

No. 1-18-0880

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAMELA SMITH,)	Appeal from the
)	Circuit Court of
Plaintiff-Respondent,)	Cook County
)	
v.)	No. 2016 L 003001
)	
FRESENIUS MEDICAL CARE)	
CHICAGOLAND, LLC,)	Honorable
)	Daniel Gillespie,
Defendant-Petitioner.)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the circuit court’s denial of defendant’s motion to dismiss plaintiff’s amended complaint for lack of jurisdiction, finding that the court had both subject matter jurisdiction and personal jurisdiction.

¶ 2 Pursuant to Illinois Supreme Court Rule 306(a)(3) (eff. Oct. 1, 2019), defendant, Fresenius Medical Care Chicagoland, LLC, appeals the order denying its section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)) motion to dismiss plaintiff’s, Pamela Smith’s, amended medical malpractice action for lack of jurisdiction. We affirm.

¶ 3 Plaintiff allegedly sustained permanent nerve damage as a result of dialysis treatment at defendant’s South Holland location in July 2014. On February 5, 2015, plaintiff sent defendant a letter requesting “the release of medical information pertaining to the care and treatment of her”

No. 1-18-0880

including hospitalization records, office records, in-patient records, out-patient records, emergency room records, physical therapy records, operative reports, consultant's reports, therapy reports, and X-rays. On May 5, 2015, plaintiff received an invoice from defendant in the amount of \$67.24 for the records, which plaintiff paid on May 15, 2015. On June 30, 2015, plaintiff received some medical records from defendant, along with a second invoice for \$106.80, which plaintiff paid on July 1, 2015. Defendant provided no affidavit of completeness indicating that the document production was complete.

¶ 4 On November 30, 2015, plaintiff sent defendant a letter stating that it had not yet produced her complete medical chart. Plaintiff requested that defendant produce the chart within 10 days from the date of the letter. After receiving no response to the November 30, 2015, letter, plaintiff filed a complaint in the circuit court against defendant on March 23, 2016, pursuant to section 8-2001 of the Code of Civil Procedure (Code) (735 ILCS 5/8-2001 (West 2016)). Section 8-2001 provides that a health care facility must produce a copy of a patient's medical records no later than 60 days after a request by the patient. The failure to timely comply with the records request "shall subject the denying party to expenses and reasonable attorneys' fees incurred in connection with any court ordered enforcement of the provisions of this Section." 735 ILCS 5/8-2001(g) (West 2016).

¶ 5 In her complaint, plaintiff sought an order compelling defendant to produce all the medical records requested in the February 5 letter and the entire medical chart requested in the November 30 letter. Plaintiff also sought her costs and expenses. The record on appeal contains an affidavit of service from the sheriff's office, indicating that a deputy sheriff served defendant's "authorized person" with the summons and complaint on March 28, 2016. Defendant did not file an appearance.

¶ 6 On April 5, 2016, plaintiff received certain medical records from defendant. However, no affidavit of completeness was provided. Plaintiff contends on appeal that “upon review, the records provided by [defendant] proved again to be incomplete.”

¶ 7 On April 8, 2016, defendant sent plaintiff an email stating its understanding that plaintiff would be dismissing her complaint upon receipt of the medical records, and asked plaintiff to let defendant know if she intended to “pursue” the complaint. Plaintiff did not respond to the email.

¶ 8 On July 7, 2016, plaintiff sought and obtained leave of court to amend her complaint to add medical malpractice counts against defendant and to add Northwestern Memorial Hospital and Northwestern Medical Faculty Foundation as respondents in discovery. On July 7, 2016, plaintiff filed her amended medical malpractice complaint, alleging that defendant provided dialysis for plaintiff from April 2014 through November 2014 and that defendant acted negligently by: failing to correctly access dialysis ports; failing to order, perform and obtain appropriate radiological studies and diagnostic tests; failing to appropriately treat her medical condition, thereby causing nerve damage to her upper extremity; delaying the administration of appropriate medical care; discharging her when it was not appropriate to do so; and administering dialysis when it was contraindicated. Plaintiff added Northwestern Memorial Hospital and Northwestern Medical Faculty Foundation as respondents in discovery.

¶ 9 On July 11, 2016, plaintiff mailed a copy of the amended medical malpractice complaint to defendant’s place of business at 17225 Paxton Avenue, South Holland, Illinois 60473.

¶ 10 On December 10, 2017, defendant filed its appearance and jury demand. On December 18, 2017, defendant filed a section 2-619.1 motion to dismiss plaintiff’s amended medical malpractice complaint. In the section 2-619 portion, defendant argued that: the original complaint was a limited statutory action under section 8-2001 seeking medical records, and that

No. 1-18-0880

when defendant provided the requested medical records by April 5, 2016, “the controversy became moot” and therefore “this matter should be dismissed based upon the doctrine of mootness”; that the circuit court lacked the authority to allow plaintiff to amend her medical records action to include medical malpractice counts; and that the circuit court did not have personal jurisdiction over defendant because plaintiff never served it with a summons for the medical malpractice action.

¶ 11 On January 9, 2018, the circuit court directed defendant to file an amended motion to dismiss limited to the personal jurisdiction issue, which it did. Plaintiff filed a response brief arguing that the court had personal jurisdiction over defendant in the medical malpractice action based on the summons that was served on it in connection with the medical records action.

¶ 12 A hearing on the motion to dismiss for lack of personal jurisdiction was held on March 29, 2018. At the conclusion of the hearing, the circuit court found that it had personal jurisdiction over defendant in the medical malpractice action pursuant to the summons served on defendant for the medical records action. The court also found that pursuant to Illinois Supreme Court Rule 11 (eff. Jan. 1, 2016), defendant was properly notified of the amended medical malpractice complaint when plaintiff mailed it to defendant’s business address. Accordingly, the court denied defendant’s motion to dismiss for lack of personal jurisdiction. The court ordered defendant to file an “amended motion to dismiss on the non-personal jurisdiction issues in its previously-filed 2-619.1 motion to dismiss.”

¶ 13 Defendant filed a petition in the appellate court for leave to appeal under Rule 306(a)(3). We denied that petition on August 9, 2018. On January 31, 2019, the supreme court entered a supervisory order directing us to allow defendant leave to appeal. On March 29, 2019, pursuant

No. 1-18-0880

to the supreme court's supervisory order, we vacated the August 9, 2018, order and granted defendant leave to appeal under Rule 306(a)(3).

¶ 14 First, defendant argues that we should reverse the March 29, 2018, order denying its motion to dismiss plaintiff's amended complaint for medical malpractice because the circuit court lost subject matter jurisdiction over the proceedings once defendant tendered a copy of the medical records by April 5, 2016. We note that the March 29, 2018, order addressed the circuit court's personal jurisdiction over defendant, not its subject matter jurisdiction. However, subject matter jurisdiction may be raised at any time, even for the first time on appeal. *Village of Maywood Board of Fire & Police Commissioners v. Dep't of Human Rights of State of Illinois*, 296 Ill. App. 3d 570, 575 (1998); *Sherman West Court v. Arnold*, 407 Ill. App. 3d 748, 750 (2011). Accordingly, we will address defendant's argument. Whether a circuit court has subject matter jurisdiction to entertain a claim presents a question of law that we review *de novo*. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18.

¶ 15 Section 9 of article VI of the Illinois Constitution provides that the jurisdiction of the circuit court extends to "all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office." Ill. Const. 1970, art. VI, §9. If the matter brought before the circuit court is justiciable and does not fall within the original and exclusive jurisdiction of the supreme court, the circuit court has subject matter jurisdiction to consider it. *McCormick v. Robertson*, 2015 IL 118230, ¶ 20.

¶ 16 A matter is considered justiciable when it presents "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota, Inc. v. Toyota*

No. 1-18-0880

Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 334 (2002). The purpose of the justiciability requirement is to reserve the exercise of judicial authority for situations where an actual controversy exists. *McCormick*, 2015 IL 118230, ¶ 21. An issue is moot (meaning that subject matter jurisdiction is lacking) if no actual controversy exists. *Wheatley v. Board of Education of Township High School District 205*, 99 Ill. 2d 481, 484 (1984).

¶ 17 Plaintiff's original complaint only sought her medical records pursuant to section 8-2001 of the Code. Defendant contends that once plaintiff received those records on April 5, 2016, no further controversy with regard to the production of her medical records existed, rendering the issue moot. As the sole issue between the parties was mooted by the production of the medical records, defendant argues that the circuit court lacked the subject matter jurisdiction to enter any further orders in that action, including the order allowing plaintiff to amend her medical records complaint to add medical malpractice counts.

¶ 18 We disagree with defendant's contention that its production of the medical records by April 5, 2016, deprived the circuit court of subject matter jurisdiction to enter the order allowing plaintiff to amend her complaint to add medical malpractice counts. An actual controversy continued to exist even after the production of the medical records, as the parties disputed whether defendant had produced *all* the requested records. Further, defendant provided no affidavit of completeness, and the circuit court entered no order finding that defendant's production of the medical records was complete or ruling on plaintiff's request for costs and expenses. Accordingly, the medical records action brought before the circuit court pursuant to section 8-2001 remained justiciable, meaning that the court continued to possess subject matter jurisdiction over the matter at the time it granted plaintiff's motion to amend the complaint to add medical malpractice counts. Also, the circuit court committed no error in granting plaintiff's

motion to amend, as section 2-616(a) of the Code provides that at any time before final judgment, amendments may be allowed adding new causes of action. 735 ILCS 5/2-616(a) (West 2016)).

¶ 19 Defendant argues that *Low Cost Movers, Inc. v. Craigslist, Inc.*, 2015 IL App (1st) 143955, compels a different result. Low Cost Movers, Inc. (Low Cost) advertised its services on Craigslist, Inc. and subsequently came to believe that one of its competitors had “flagged” its Craigslist ads to get them removed from the website. *Id.* ¶ 1. Low Cost filed a petition under Illinois Supreme Court Rule 224 (eff. May 30, 2008), asking that Craigslist reveal the identity of anyone who had flagged its ads for removal since 2011, so that it could sue them. *Id.* In response to the Rule 224 petition, Craigslist disclosed that on its own initiative and unrelated to any flagging, it had removed all of Low Cost’s ads. *Id.* ¶ 5. The trial court *sua sponte* dismissed Low Cost’s petition (*id.* ¶ 6) and denied its motion to vacate the dismissal order. *Id.* ¶ 7.

¶ 20 Low Cost appealed, contending that the dismissal of its petition frustrated the purpose of Rule 224, by not permitting Low Cost to obtain the name of a potential defendant. *Id.* ¶ 9. In response, Craigslist contended that the trial court properly dismissed the petition because Low Cost had learned the identity of one party (Craigslist) that had engaged in the allegedly unlawful activity, thereby satisfying the requirements of a Rule 224 petition. *Id.* ¶ 10.

¶ 21 The appellate court noted that the filing of a Rule 224 petition creates an independent action for discovery to identify a party that may be responsible in damages (*id.* ¶ 11), and that once the identity of such a person or entity has been discovered, the purpose of Rule 224 has been achieved and the action should be dismissed. *Id.* ¶ 12. The appellate court held that Low Cost’s Rule 224 petition had served its purpose by identifying a party (Craigslist) that may be responsible in damages, and therefore it affirmed the dismissal of the petition. *Id.* ¶¶ 17-18.

¶ 22 In the present case, defendant argues that plaintiff's medical records action is akin to a Rule 224 petition for pre-suit discovery, as they are both limited purpose mechanisms to obtain data as opposed to asserting liability. Just as a Rule 224 petition must be dismissed once a party that may be responsible in damages is identified, defendant argues that a medical records action similarly must be dismissed once the medical records are produced, because at that point the limited purpose of the medical records action has been achieved and the circuit court loses its subject matter jurisdiction.

¶ 23 Even assuming, without deciding, that plaintiff's medical records action is a limited purpose action comparable to a Rule 224 petition, defendant has failed to show that the purpose of the medical records action was achieved in this case where the parties dispute whether all relevant medical records were disclosed and where the circuit court never entered any ruling thereon. As the purpose of the medical records action had not yet been achieved at the time that the circuit court granted plaintiff leave to amend the complaint to add medical malpractice counts, a justiciable controversy continued to exist, meaning that the circuit court retained subject matter jurisdiction over the matter at the time it granted plaintiff's motion to amend the complaint.

¶ 24 Next, defendant argues that the circuit court should have granted the motion to dismiss plaintiff's amended complaint for medical malpractice because it lacked personal jurisdiction over defendant. No judgment against a party is valid unless the court has personal jurisdiction over that party. *Pro Sapiens, LLC v. Indeck Power Equipment Co.*, 2019 IL App (1st) 182019, ¶73. "Serving a copy of a summons and complaint on a party-defendant is an essential part of the litigation process and allows a court to obtain personal jurisdiction over that defendant." *Urban Partnership Bank v. Ragdale*, 2017 IL App (1st) 160773, ¶ 18. Where, as here, the trial court

No. 1-18-0880

decides the issue of personal jurisdiction without an evidentiary hearing, our review is *de novo*. *Morris v. Halsey Enterprises Co., Ltd.*, 379 Ill. App. 3d 574, 579 (2008).

¶ 25 Plaintiff here effectuated service of process on defendant, a limited liability company (LLC), when she served its “authorized person” with a summons and copy of the original medical records complaint, thereby enabling the circuit court to obtain personal jurisdiction over defendant. See section 1-50 of the Limited Liability Company Act (805 ILCS 180/1-50 (West 2016)) (requiring that service of process on an LLC be served on its registered agent). As discussed, the circuit court also possessed subject matter jurisdiction, as plaintiff’s medical records action was justiciable. Thus, there were no jurisdictional impediments preventing the circuit court from entering any orders on plaintiff’s medical records complaint, including its order allowing plaintiff to amend the complaint to include medical malpractice counts.

¶ 26 The remaining issue is whether defendant was properly notified of the amended complaint for medical malpractice. Illinois Supreme Court Rule 11(a) (eff. Jan. 1, 2016), in effect at the time plaintiff filed her amended complaint, governed the “manner of serving documents other than process,” *i.e.*, it governed the manner in which plaintiff was required to serve defendant with the amended complaint after having effectuated service of process of the original complaint. Rule 11(a) provided that where a defendant is not represented by an attorney of record, service may be made by mailing the amended complaint to defendant’s business address. *Id.* (b)(3). Defendant here was not represented by an attorney of record at the time of the filing of the amended complaint. Accordingly, plaintiff complied with Rule 11 by serving defendant with a copy of the amended complaint at its business address.

¶ 27 For all the foregoing reasons, we affirm the order of the circuit court denying defendant’s motion to dismiss plaintiff’s amended complaint for medical malpractice.

No. 1-18-0880

¶ 28 Affirmed.