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SECOND DIVISION
February 24, 2015

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).

Honorable
John Ehrlich,
Judge Presiding.

¶ 1 HELD: Section 2-619 dismissal affirmed where plaintiff in medical malpractice lawsuit failed to file the affidavit required pursuant to section 2-622 of the Code of Civil Procedure more than a year after she filed suit; the circuit court did not abuse its

discretion in dismissing the complaint with prejudice after plaintiff failed to comply with section 2-622 despite being given additional time to satisfy the statutory requirements.

¶ 2 Plaintiff, Carolyn Winfield, for the Estate of Kimberly Winfield, appeals from an order of the circuit court of Cook County dismissing her medical malpractice complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)). On appeal, she contends, essentially, that the court erred in dismissing her complaint for failure to comply with the affidavit requirement of section 2-622 of the Code (735 ILCS 5/2-622 (West 2012)). For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On March 13, 2013, plaintiff filed a *pro se* complaint "on behalf of her daughter" Kimberly Winfield. She alleged that defendants, University of Chicago Medical Center (the Medical Center) and Matthew J. Sorrintino M.D., were negligent in treating Kimberly, who had been a "heart patient" at the Medical Center. Kimberly eventually died after she was taken off life support by defendants. The complaint alleged that defendants were negligent where, *inter alia*, they failed to discontinue the use of "blood pressure raising drugs," gave "false or misleading information" as to Kimberly's treatment, disqualified Kimberly from receiving a heart transplant, prescribed unnecessary morphine, and made the "unilateral decision" to discontinue Kimberly's treatment. Plaintiff purported to bring the instant negligence action not just on behalf of Kimberly, but on behalf of her sons, Eric and Matthew Winfield, as well. She ultimately sought damages in the amount of \$3 million.

¶ 5 On December 11, 2013, the Medical Center filed its appearance in this matter. In its motion to dismiss filed about one week later, the Medical Center noted that it had not been

served with a copy of the complaint until December 4, 2013. The Medical Center stated that "[u]pon information and belief, Dr. Sorrentino has yet to be served."¹

¶ 6 The Medical Center moved to dismiss plaintiff's complaint pursuant to section 2-619 of the Code. It asserted that plaintiff: (1) failed to file her case within the applicable statute of limitations; (2) was not authorized to file a suit on behalf of her children; and (3) failed to attach an affidavit in accordance with section 2-622 of the Code. The Medical Center attached to its motion, *inter alia*, two complaints filed by plaintiff in an earlier case against defendants. Both of the complaints in plaintiff's prior lawsuit arose out of the same factual circumstances that were alleged in the instant complaint. In the prior lawsuit, the original complaint was stricken by the court with leave to replead. After plaintiff amended that complaint, the court in the earlier case dismissed the complaint for want of prosecution and denied plaintiff's motion to reinstate the case, noting that plaintiff "does not have standing to proceed with a lawsuit on behalf of Kimberly Winfield deceased."

¶ 7 Plaintiff filed a response in opposition to the Medical Center's motion to dismiss. As pertinent here, she responded to the lack of a section 2-622 affidavit by stating, "I have tried unsuccessfully to obtain this requirement in the past but, however as a result of my research I am now seeking a Medical Review Panel to look over my medical records in order to comply with this requirement." A few weeks later, before a ruling was entered on the Medical Center's motion, plaintiff filed a motion requesting more time to comply with section 2-622. On April 17, 2014, the circuit court entered an order continuing the Medical Center's motion to dismiss to May 14. The court stated that, on that date, "Plaintiff is to present the court with a 2-622 report

¹ In its brief, the Medical Center now states that "[u]pon information and belief, Dr. Sorrentino *was never served*." (Emphasis added.)

or a letter from a physician stating that a report is in progress, or else the case will be dismissed and Defendant's motion granted."

¶ 8 On May 14, 2014 plaintiff submitted, for the court's review, a letter from American Medical Experts (AME). The letter stated that plaintiff had sent AME medical records for a board-certified cardiologist to review and that a report was expected to be completed in two to three weeks. The court ordered plaintiff to tender the medical report on June 11, and continued the Medical Center's motion to that date. The record does not show that plaintiff ever tendered AME's report, or any medical report for that matter, to the court or the Medical Center. On June 11, the court ruled that plaintiff had failed to comply with section 2-622 and dismissed plaintiff's complaint with prejudice.

¶ 9 Plaintiff timely appealed from the circuit court's June 11, 2014 order. Accordingly, we have jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. Jan. 1, 2015).

¶ 10

ANALYSIS

¶ 11 Initially, we find that plaintiff has failed to comply with the supreme court rules governing appellate court briefs. In her brief, she has not presented her statement of facts "fairly without argument or comment." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Also, she has failed to provide this court with pertinent authority in support of many of her arguments. Ill. S. Ct. R. 341(h)(7). We note that plaintiff's *pro se* status does not relieve her of the burden of complying with the supreme court rules. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). That said, " 'our jurisdiction to entertain the appeal of a *pro se* plaintiff is unaffected by the insufficiency of [her] brief,' so long as we understand the issue plaintiff intends

to raise and especially where the court has the benefit of a cogent brief of the other party," as we have here. *Id.* (quoting *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344, 354 (1994)).

¶ 12

A. Lack of Section 2-622 Affidavit

¶ 13 Turning to the merits, plaintiff first contends that the court erred in dismissing her complaint for failure to comply with section 2-622 of the Code. A section 2-619 dismissal for failure to comply with section 2-622 is reviewed *de novo*. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 100. Pursuant to section 2-622, plaintiff was required to attach to her complaint the following two documents: (1) an affidavit, either from the plaintiff's attorney or from the plaintiff if proceeding, *pro se*, certifying that the affiant consulted with a qualified health care professional in whose opinion there is a reasonable and meritorious cause for the filing of the action, and (2) a copy of that health professional's written report setting forth the reasons for his determination. 735 ILCS 5/2-622(a) (West 2012). The specific requirements for the plaintiff's section 2-622 affidavit are set forth in subsection (a)(1), as follows:

"That the affiant has consulted and reviewed the facts of the case with a health professional who the affiant reasonably believes: (i) is knowledgeable in the relevant issues involved in the particular action; (ii) practices or has practiced within the last 6 years ***; and (iii) is qualified by experience or demonstrated competence in the subject of the case; that the reviewing health professional has determined in a written report, after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of such action; and that the affiant has concluded on the basis of the reviewing health professional's review and consultation that there is a

reasonable and meritorious cause for filing of such action. 735 ILCS 5/2-622(a)(1) (West 2012).

"The failure to file a certificate [or affidavit] required by this Section shall be grounds for dismissal under Section 2-619." 735 ILCS 5/2-622(g) (West 2012).

¶ 14 In this case, plaintiff filed a medical malpractice complaint against defendants, alleging that they were negligent in treating her daughter Kimberly. Plaintiff's claim falls squarely within the type of action contemplated by section 2-622, namely, an "action *** in tort *** in which plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice." 735 ILCS 5/2-622 (West 2012). Nonetheless, plaintiff failed to attach the requisite section 2-622 affidavit to her complaint, despite the fact that she was given several extensions of time in which to cure the deficiency. When the Medical Center objected to the lack of the affidavit, plaintiff sought additional time to comply with section 2-622. Between April 17, 2014 and June 11, 2014, the court continued the Medical Center's motion for almost two months so as to allow plaintiff the opportunity to file her affidavit after obtaining a health professional's written report. On June 11, 2014, the court granted the motion to dismiss after plaintiff indicated she still did not have a health professional's written report and her affidavit. By that time, it had been over a year since plaintiff had filed her complaint. Under 2-622(g), "plaintiff's failure to provide an affidavit is a proper ground for dismissal under section 2-619 of the Code." 735 ILCS 5/2-622(g) (West 2012). We find no error in the court's dismissal of the complaint.

¶ 15 Next, plaintiff argues that it was too harsh for the court to dismiss her complaint with prejudice. We acknowledge that where a plaintiff fails to file the requisite section 2-622 affidavit, the court is not *required* to enter a dismissal with prejudice. *McCastle v. Sheinkop*, 121 Ill. 2d 188, 193 (1987). Instead, the court must exercise its discretion in determining whether the

pleadings have complied with section 2-622. *Id.* at 192; see *Wasielewski v. Gilligan*, 189 Ill. App. 3d 945, 951 (1989) (dismissal with prejudice based on non-compliance with section 2-622 should not be reversed unless the court "erroneously believed that [section 2-622 of] the Code mandated a dismissal with prejudice"). Thus, the court's decision to dismiss the case with prejudice will not be disturbed unless the court abused its discretion. *Holzrichter*, 2013 IL App (1st) at ¶ 100; *Mueller v. North Suburban Clinic, Ltd.*, 299 Ill. App. 3d 568, 572 (1998).

¶ 16 The record shows that the circuit court granted plaintiff numerous extensions of time in which to satisfy the affidavit requirement under section 2-622. On April 17, 2014, the court specifically continued the pending motion to dismiss for almost five weeks—to May 14, in order to allow plaintiff sufficient time to tender the section 2-622 documents. In the written order entered on April 17, the court stated, unequivocally, that "Plaintiff is to present the court with a 2-622 report or a letter from a physician stating that a report is in progress, or else the case will be dismissed and Defendant's motion granted." On May 14, the court again granted plaintiff an additional four weeks to meet the requirements—to June 11, after plaintiff submitted a letter from AME stating that a health care professional report would be completed in two to three weeks. Not only did plaintiff fail to file a section 2-622 affidavit, but she also failed to secure a health professional's written report in accordance with section 2-622(a)(1), despite the extensions given by the court. After filing two actions and three complaints against defendants, she was still unable to come into compliance with the statute more than a year after she initially brought her medical malpractice claim. "While the affidavit and report requirements imposed on plaintiffs under section 2-622 of the Code do not rise to the level of substantive elements of a claim for medical malpractice, neither should they be viewed as empty formalism." *Mueller*, 299 Ill. App. 3d at 573. Based on the record before us, we find that the court did not abuse its discretion in

dismissing the complaint with prejudice.

¶ 17 Finally, we address plaintiff's newly-raised argument that section 2-622 does not apply because she was alleging a medical battery. We see nothing in the record on appeal to indicate that this argument was raised in pleadings or proceedings in the circuit court. "Issues not raised before the circuit court cannot be argued for the first time on appeal." *1010 Lake Shore Ass'n v. Deutsche Bank Nat. Trust Co.*, 2014 IL App (1st) 130962, ¶ 4. Therefore, we do not consider the merits of this argument because it has been forfeited.

¶ 18 For the reasons stated, we affirm the order of the circuit court of Cook County dismissing plaintiff's complaint with prejudice.

¶ 19 Affirmed.