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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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WALLACE WING, IV as Special	)	Appeal from the Circuit Court
Adminstrator of Estate of WALLACE	)	of Du Page County.
E. WING, III, deceased,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-L-160
	)	
BUTTERFIELD COUNTRY CLUB,	)	
a Corporation,	)	Honorable,
	)	Kenneth L. Popejoy,
Defendant-Appellee.	)	Judge, Presding

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant had no common law duty to administer an automatic external defibrillator to plaintiff decedent at their facilities when he was suffering a sudden cardiac arrest. The trial court did not err in granting defendant's motion to dismiss plaintiff's first amended complaint with prejudice pursuant to section 2-615 as plaintiff's allegations did not constitute willful or wanton misconduct required by applicable statutory authority to create civil liability.

¶ 2 Plaintiff appeals the trial court's grant of defendant's motion to dismiss its first amended complaint pursuant to section 2-615(e) of the Code of Civil Procedure (the Code). 735 ILCS 5/2-615(e) (West 2014). Plaintiff contends that the first amended complaint properly pled facts

supporting a finding that the defendant owed a common-law duty to exercise ordinary care in the provision, control, placement, and use of automated external defibrillation (AED) devices at its facility. Additionally, plaintiff contends that the first amended complaint alleges facts establishing that defendant owed a duty to render aid by administering an AED device to plaintiff decedent under section 314A Restatement (Second) of Torts.

¶ 3

### I. BACKGROUND

¶ 4 On February 26, 2014, plaintiff decedent, Wallace E. Wing, III, was playing paddle tennis at the defendant's facilities. While playing paddle tennis, plaintiff decedent suffered a sudden cardiac arrest. Plaintiff decedent died of an acute myocardial infarction on that day.

¶ 5 Plaintiff's first amended complaint alleged that defendant knew or should have known that plaintiff decedent suffered from a sudden cardiac arrest. The complaint alleged that defendant was in possession of various AED devices at its facilities and that its employees were trained to use, supply, and store the devices properly. The complaint states that defendant had a duty to exercise ordinary care in the training of its employees as to the provision, control, placement, and use of the AED devices, as well as a duty to render aid to plaintiff decedent by administering an AED device when plaintiff decedent suffered his sudden cardiac arrest.

¶ 6 Plaintiff's first amended complaint contains a recitation of defendant's instances of negligence in one or more of the following respects: defendant 1) failed to employ individuals who were trained AED users; 2) failed to train their agents and/or employees on how to use AED devices; 3) failed to staff individuals that were trained on the use and application of AED devices; 4) failed to make an AED device accessible at its facilities; 5) failed to make an AED device available at its paddle tennis facilities; 6) failed to display the location of the AED devices; and 7) failed to administer an AED device to plaintiff decedent in a timely manner. As

a direct and proximate result of one or more of defendant's above failings, plaintiff decedent continued to suffer from cardiac arrest and died as a result.

¶ 7 Defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code. The crux of the motion was that defendant owed plaintiff decedent no duty to 1) diagnose a medical condition of cardiac arrest; 2) possess, maintain or make accessible an AED device; 3) train its employees in the use of an AED device; 4) administer the AED device to one of its members who goes into cardiac arrest.

¶ 8 The trial court held a hearing on defendant's motion to dismiss pursuant to section 2-615(e) of the Code. 735 ILCS 5/2-615(e) (West 2014). After hearing arguments from both parties, the trial court found defendant had no duty to do anything alleged by plaintiff in their complaint. In so finding, the court repeatedly invoked the holding by this court in *Salte*. See *Salte v. YMCA of Metropolitan Chicago Foundation*, 351 Ill. App. 3d. 524 (2004). The trial court said "I can't find the appropriate duty for this to be done and \*\*\* if I can't find the appropriate duty, then I don't have a negligence cause of action \*\*\*." The court further stated that "[t]he motion to dismiss is granted. It's going to be granted with prejudice because I don't think there's anything else that you can do in your pleading to satisfy me, given how I'm interpreting *Salte*."

¶ 9 Plaintiff timely appealed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff contends that the trial court erred in granting defendant's motion to dismiss pursuant to section 2-615(e) of the Code with prejudice. 735 ILCS 5/2-615(e) (West 2014). Plaintiff argues that its first amended complaint properly pleaded facts supporting a finding that the defendant owed a common-law duty to exercise ordinary care in the provision,

control, placement, and use of automated external defibrillation (AED) devices at its facility. Additionally, plaintiff contends that the first amended complaint alleges facts providing that defendant owed a duty to render aid by administering an AED device to plaintiff decedent under section 314A Restatement (Second) of Torts.

¶ 12 On a section 2–615 motion to dismiss, a court must accept as true all well-pleaded facts in the complaint, as well as any reasonable inferences that may arise therefrom. See *DeHart v. DeHart*, 2013 IL 114137, ¶ 18 (citing *Doe ex rel. Ortega–Piron v. Chicago Board of Education*, 213 Ill. 2d 19, 28 (2004)). The merits of the case, at this point, are not yet considered. See *Kilburg v. Mohiuddin*, 2013 IL App (1st) 113408, ¶ 19. A party moving for a section 2–615(e) judgment on the pleadings concedes the truth of the well-pleaded facts in the nonmovant's pleadings. *McCall v. Devine*, 334 Ill. App. 3d 192, 198 (2002). The court is to construe the complaint liberally and should not dismiss it unless it is clearly apparent from the pleadings that “no set of facts can be proved which would entitle [ ] plaintiff[s] to recover.” *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008); see also *DeHart*, 2013 IL 114137, ¶ 18; *Kilburg*, 2013 IL App (1st) 113408, ¶ 20. Our inquiry upon review is whether the allegations of the complaint, when construed in the light most favorable to plaintiff, were sufficient to establish a cause of action upon which relief may be granted. See *DeHart*, 2013 IL 114137, ¶ 18; *Napleton*, 229 Ill. 2d at 305. We perform this review *de novo*. See *DeHart*, 2013 IL 114137, ¶ 18; *Napleton*, 229 Ill. 2d at 305.

¶ 13 Pleadings are not intended to erect barriers to a trial on the merits but instead to remove them and facilitate trial. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 307 (1981). The object of pleadings is to produce an issue asserted by one side and denied by the other so that a trial may determine the actual truth. *Id.* at 308 (citing *Fleshner v. Copeland*, 13

Ill. 2d 72, 77 (1958)). In determining whether a cause of action has been stated, the whole complaint must be considered. *Stenwall v. Bergstrom*, 398 Ill. 377, 383 (1947). Although pleadings are to be liberally construed and formal or technical allegations are not necessary, a complaint must, nevertheless, contain facts to state a cause of action. *Purmal v. Robert N. Wadington & Associates*, 354 Ill. App. 3d 715, 720 (2004). The complaint is deficient when it fails to allege the facts necessary for a plaintiff to recover. See *Doe v. Chicago Board of Education*, 339 Ill. App. 3d 848, 853 (2003). “But it is a rule of pleading long established, that a pleader is not required to set out his evidence. To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts.” *Board of Education v. Kankakee Federation of Teachers Local No. 886*, 46 Ill. 2d 439, 446–47 (1970).

¶ 14 To state a claim for negligence, a plaintiff must plead a duty owed by a defendant to that plaintiff, breach of that duty, and injury proximately caused by that breach of duty. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006). Whether a duty of care exists is a question of law to be decided by the court. *Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 422 (2008); *Shank v. Fields*, 373 Ill. App. 3d 290, 292 (2007); see also *LaFever v. Kemlite Co.*, 185 Ill. 2d 380, 388 (1998).

¶ 15 In deciding whether a defendant owes a plaintiff a duty, the court considers (1) whether the plaintiff’s injury was reasonably foreseeable, (2) the likelihood of injury, (3) the magnitude of the burden of guarding against injury, and (4) the consequences of placing a burden on defendant. *Buerkett*, 384 Ill. App. 3d at 422; see also *Ward*, 136 Ill. 2d at 140–41. If there is no duty, a plaintiff cannot recover. *Clifford v. Wharton Business Group, L.L.C.*, 353 Ill. App. 3d 34, 40 (2004).

¶ 16 Plaintiff argues that it was reasonably foreseeable that an individual may suffer a sudden cardiac arrest when engaged in strenuous athletic activities at defendant's facilities. Further, defendant's possession of AED devices at its facilities seems to suggest that the likelihood of cardiovascular-related injuries were a likely occurrence as well. Plaintiff asserts that defendant took on the magnitude of any burden with respect to the maintenance and control of the AED devices at its facilities when it purchased the AED devices. Thus, plaintiff argues that defendant owed a common-law duty to plaintiff to exercise ordinary care in the control, placement, maintenance, and use of the AED devices for use in their intended purpose; treating sudden cardiac arrest.

¶ 17 We agree that it is foreseeable that such an event may occur at defendant's facilities and its possession of the AED devices affirms the foreseeability of an injury like that suffered by plaintiff decedent. However, we cannot agree that the mere purchase of AED devices for defendant's facilities automatically disposes of the magnitude of any burden in finding the existence of a common-law duty on defendant to exercise ordinary care in the placement, maintenance, and use of the AED devices. In *Parra v. Tarasco*, 230 Ill. App. 3d 819, 821, the plaintiff decedent was dining at defendants' restaurant when he began choking on food. Plaintiff brought a negligence action against the defendants alleging that the restaurant owed plaintiff decedent a duty to 1) post visible signs concerning instructions on first aid for choking; 2) administer first aid; 3) promptly summon emergency personnel; or 4) assist him while he was choking. *Id.* at. 822. The trial court dismissed the complaint pursuant to section 2-615 of the Code on the basis that defendant owed decedent no duty under the common law. *Id.* The appellate court agreed with the trial court that plaintiff's allegations of negligence did not state a

cause of action as there is no duty on restaurateurs to rescue customers from a danger not caused by the restaurateur. *Id.* at 822, 830.

¶ 18 Here, while defendant owned an AED device, we have not found any authority stating that the purchase of AED devices creates a common-law duty to exercise ordinary care in the control, placement, maintenance, and use of the AED devices for use in treating sudden cardiac arrest. Defendant here did not cause plaintiff decedent's cardiac arrest by allowing him to play paddle tennis at its facilities any more than a restaurant causes a patron to choke on food. And, further, defendant's purchase of the AED devices did not create a common-law duty to exercise ordinary care in the control, placement, maintenance, and use of the devices any more than a restaurant that hires staff equipped with hands capable of removing food from a patron's throat or eyes capable of reading a sign detailing what to do in the event of a choking patron. See *Id.* If this court were to agree with plaintiff that the purchase of the AED devices created a common law duty to control, place, maintain, and use the AED devices in the treatment of sudden cardiac arrest, we would be telling business owners and those similarly situated to abstain from purchasing AED devices so as not to open themselves up to potential tort liability. Therefore, we find no common-law duty to the plaintiff.

¶ 19 Plaintiff's next assertion is that section 314A Restatement (Second) of Torts, creates a common-law duty on defendant to render aid by administering an AED device to the plaintiff decedent.

¶ 20 This court had occasion to visit a similar set of facts in *Salte*, 351 Ill. App. 3d, at 524. In *Salte*, the plaintiff was exercising on one of defendant's treadmills when he suffered a cardiac arrest. *Id.* at 525. Defendant did not have a defibrillator on its premises. *Id.* Plaintiff's complaint alleged that decedent's cardiac arrest was a predictable and foreseeable event which

created a duty on defendant to equip its staff with defibrillators as they were inexpensive, easy to use, and readily available. *Id.* The trial court dismissed plaintiff's complaint pursuant to section 2-615 of the Code.

¶ 21 On appeal, this court examined the defendant's duty to administer aid via a defibrillator under the auspices of section 314A of Restatement (Second) of Torts. Although defendant did not have a defibrillator on site, the complaint's allegations were liberally construed to include the allegation that defendant had a duty to use such a device. *Salte*, at 526. This court acknowledged that "[o]ur common law generally imposes no duty to rescue an injured stranger upon one who did not cause the injury in the first instance." *Id.* at 527; quoting *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 232 (1996). "A duty to take some affirmative action to aid another may arise, however, where a special relationship exists between the parties." *Id.* The court went on to find that under the Restatement (Second) of Torts, a possessor of land who holds it open to the public is under a duty to members of the public to protect them against unreasonable risk of physical harm, and give them first aid after it knows or has reason to know that they are ill or injured. *Id.* at 526-27; See also Restatement (Second) of Torts § 314A, at 118 (1965).

¶ 22 This court, in *Salte*, also pointed out comment *f* to section 314A of the Restatement, which provides:

"The defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured. He is not required to take any action beyond that which is reasonable under the circumstances. In the case of an ill or injured person, he will seldom be required to do more than give such first aid as he reasonably can, and take reasonable steps to turn the sick man over to a physician, or to those who



will look after him and see that medical assistance is obtained.” Restatement (Second) of Torts § 314A, Comment *f*, at 120 (1965).

This court then went on to find that, based on comment *f* of the Restatement, the defendant did not have a duty to use a defibrillator on plaintiff decedent. *Salte*, at 529. Defendant’s duty was to provide plaintiff decedent with the level of aid that was reasonable under the circumstances. *Id.* “The use of a defibrillator requires specific training and we believe that its use is far beyond the type of ‘first aid’ contemplated by Restatement section 314A.” *Id.*

¶ 23 Plaintiff here argues that defendant owed a duty of reasonable aid under the circumstances which includes the use of an AED device because defendant had such a device on its premises, unlike the defendant in *Salte*. But this argument ignores the language this court used in *Salte* where the analysis started from the premise that the complaint’s allegations were to be liberally construed to include the allegation that defendant had a duty to use a defibrillator. *Salte*, at 526. This makes the present case and the facts of *Salte* nearly identical. Therefore, we cannot say that defendant in the present case had a common law duty to use the AED device on plaintiff decedent as the use of such a device is not the type of first aid contemplated by the Restatement section 314A, even though plaintiff assures us that such a device is quite “foolproof.”

¶ 24 Based on the foregoing analysis, we find no error in the trial court’s grant of defendant’s motion to dismiss pursuant to section 2-615(e) of the Code as defendant owed plaintiff no common-law duty to use an AED device on plaintiff decedent. However, the trial court dismissed plaintiff’s first amended complaint with prejudice. The court stated the complaint would be dismissed with prejudice “because I don’t think there’s anything else that you can do in

your pleading to satisfy me [that a duty existed].” We will examine the trial court’s dismissal with prejudice of plaintiff’s first amended complaint.

¶ 25 Whether to allow the amendment of a complaint is a matter left to the discretion of the trial court, and absent an abuse of that discretion, the trial court’s determination will not be overturned. *Janis v. Graham*, 408 Ill. App. 3d 898, 905 (2011). We will find an abuse of discretion only where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 26 At oral arguments held on May 23, 2017, the parties in the present case were asked to discuss the applicability of statutes related to AED devices. Illinois has no less than two statutes that speak to the use of AED devices by an entity such as defendant. The first is the Physical Fitness Facility Medical Emergency Preparedness Act. 210 ILCS 74/ *et seq.* (West 2014). This Act requires any indoor or outdoor establishment, whether public or private, that provides services or facilities focusing on cardiovascular exertion, to have an AED device on their premises and meet certain criteria for proper storage, training, maintenance, and use of the device. See *Id.* This act specifically references another statute which Illinois has adopted regarding the use of AED devices, the Automated External Defibrillator Act (the AED Act). 410 ILCS 4/ *et seq.* (West 2014).

¶ 27 In enacting the AED Act, the General Assembly’s intent was to “encourage lifesaving first aid, to set standards for the use of [AED devices] and to encourage their use.” 410 ILCS 4/5 (West 2014). The AED Act provides what is required of an entity in possession of an AED device as it pertains to training, maintenance and oversight. 410 ILCS 4/arts. 15, 20 (West 2014). An entity subject to the provisions of the Physical Fitness Facility Medical Emergency Preparedness Act may be civilly liable for failing to adhere to the provisions of the AED Act or for willful or wanton misconduct in the use of an AED. 410 ILCS 4/30(d) (West 2014).

¶ 28 When ruling on a section 2–615 motion, the relevant question is whether the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted, and a motion to dismiss should not be granted “unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief.” *Pilotto v. Urban Outfitters W., L.L.C.*, 2017 IL App (1st) 160844, ¶ 16. For plaintiff’s first amended complaint to state a cause of action via the AED Act, defendant’s failure to adhere to the provisions of the AED Act or willful or wanton misconduct in the use of an AED must have been pleaded. 410 ILCS 4/30(d) (West 2014).

¶ 29 There is no indication in the record whether defendant is the type of entity that is required to adhere to the provisions of the Physical Fitness Facility Medical Emergency Preparedness Act (210 ILCS 74/ *et seq.* (West 2014)), nor is there any indication as to whether plaintiff decedent belongs to the class of persons that the AED Act was designed to protect. But even if we assume that defendant is the type of entity contemplated by the Physical Fitness Facility Medical Emergency Preparedness Act and plaintiff decedent belongs to the class designed to be protected by the AED Act, plaintiff’s first amended complaint still does not contain any allegations that would rise to the level of willful or wanton misconduct to create potential civil liability for defendant. See 410 ILCS 4/30(d) (West 2014); see also *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 19 (To plead willful or wanton misconduct, the factual allegations by the plaintiff must demonstrate either a deliberate intention to harm or a conscious disregard for the plaintiff’s welfare).

¶ 30 In *Green v. Wood River Trust*, 2013 IL App (4th) 130036 (2013), plaintiff filed a complaint in negligence alleging that she slipped and fell near the entrance of a residence she leased from defendants due to the icy condition of the walkway. In her second amended

complaint, plaintiff asserted willful and wanton allegations against defendants due to their failure to (1) maintain and provide a properly pitched overhang roof; (2) provide properly hung and sized downspouts; (3) allow proper drainage to occur from the overhang roof onto the walkway; and (4) keep the gutters and downspouts free and clear at all times of stored materials. *Id.* at ¶ 4. Defendants filed a motion to dismiss plaintiff's complaint under section 2-615 of the Code, arguing plaintiff's allegations did not amount to willful and wanton misconduct giving rise to civil liability under the Snow and Ice Removal Act. *Id.* at ¶ 5. The trial court dismissed plaintiff's second amended complaint pursuant to section 2-615 of the Code with prejudice. On appeal the court found that plaintiff's factual allegations of willful and wanton misconduct did not demonstrate "either a deliberate intention to harm or a conscious disregard for the plaintiff's welfare." *Id.* at ¶ 24, quoting *Doe-3*, 2012 IL 112479, ¶ 19.

¶ 31 The same analysis holds true in the case-at-bar. Here, plaintiff does not even allege willful or wanton conduct in its first amended complaint. But even if we construe the allegations of negligence made by plaintiff as liberally as possible, defendant's conduct would not rise to the level of willful or wanton. Plaintiff's main argument is that defendant was negligent in its storage and placement of the AED device as it was "locked away in the manager's desk drawer". We determine that keeping an AED in a manager's drawer, locked or not, does not demonstrate a deliberate intent to harm plaintiff decedent. Further, we hold that defendant's conduct does not illustrate a conscious disregard for plaintiff decedent's welfare. Therefore, as plaintiff's first amended complaint does not allege any negligence claims against defendant that would amount to willful or wanton conduct, coupled with the non-existence of a common law duty on defendant to administer first aid by way of a defibrillator; we find no abuse of discretion in the trial court's dismissal of the complaint with prejudice.

¶ 32 In summary, the trial court did not err in granting defendant's motion to dismiss plaintiff's first amended complaint pursuant to section 2-615(e) of the Code as there is no common-law duty on defendant to render first aid with an AED device on plaintiff decedent. Additionally, we find no abuse of discretion in the trial court's dismissal of plaintiff's first amended complaint with prejudice.

¶ 33

### III. CONCLUSION

¶ 34 For the reasons stated, we affirm the judgment of the circuit court of DuPage County.

¶ 35 Affirmed.