he nevertheless argues that the rule announced in *Kirk* does not bar his action against Heartland. According to plaintiff, in reaching its conclusion in *Kirk*, the supreme court analyzed the traditional factors considered in determining whether a duty exists and so should we. In essence, plaintiff invites us to reassess the question already answered by the supreme court in *Kirk*. We must decline plaintiff's invitation. In *Kirk*, the supreme court created a bright-line rule that a third-party nonpatient may not maintain a medical malpractice action against a medical provider absent a special relationship between the plaintiff and the patient or a direct relationship between the plaintiff and the medical provider. *Kirk*, 117 Ill. 2d at 531. The court did not limit the application of this rule, and the rule has been applied in a variety of factual contexts. See *Doe*, 183 Ill. 2d at 284; *Charleston*, 297 Ill. App. 3d at 553-54; *Heigert*, 206 Ill. App. 3d at 563.

According to *Kirk*, the bar on third-party nonpatient medical malpractice actions applies unless there exists a special relationship between the plaintiff and the patient or there is a direct relationship between the plaintiff and the medical provider. *Kirk*, 117 Ill. 2d at 531. Plaintiff has not alleged that either exception applies. Accordingly, plaintiff's action is precluded by *Kirk*.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 18 Affirmed.