MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Lee Evans Dunigan,
Appellant-Plaintiff

v.

Centurion Health of Indiana, LLC, Dr. Samuel Byrd, Nurse Lisa Wolfe, and Chelsey Pearison,
Appellees-Defendants

February 20, 2024

Court of Appeals Case No.
23A-CT-2117

Appeal from the Marion Superior Court The
Honorable Timothy W. Oakes, Judge
The Honorable Patricia C. McMath, Magistrate

Trial Court Cause Nos.
49D02-2206-CT-18953
49D12-2206-MI-18470

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

[1] Lee Dunigan filed a complaint that alleged claims of medical malpractice, negligence, and breach of contract against Centurion Health of Indiana, LLC ("Centurion"), Dr. Samuel Byrd, Nurse Lisa Wolfe, and Chelsea Pearison[1] (collectively, "Defendants"). Centurion filed a motion to dismiss, in which Centurion argued that the trial court lacked subject matter jurisdiction over the claims against Centurion and Dr. Byrd and that, with regard to the claims against Wolfe and Pearison, Dunigan failed to state a claim upon which relief could be granted. Dunigan never responded to the motion to dismiss, and the trial court granted the motion.

[2] Dunigan now appeals and argues that: (1) the clerk of the Marion Superior Court intentionally delayed filing his complaint; and (2) the trial court erred by dismissing the complaint. We are not persuaded by Dunigan's arguments. Accordingly, we affirm.

[1] Dunigan spells this name "Pearison" and "Perison." Because the Defendants use the name "Pearison," we use that spelling.

Issues

[3] Dunigan raises four issues on appeal, which we consolidate and restate as:

I. Whether the clerk of the Marion Superior Court intentionally delayed filing Dunigan's complaint.

II. Whether the trial court erred by dismissing the complaint.

Facts

[4] On June 7, 2022, Dunigan filed his original complaint against Centurion, a medical services contractor for the Wabash Valley Correctional Facility ("Wabash Facility"), where Dunigan was incarcerated. Dunigan alleged claims of medical malpractice, negligence, and breach of contract based on Centurion's alleged failure to: (1) test for and treat certain ailments; (2) refer Dunigan to a specialist; and (3) properly document Dunigan's symptoms. Dunigan identified his treating physician as Dr. Byrd; however, Dr. Byrd was not yet named as a defendant.

[5] Dunigan filed a nearly-identical amended complaint on October 19, 2022. On November 4, 2022, Centurion filed a motion to strike the amended complaint for failure to comply with Trial Rules 8(A), 8(E)(1), and 10(B). The trial court granted the motion and gave Dunigan until December 31, 2022, to file a new amended complaint.

[6] Dunigan filed a second amended complaint on December 28, 2022. Centurion filed a motion to strike that complaint for failure to comply with Trial Rules

8(A), 8(E)(1), 9(B), 9.2(A), 10(B), and 12(F). On January 4, 2023, the trial court granted the motion and gave Dunigan until March 5, 2023, to file a new amended complaint.

[7] Dunigan's third amended complaint ("Complaint") is marked as filed on March 28, 2023; however, the complaint itself is dated February 2, 2023.[2] In the Complaint, Dunigan added as defendants Dr. Byrd, Wolfe, and Pearison. Dunigan alleged that Centurion and Dr. Byrd denied him Hepatitis C treatment; Hepatitis A testing; a "Hepatitis [s]pecialist referral to determine why his Hepatitis B AB results are indeterminate"; testing for Meningitis; treatment for a "wart/lesion"; cancer screening for "H.P.V. related cancers"; treatment for a "Coccus/Gram Positive Cocci infection"; and treatment for Dunigan's dental problems. Appellant's App. Vol. II pp. 16-17. Dunigan alleged that, in addition to medical malpractice, several of these actions amounted to negligence and breach of a "contract for medical services"; however, Dunigan did not attach the alleged contract to his complaint. *Id.* at 17.

[8] Regarding Wolfe, Dunigan alleged that she failed to document "homocult [sic] /f.o.b.t. blood in stool test results" in October 2021, which "depriv[ed] [Dunigan] of services that he should have received after signing a contract for medical services." *Id.* As for Pearison, Dunigan alleged that she "falsely

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[2] Also on March 28, 2023, Dunigan filed a motion for change of judge, which the trial court granted.

documented [Dunigan's] homocult [sic]/f.o.b.t.[] blood in stool test results" in January 2022, which "preclude[ed] needed specialist referral and possible needed treatment . . . ." *Id.* Dunigan requested that the trial court: award him compensatory and punitive damages; order the requested treatment and testing; order that Wolfe "provide a written explanation [as] to why [Dunigan's] Hommucult [sic] results of October, 2021 were not logged"; and order that the "false hommucult [sic] results documented by [Pearison] be corrected." *Id.* at 18.

[9] On April 20, 2023, Centurion filed a motion to dismiss the Complaint, in part, because it was not timely filed pursuant to the trial court's January 4, 2023 order. The trial court denied this motion.

[10] On June 8, 2023, Centurion filed a second motion to dismiss ("Motion to Dismiss"). Centurion argued that the claims against Centurion and Dr. Byrd should be dismissed pursuant to Trial Rule 12(B)(1) for lack of subject matter jurisdiction because Centurion and Dr. Byrd were both qualified providers under the Medical Malpractice Act and Dunigan had not obtained an opinion from the medical review panel. As for the claims against Wolfe and Pearison, Centurion argued that those claims should be dismissed pursuant to Trial Rule 12(B)(6) for failure to state a claim upon which relief could be granted.

[11] Dunigan did not respond to the Motion to Dismiss. His only response appears to be a June 15, 2023 affidavit, in which he stated that he had not received a

ruling on the Motion to Dismiss. On July 18, 2023, the trial court granted the Motion to Dismiss. Dunigan now appeals.

Discussion and Decision

[12] Dunigan argues that: (1) the clerk of the Marion Superior Court intentionally delayed filing his Complaint; and (2) the trial court erred by dismissing the Complaint. Before turning to the parties' arguments, we note at the outset that this Court has previously observed that Dunigan has filed dozens of meritless lawsuits during his incarceration and "has become 'a prolific, abusive litigant.'" *Dunigan v. State*, 191 N.E.3d 851, 853 (Ind. Ct. App. 2022) (quoting *Zavodnik v. Harper*, 17 N.E.3d 259, 262 (Ind. 2014)), *trans. denied*.[3]

[13] We also note that Dunigan proceeds in this matter pro se. We, therefore, reiterate that "'a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.'" *Stark v. State*, 204 N.E.3d 957, 963 (Ind. Ct. App. 2023) (quoting *Zavodnik*, 17 N.E.3d at 266). "'This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.'" *Id*. (quoting *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018), *trans. denied*). "'Although

[3] Based on Dunigan's abusive litigation, we placed certain filing requirements on lawsuits filed by Dunigan "with respect to any future lawsuits that arise directly or indirectly from any alleged conspiracies or misconduct by public officials related to Dunigan's arrest, prosecution, conviction or confinement for child molestation . . . ," but those requirements do not apply in this action because the defendants here are not public officials. *Dunigan*, 191 N.E.3d at 860.

we prefer to decide cases on their merits, arguments are waived where an appellant's noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors.'" *Id.* (quoting *Picket Fence Prop. Co.*, 109 N.E.3d at 1029). We conclude that Dunigan has not carried his burden of persuasion in this case. We, therefore, affirm the judgment of the trial court.

I. Late filing of the Complaint

[14] Dunigan first argues that, because he filed his Complaint on February 2, 2023, and the clerk of the Marion Superior Court did not mark the complaint as filed until March 28, 2023, the clerk intentionally delayed filing his Complaint in an "attempt to cause dismissal." Appellant's Br. p. 8. Dunigan further argues that this alleged delay is a "wrong that compromising [sic] United States Constitution's, [sic] first Amendment, unrectified, violates [Dunigan's] 14th Amendment rights in the same offense." *Id*. at 9.

[15] This argument is not sufficiently developed for our review and is, therefore, waived. *See* App. R. 46(A)(8)(a) (requiring that arguments be supported by "cogent reasoning"); *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (noting that appellate courts will neither "step in the shoes of the advocate and fashion arguments on his behalf" nor "address arguments that are too poorly developed or improperly expressed to be understood" (quotation omitted)).

[16] Moreover, an argument is moot "when no effective relief can be rendered to the parties before the court." *T.W. v. St. Vincent Hosp. and Health Care Ctr., Inc.*, 121

N.E.3d 1039, 1042 (Ind. 2019) (citation omitted). Here, despite the late filing of the Complaint, the trial court treated the Complaint as timely filed, and Dunigan does not identify what relief this Court can now provide. Accordingly, we reject Dunigan's argument that the clerk intentionally delayed filing his Complaint.

II. Dismissal of the Complaint

[17] Dunigan next argues that the trial court erred by dismissing his Complaint. "We will affirm a trial court's dismissal of an action if it is sustainable on any basis found in the record." *Zavodnik v. Richards*, 984 N.E.2d 699, 701 (Ind. Ct. App. 2013) (citing *City of New Haven v. Reichhart,* 748 N.E.2d 374, 378 (Ind. 2001)), *aff'd on reh'g*. Here, we conclude that the trial court did not err by dismissing the Complaint.

A. Claims against Centurion and Dr. Byrd

[18] The trial court did not err by dismissing the claims against Centurion and Dr. Byrd. Centurion argues that these claims should be dismissed based upon the Medical Malpractice Act. The Medical Malpractice Act "'impose[s] procedural requirements on the prosecution'" of medical malpractice claims against "'health care providers meeting qualifications set forth in the act . . . .'" *Robertson v. Anonymous Clinic*, 63 N.E.3d 349, 356-57 (Ind. Ct. App. 2016) (quoting *Ellenwine v. Fairley*, 846 N.E.2d 657, 660 (Ind. 2006); *In re Stephens*, 867 N.E.2d 148, 150 (Ind. 2007)), *trans. denied*. The Medical Malpractice Act governs all claims regarding the "'curative or salutary conduct'" of qualified

providers. *Rossner v. Take Home Health Sys.*, *LLC*, 172 N.E.3d 1248, 1254-55 (Ind. Ct. App. 2021) (quoting *Howard Reg'l Health Sys. v. Gordon*, 952 N.E.2d 182, 185 (Ind. 2011)), *trans. denied*. "Before a plaintiff may pursue a malpractice complaint in court against a qualified healthcare provider, the Medical Malpractice Act requires the plaintiff to present a proposed complaint to a [medical review panel], and the [medical review panel] must give its opinion as to whether the provider breached the standard of care." *McKeen v. Turner*, 71 N.E.3d 833, 834 (Ind. 2017) (citing Ind. Code § 34-18-8-4) (per curiam).

[19] Here, Dunigan's Complaint alleged medical malpractice claims against Centurion and Dr. Byrd regarding their treatment of Dunigan's health conditions. Centurion argued in its Motion to Dismiss, as it does on appeal, that the Complaint should be dismissed because Dunigan had not complied with the Medical Malpractice Act's requirement that he first obtain the opinion of a medical review panel. The Medical Malpractice Act governs Dunigan's claims, Centurion argues, because Dr. Byrd and Centurion are qualified providers.

[20] Dunigan never argued before the trial court, nor does he on appeal, that the Medical Malpractice Act does not apply to his claims or that he satisfied the Medical Malpractice Act's statutory prerequisites to suit. Again, appellate courts will neither "step in the shoes of the advocate and fashion arguments on his behalf" nor "address arguments that are too poorly developed or improperly expressed to be understood." *Miller*, 212 N.E.3d at 657. Accordingly, the trial court did not err by dismissing Dunigan's claims against Centurion and Dr.

Byrd. *See, e.g.*, *Putnam Cty. Hosp. v. Sells*, 619 N.E.2d 968, 972 (Ind. Ct. App. 1993) (holding complaint should have been dismissed when it asserted claims governed by the Medical Malpractice Act and plaintiff had not obtained opinion from medical review panel).[4]

B. Claims against Wolfe and Pearison

[21] The trial court also did not err by dismissing Dunigan's claims against Wolfe and Pearison. Centurion argues that those claims should be dismissed pursuant to Trial Rule 12(B)(6).[5] Our standard of review is as follows:

> A motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. *See Kitco, Inc. v. Corp. for Gen. Trade*, 706 N.E.2d 581[, 590-91] (Ind. Ct. App. 1999). Thus, while we do not test the sufficiency of the facts alleged with regards to their adequacy to provide recovery, we do test their sufficiency with regards to whether or not they have stated some factual scenario in which a legally actionable injury has occurred.
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> A court should "accept[ ] as true the facts alleged in the complaint," *Minks v. Pina*, 709 N.E.2d 379, 381 (Ind. Ct. App. 1999)[, *trans. denied*], and should not only "consider the pleadings

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[4] Although the parties characterize Dunigan's failure to obtain an opinion from a medical review panel as depriving the trial court of subject matter jurisdiction, the issue is better characterized as whether Dunigan has satisfied the procedural requirements for the trial court to exercise its jurisdiction. *See First Am. Title Ins. Co. v. Robertson*, 19 N.E.3d 757, 760 (Ind. 2014) (noting that the failure to exhaust administrative remedies "is a procedural error and does not implicate the trial court's subject matter jurisdiction"), *amended on reh'g*, 27 N.E.3d 768 (Ind. 2015).

[5] Centurion does not contend that Wolfe or Pearison are qualified providers under the Medical Malpractice Act.

> in the light most favorable to the plaintiff," but also "draw every reasonable inference in favor of [the non-moving] party." *Newman v. Deiter*, 702 N.E.2d 1093, 1097 (Ind. Ct. App. 1998)[, *trans. denied*]. . . .
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> Indiana Trial Rule 8(A), this state's notice pleading provision, requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although the plaintiff need not set out in precise detail the facts upon which the claim is based, she must still plead the operative facts necessary to set forth an actionable claim. *Miller v. Mem. Hosp. of South Bend, Inc.*, 679 N.E.2d 1329[, 1332] (Ind. 1997). Under notice pleading, we review the granting of a motion to dismiss for failure to state a claim under a stringent standard, and affirm the trial court's grant of the motion only when it is "apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *McQueen v. Fayette Cty. Sch. Corp.*, 711 N.E.2d 62, 65 (Ind. Ct. App. 1999)[, *trans. denied*].

CW Farms, LLC v. Egg Innovations, LLC, 169 N.E.3d 874, 878-79 (Ind. Ct. App. 2021) (quoting *Trail v. Boys and Girls Clubs of Nw. Ind.*, 845 N.E.2d 130, 134-35 (Ind. 2006)), *trans. denied*.

[22] Dunigan's Complaint alleges that Wolfe "failed to document" blood in his stool, "committing medical negligence and malpractice" and "depriving [Dunigan] of services that he should have received after signing a contract for medical services." Appellant's App. Vol. II p. 17. As for Pearison, the Complaint alleges that Pearison "falsely documented" stool results on a different occasion, which "preclude[ed] needed specialist referral and possible needed treatment . . . ." *Id*.

[23] Dunigan's claims sound in breach of contract and negligence. "'To recover for a breach of contract, a plaintiff must prove that: (1) a contract existed, (2) the defendant breached the contract, and (3) the plaintiff suffered damage as a result of the defendant's breach.'" *Trs. of Ind. Univ. v. Spiegel*, 186 N.E.3d 1151, 1158 (Ind. 2022) (quoting *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007)), *trans. denied*. To recover for negligence, the plaintiff must prove that: (1) the defendant owed the plaintiff a "duty"; (2) the defendant "breach[ed]" that duty; and (3) the plaintiff suffered "compensable damages proximately caused by the breach." *Cmty. Health Network, Inc. v. McKenzie*, 185 N.E.3d 368, 379 (Ind. 2022).

[24] Beginning with the breach of contract claim, Dunigan makes no argument regarding any contract between him and the Defendants in his Appellant's Brief. *See Stark*, 204 N.E.3d at 963-64 (failure to make a "cogent" argument pursuant to Appellate Rule 46(A)(8)(a) results in waiver of the argument). Moreover, while Dunigan asserts that a "contract for medical services" existed, he fails to identify any relevant terms under that contract to put the Defendants on notice regarding how the contract was breached. In other words, he fails to plead the necessary "operative facts" for his breach of contract claim. *CW Farms, LLC*, 169 N.E.3d at 879; *cf. Trail v. Boys and Girls Club of Nw. Ind.*, 811 N.E.2d 830, 839 (Ind. Ct. App. 2004) (holding complaint failed to allege sufficient facts to demonstrate breach of contract claim), *summarily aff'd in relevant part*, 845 N.E.2d at 135.

[25] As for Dunigan's negligence claims, he merely asserts in his Appellant's Brief that the Defendants "fraudulently" documented his medical records, but he did not allege fraud in his Complaint. He also does not direct us to any legal authority indicating that a mere "possible" injury caused by Pearison is compensable. Appellant's App. Vol. II p. 17. As for Wolfe, Dunnigan does not identify any injury caused by her conduct. While his Complaint requests that Wolfe "provide a written explanation" for her conduct, he again provides no legal support to suggest this is a form of relief that a court may order. *Id*. at 18. *Cf. Bellows v. Bd. of Comm'rs of Cty. of Elkhart*, 926 N.E.2d 96, 111 (Ind. Ct. App. 2010) (affirming dismissal of count for failure to state a claim when count "neither identifie[d] a legally actionable injury nor request[ed] relief for an injury"). Under these circumstances, we cannot say that the trial court erred by dismissing Dunigan's claims against Wolfe and Pearison.

Conclusion

[26] Dunigan's argument that the clerk intentionally delayed filing his Complaint is waived and, moreover, moot. Additionally, the trial court did not err by dismissing Dunigan's complaint. Accordingly, we affirm the judgment of the trial court.

[27] Affirmed.

Pyle, J., and Foley, J., concur.

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