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IN THE
COURT OF APPEALS OF INDIANA

Jamiee L. Stromblad, as
Guardian of Person and Estate
of John T. Murphy,
Appellant-Plaintiff,

v.

Anonymous Doctor No. 1,
Appellee-Defendant.

December 15, 2021

Court of Appeals Case No.
21A-CT-855

Appeal from the Floyd Circuit
Court

The Honorable J. Terrence Cody,
Judge

Trial Court Cause No.
22C01-1908-CT-1181

Pyle, Judge.

Statement of the Case

- [1] Jamiee L. Stromblad (“Stromblad”) appeals the trial court’s dismissal of her proposed medical malpractice complaint for failure to prosecute. Stromblad argues that the trial court abused its discretion when it dismissed her complaint against Anonymous Doctor #1 (Anonymous Doctor”) under Indiana Trial

Rule 41(E) (“Trial Rule 41(E)”) for failing to prosecute her claim. Concluding that the trial court abused its discretion when it dismissed Stromblad’s complaint, we reverse the trial court’s dismissal.

[2] We reverse and remand.

Issue

Whether the trial court abused its discretion when it dismissed Stromblad’s complaint against Anonymous Doctor under Trial Rule 41(E).

Facts

[3] John T. Murphy (“Murphy”) was a resident at a nursing home (“Nursing Home”) in New Albany, Indiana from August 2017 until his death. While at this Nursing Home, Murphy was under the care of Anonymous Doctor. Anonymous Doctor provided care to Murphy until around January 2018. After Murphy’s death, his daughter-in-law, Stromblad, was appointed the personal representative of his estate.

[4] In August 2019, Stromblad filed a proposed medical malpractice complaint as the personal representative of Murphy with the Indiana Department of Insurance (“IDOI”) and the trial court, alleging, among other things, medical malpractice and negligence by Anonymous Doctor and dozens of other parties related to Murphy’s care at Nursing Home. The first three pages of the proposed complaint listed the parties to the case. A clerk at the IDOI failed to scan the second page of Stromblad’s proposed complaint. Because Anonymous

Doctor's name was listed on the page that was not scanned, the IDOI failed to inform him of Stromblad's proposed complaint and did not issue him a claim letter.

[5] Over the next year, Stromblad continued to discuss the merits of the case with many of the defendants, including some who were also on the missing second page of the proposed complaint. These discussions included negotiations over a tolling agreement for her proposed complaint and attempts to mediate the issues. Mediation had been scheduled for February 2020, was rescheduled for July 2020, and was rescheduled a final time for September 2020. The creation of a medical review panel was postponed until after mediation. Requests for production were sent to Stromblad's counsel in January 2020, May 2020, and August 2020. Stromblad did not respond to the requests for production. Anonymous Doctor continued to be unaware of the proposed medical malpractice proceedings.

[6] In August 2020, roughly one year after Stromblad had filed her proposed complaint with the IDOI and the trial court, Stromblad's counsel's paralegal phoned the IDOI to inquire about Anonymous Doctor's counsel. During this phone conversation, the clerk at the IDOI realized that the second page of the proposed complaint had not been scanned, and, consequently, the IDOI had not informed Anonymous Doctor of the proposed complaint. Three days later, Stromblad, in an effort to rectify IDOI's error, used a process server to serve Anonymous Doctor with the proposed complaint filed with the IDOI and the complaint filed in the trial court.

[7] In September 2020, counsel for Anonymous Doctor entered an appearance in the trial court. In November 2020, Anonymous Doctor filed a motion to dismiss the complaint pursuant to Trial Rule 41(E). Anonymous Doctor argued that the case should be dismissed for a failure to prosecute because: (1) Stromblad had failed to ensure adequate service of process; and (2) Stromblad's failure to prosecute had been unreasonable and had prejudiced Anonymous Doctor. Stromblad responded by filing a motion to hold Anonymous Doctor's motion to dismiss in abeyance. Stromblad argued that the case should not be dismissed until a medical review panel had issued its opinion. Stromblad also noted that mediation had been held in September 2020 with some of the other defendants.

[8] In February 2021, the trial court held a hearing on Anonymous Doctor's motion to dismiss. The trial court heard the evidence as set forth above. Additionally, Anonymous Doctor stated that he had "never been a party to mediation." (Tr. Vol. 2 at 20). Anonymous Doctor also stated that "other than taking this case to mediation, [Stromblad] [had] made no effort to pursue [her case] at all." (Tr. Vol. 2 at 20). Anonymous Doctor explained that "the Plaintiff's failure to reasonably prosecute her case[,] to learn of that clerical error[,] . . . and to resolve that clerical error as well as her failure to provide sufficient identification for the [Anonymous] [D]octor to receive summons and complaint in this case prior to the expiration of the statute of limitations [was] the reason for the request for dismissal." (Tr. Vol. 2 at 20-21).

[9] The trial court granted Anonymous Doctor’s motion to dismiss due to Stromblad’s failure to prosecute under Trial Rule 41(E) and dismissed Stromblad’s complaint with prejudice. Stromblad responded by filing a motion to correct error in March 2021. Stromblad raised the same arguments as she had made in opposition to the motion to dismiss. In April 2021, the trial court denied her motion to correct error.

[10] Stromblad now appeals.

Decision

[11] Stromblad argues that the trial court abused its discretion when it dismissed her complaint with prejudice against Anonymous Doctor based on Anonymous Doctor’s motion to dismiss under Trial Rule 41(E) for failure to prosecute.

[12] We pause at this juncture to address the nature and procedural posture of this case on appeal. The underlying case is a medical malpractice action in which a proposed medical malpractice complaint has been filed with the IDOI, but a medical review panel has yet to be formed or issue an opinion on that proposed complaint. Because this appeal involves a medical malpractice case, the statutory provisions of the Medical Malpractice Act (“the Act”) are applicable.

[13] Here, Stromblad filed her proposed medical malpractice complaint with the IDOI and simultaneously commenced an action in the trial court, which is permitted by INDIANA CODE § 34-18-8-7. This section prohibited Stromblad from identifying the physician in her trial court complaint or pursuing the case in the trial court until an opinion was issued by the medical review panel. *Id.*

In addition, except in certain circumstances, the Act prohibits the trial court from taking any action in the case before the medical review panel issues an opinion on Stromblad's proposed complaint. See I.C. § 34-18-8-4.

[14] Because Stromblad's proposed complaint had not been considered by a medical review panel, the trial court was limited in the actions that it could take at this point in the proceedings. See I.C. § 34-18-8-7. See also *Adams v. Chavez*, 874 N.E.2d 1038, 1041 (Ind. Ct. App. 2007), *clarified on reh'g*. We have held that under the Act, there are three ways under which a trial court can grant the relief requested when a medical review panel has yet to issue an opinion:

First, Indiana Code section 34-18-11-1(a) states that a trial court has the power to preliminarily determine an affirmative defense or issue of law or fact that may be preliminarily determined under the Indiana Rules of Procedure and compel discovery in accordance with the Indiana Rules of Procedure. This grant of authority is limited to deciding issues of law or fact that may be preliminarily determined under Trial Rule 12(D), and compelling discovery pursuant to Trial Rules 26 through 37, inclusively.

Second, Indiana Code section 34-18-8-8 permits *the Commissioner [of the Indiana Department of Insurance]*, on the Commissioner's own motion or on the motion of a party, to file a motion in Marion county circuit court to dismiss the case under Rule 41(E) of the Indiana Rules of Trial Procedure if action has not been taken on the case for at least two years.

Finally, a trial court can grant relief under Indiana Code section 34-18-10-14[.]

Mooney v. Anonymous M.D. 4, 991 N.E.2d 565, 580 (Ind. Ct. App. 2013) (emphasis added) (citations removed), *reh'g denied, trans. denied.*; See also *Adams*, 874 N.E.2d at 1041.

[15] We find that the Act explicitly restricts a trial court's ability to act on a proposed complaint before a medical review panel has issued an opinion on a proposed complaint. Because Anonymous Doctor, and not the commissioner, sought a dismissal under Trial Rule 41(E), the trial court did not have the statutory authority to grant the requested relief under the Act. Given the specific statutory provisions of the Act, the trial court erroneously granted Anonymous Doctor's Trial Rule 41(E) motion to dismiss. Therefore, we reverse the trial court's order dismissing Stromblad's trial court complaint and remand for further proceedings consistent with the Act.

[16] Reversed and remanded.

Bailey, J., and Crone, J., concur.