

NOTICE
Decision filed 07/30/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110363-U
NO. 5-11-0363
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

ANTHONY GAY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Alexander County.
)	
v.)	No. 11-MR-28
)	
MICHAEL AHRENS, RHONDA MEDLIN, and)	
WANDA EVANS,)	Honorable
)	Charles C. Cavaness,
Defendants-Appellees.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiff failed to attach an affidavit to his complaint in compliance with section 2-622 of the Code of Civil Procedure (735 ILCS 5/2-622 (West 2010)), the judgment of the circuit court is affirmed.

¶ 2 The plaintiff, Anthony Gay, appeals *pro se* the dismissal of his medical malpractice complaint against the defendants, Michael Ahrens, Rhonda Medlin, and Wanda Evans. He asks this court to reverse and remand his cause for further proceedings. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 The plaintiff is currently incarcerated at Tamms Correctional Center (Tamms). The plaintiff's complaint consists of eight counts: three for negligence, three for intentional infliction of emotional distress, and two for battery. The defendants were all employed by Wexford Health Services, Inc. (Wexford), at the time of the plaintiff's alleged injury.

Wexford provides healthcare services to inmates incarcerated at Tamms. Ahrens was a psychologist, Medlin was a registered nurse, and Evans was a professional social worker. The defendants interacted with the plaintiff only when he needed or requested medical attention. The plaintiff found himself under the care of the defendants as a result of his frequent self-mutilation, among other things.

¶ 5

ANALYSIS

¶ 6 We review *de novo* a dismissal pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2010)). 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).

¶ 7 The defendants argue that the plaintiff's claim is a medical malpractice cause of action. We agree. According to section 2-1704 of the Code, a medical malpractice claim is defined as "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." 735 ILCS 5/2-1704 (West 2010). All three of the defendants interacted with the plaintiff as a result of their employment with Wexford. The complaint alleged torts which related solely to circumstances that occurred as a result of the defendants' medical treatment of him. Therefore, his complaint is a medical malpractice complaint.

¶ 8 Having determined that the plaintiff's cause of action is a medical malpractice action, we must now determine whether the plaintiff complied with the requirements for filing a medical malpractice complaint. When filing a medical malpractice complaint, a plaintiff must attach an affidavit indicating that he has consulted and reviewed the facts of his case

with a knowledgeable healthcare professional who has determined, in a written report, that the plaintiff's claim is reasonable and meritorious; that the plaintiff was unable to obtain the consultation with a healthcare professional because of the statute of limitations, in which case he must have the consultation within 90 days after filing the complaint; or that the plaintiff has issued a request for the documents from the healthcare professional but the healthcare professional has not complied within 60 days of the request. 735 ILCS 5/2-622(a)(1)-(3) (West 2010). If a plaintiff fails to attach an affidavit in accordance with section 2-622(a) of the Code, section 2-622(g) states that such a failure is grounds for dismissal pursuant to section 2-619 of the Code. 735 ILCS 5/2-622(g) (West 2010).

¶ 9 Here, the plaintiff did not attach an affidavit in accordance with section 2-622 of the Code. He did not provide a medical report, nor any information that the report was forthcoming, nor any information to indicate that he had requested a medical report from a consultation with a healthcare provider. Therefore, dismissal pursuant to section 2-619 of the Code was proper.

¶ 10 CONCLUSION

¶ 11 For the foregoing reasons, the judgment of the circuit court of Alexander County is affirmed.

¶ 12 Affirmed.