

NOTICE

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2019 IL App (4th) 170492-U

NO. 4-17-0492

FILED
March 7, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

JUAN A. REYES,)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
v.)	Vermilion County
PRESENCE UNITED SAMARITANS)	No. 16MR206
MEDICAL CENTER, a Private Hospital,)	
Defendant-Appellee.)	Honorable
)	Mark S. Goodwin,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court’s dismissal of plaintiff’s amended complaint for failure to state a claim upon which relief may be granted pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)).

¶ 2 In February 2017, plaintiff, Juan A. Reyes, *pro se* filed an amended complaint for declaratory relief against defendant, Presence United Samaritans Medical Center (the hospital). In the amended complaint, plaintiff alleged the hospital failed to produce a surgical report used in his “trial for murder.” The hospital filed a motion to dismiss, which the trial court granted. On appeal, plaintiff argues the trial court erred in dismissing his amended complaint for declaratory judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2016, plaintiff *pro se* filed a complaint for declaratory relief against the hospital, alleging the hospital failed to produce a surgical report that was used against him during a “criminal trial.” According to plaintiff’s complaint, the surgical report pertained to Timothy Landon, the alleged victim who had been a patient of the hospital. Plaintiff further alleged he had requested a copy of the report to support his claim that “trial counsel was ineffective for failing to impeach Timothy Landon with the medical reports ***.”

¶ 5 The hospital filed a motion to dismiss the complaint, which the trial court granted.

¶ 6 On February 8, 2017, plaintiff filed his amended complaint. Plaintiff alleged he was entitled to Landon’s surgical report because “the report, or portions thereof, were disclosed to the Vermilion County State’s Attorney and [p]laintiff’s trial counsel[,]” resulting in a waiver of any claim to “medical privacy pursuant to 735 ILCS 5/[8]-802(1) [*sic*][,]” the homicide exception to the statutory physician-patient privilege. Plaintiff further alleged the records from his criminal trial had been destroyed.

¶ 7 On March 21, 2017, the hospital filed a motion to dismiss the amended complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), claiming that plaintiff failed to name a necessary party, namely Timothy Landon, failed “to plead any legal basis *** for *** relief” and failed to plead his standing. The trial court dismissed plaintiff’s amended complaint.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiff argues the trial court erred in dismissing his amended complaint. Specifically, plaintiff argues the victim’s surgical report was used against him in his

“trial for murder” and thus it is exempted from the statutory physician-patient privilege pursuant to section 8-802 of the Code of Civil Procedure (735 ILCS 5/8-802(1) (West 2016)). The hospital argues the trial court properly dismissed plaintiff’s amended complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). The hospital contends plaintiff failed to identify a legal basis for which relief may be granted, the amended complaint did not comply with section 5/2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2016)) because plaintiff did not stand in a position adverse to the hospital, and plaintiff failed to name a necessary party, Landon, the patient named in the surgical report.

¶ 11 A motion to dismiss brought pursuant to section 2-615 challenges “the legal sufficiency of a complaint.” *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 8, 21 N.E.3d 437. “A court deciding a section 2-615 motion must accept all well-pleaded facts in the complaint as true ***.” *Id.* The allegations in the complaint are construed in the light most favorable to the plaintiff. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429, 856 N.E.2d 1048, 1053 (2006). “Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” *Id.* “While the plaintiff is not required to set forth evidence in the complaint [citation], the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions.” *Id.* at 429-30. Our review of an order granting a section 2-615 motion to dismiss is *de novo*. *Pooh-Bah Enterprises, Inc., v. County of Cook*, 232 Ill. 2d 463, 473, 905 N.E.2d 781, 789 (2009).

¶ 12 Regarding the legal basis underlying plaintiff’s claimed right to Landon’s surgical report, plaintiff asserts Landon waived “any medical privacy” by testifying about his injuries at

plaintiff's criminal trial and further that "the [surgical] report, or portions thereof, were disclosed to the Vermilion County State's Attorney and [p]laintiff's trial counsel, also waiving medical privacy pursuant to 735 ILCS 5/[8]-802(1) [sic]."

¶ 13 First, regarding Landon's alleged "waiver" of his "medical privacy," plaintiff makes no reasoned argument in his brief on appeal that a nonparty's testimony about his medical condition, in a separate legal proceeding, results in a waiver of his privacy rights. The primary purpose of the physician-patient privilege "is to encourage free disclosure between a doctor and a patient and to protect the patient from embarrassment and invasion of privacy that disclosure would entail." *People ex rel. Department of Professional Regulation v. Manos*, 202 Ill. 2d 563, 575, 782 N.E.2d 237, 245 (2002). The medical records of nonparties are equally protected by the privilege. *In re D.H. ex rel Powell*, 319 Ill. App. 3d 771, 779, 746 N.E.2d 274, 281 (2001). Absent an exception to the physician-patient privilege, the privilege against disclosure remains inviolate. We find plaintiff's first argument is without merit.

¶ 14 As for plaintiff's second claimed legal basis for relief, section 8-802 prohibits the disclosure of information obtained while a physician is attending to a patient unless one of fourteen enumerated exceptions applies. Plaintiff contends the first listed exception relating to trials for homicide applies in this case because the victim's surgical report was disclosed during his "trial for murder."

¶ 15 The homicide exception in section 8-802 of the Code of Civil Procedure provides, in pertinent part, as follows:

"No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary

to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide ***.” 735 ILCS 5/8-802 (West 2016).

¶ 16 Here, there was no “homicide” trial. Even though plaintiff alleged Landon’s surgical report was used in plaintiff’s “trial for murder,” based on the remainder of the allegations, it is clear that Landon survived the incident and testified at plaintiff’s trial. Quite simply, the homicide exception to the physician-patient privilege does not apply where there is no homicide. Thus, plaintiff’s amended complaint fails to identify a sufficient legal basis in support of any claim for relief. We find the trial court properly granted the hospital’s motion to dismiss the amended complaint.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the trial court’s judgment.

¶ 19 Affirmed.