

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0759

BRIAN LEWIS

VERSUS

TWH
AWY.
J
GOVERNOR BOBBY JINDAL, MAYOR KIP HOLDEN, ATTORNEY
GENERAL BOBBY CALDWELL, LSU HEALTH CENTER, LSU
SURGICAL CENTER, BATON ROUGE MEDICAL CENTER, OUR
LADY OF THE LAKE MEDICAL CENTER, UROLOGY CENTER
FOR BOTH MEDICAL CENTER, DOCTOR JAMES RHORER,
ELLISON B. ABAJ, ANNA SMITH, LUANN BARNETT, DAM
FLOWERS, JAMES MORRISON, MINH SO, BRITTNEY DENLEY,
HENRY HOLLIER, BARBARA LOUISE COHN, BEAU BLACK,
KENNETH B. BANK-DALE, DONALD HELTZ, PAMELA BARA,
ROBERT F. HAYSEN, COTY TROTTER, BAPTISTE W. BRUNNER,
KENNETH M. BLUE, JR., OTL-BROWN-FINANCIAL
DEPARTMENT, GAIL MAHER-CASE MANAGER, LESLIE ALTER-
CASE MANAGER

***DATE OF JUDGMENT:* DEC 22 2016**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 634,850, SECTION 27, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TODD HERNANDEZ, JUDGE

* * * * *

Brian Lewis
Baton Rouge, Louisiana

Plaintiff-Appellant
In Proper Person

Michael M. Remson
Craig J. Sabottke
N. Courtney Simmons
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
Baton Rouge General
Medical Center

* * * * *

BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

Disposition: VACATED AND REMANDED WITH INSTRUCTIONS.

CHUTZ, J.

Plaintiff-appellant, Brian Lewis, appeals from a district court judgment dismissing his medical malpractice suit pursuant to a dilatory exception raising the objection of prematurity and a peremptory exception raising the objection of no cause of action. For the following reasons, we vacate the judgment and remand this matter to the district court with instructions.

FACTS AND PROCEDURAL BACKGROUND

On November 5, 2014, plaintiff filed suit, *in forma pauperis*, in the 19th Judicial District Court against numerous defendants, including Baton Rouge General Medical Center (BRGMC).¹ In his *pro se* petition, plaintiff raised multiple complaints about the medical treatment and/or lack of treatment he received from various defendants, including BRGMC. He alleged the defendant physicians lied to him about taking care of his health promptly, refused to see him at times, neglected to inform him about a mass on his kidney, refused to do anything about blood in his urine, and did a poor job of helping him with his health issues.

BRGMC filed exceptions of prematurity and no cause of action on the ground that plaintiff failed to present his claims to a medical review panel prior to filing suit in the district court. Following a hearing, at which plaintiff made no appearance, the district court sustained BRGMC's exceptions. On March 21, 2016, the district court signed a written judgment dismissing plaintiff's malpractice claims against BRGMC without prejudice and at plaintiff's costs. Plaintiff now appeals the dismissal of his malpractice claims against BRGMC.

¹ BRGMC is the only defendant involved in this appeal. Plaintiff's claims against the other defendants were dismissed in earlier judgments that were separately appealed by plaintiff. See *Lewis v. Jindal, et al.*, 15-1329 (La. App. 1st Cir. 4/15/16) (unpublished), writ denied, 16-0840 (La. 6/17/16), 192 So.3d 772; *Lewis v. Jindal*, 15-1330 (La. App. 1st Cir. 4/15/16) (unpublished).

DISCUSSION

Initially, we note plaintiff's brief includes no specifications or assignments of error, no argument, and no citations to legal authority, all in violation of the requirements of our court rules. See Uniform Rules--Court of Appeal, Rule 1-3 and Rule 2-12.4(A)(5), (6), & (9) & (B)(4). This court may consider as abandoned any issue for review that has not been briefed. See *Price v. GEICO General Insurance Company*, 13-2216 (La. App. 1st Cir. 9/19/14), 155 So.3d 1, 3-4; Uniform Rules, Courts of Appeal, Rule 2-12.4(B)(4). Nevertheless, due to plaintiff's *pro se* status, this court has the discretion to consider the merits of his appeal despite the deficiencies in his brief. See *Putman v. Quality Distribution, Inc.*, 11-0306 (La. App. 1st Cir. 9/30/11), 77 So.3d 318, 320.

Plaintiff raises no specific issue or error on appeal regarding the merits of BRGMC's exceptions of prematurity and no cause of action. Instead, he asserts he was never served with notice of the scheduled hearing date on those exceptions and had no opportunity to address the judge at the hearing thereon.

Under La. C.C.P. art. 891(A), a plaintiff is required to include an address in his petition that is not a post office box for receipt of service upon him of items involving the litigation. An examination of the record reveals that plaintiff failed to meet this requirement, providing the district court with only a post office box as his address.

BRGMC asserts in brief that plaintiff was served on January 19, 2016, by certified mail sent to 1930 Southpointe Drive, #2, Baton Rouge, Louisiana 70808-4164 with its exceptions of prematurity and no cause of action. The appellate record, however, includes no evidence of such service. Moreover, it was not until January 20, 2016, that the district court signed the order setting the exceptions for hearing on March 21, 2016. Although BRGMC alleges the district court sent notice of the March 21, 2016 hearing date to all parties of record, once again a

review of the record reveals no evidence of any such notice.² BRGMC did request that service of both the exceptions and the order setting the hearing date be made on plaintiff at the Southpointe Drive address, as well as at a second address at 2206 Adella Street, Baton Rouge, Louisiana 70802. The attempted service at both of those addresses was unsuccessful and did not result in either personal or domiciliary service upon plaintiff.

Under La. C.C.P. art. 1313(C), when a pleading or order sets a court date, service upon the adverse party “shall be made either by registered or certified mail or as provided in Article 1314, or by actual delivery by a commercial courier.” If service is made by mail, Article 1313(B) requires the party making the service to file a certificate in the record of the manner in which service was made. Louisiana Code of Civil Procedure article 1314(A)(1), in conjunction with La. C.C.P. art. 1231, allows either personal or domiciliary service by the sheriff upon an adverse party. If the adverse party is not represented by counsel and his address is unknown, La. C.C.P. art. 1314(A)(2)(a) allows the sheriff to make service by “delivery of a copy of the pleading to the clerk of court....”

The obvious purpose of Articles 1313 and 1314 is to fulfill the constitutional requirements of due process notice. *Adair Asset Management, LLC/US Bank v. Honey Bear Lodge, Inc.*, 12-1690 (La. App. 1st Cir. 2/13/14), 138 So.3d 6, 11. Due process at a minimum requires a deprivation of life, liberty, or property be preceded by notice and an opportunity to be heard at a meaningful time. *Spiers v. Roye*, 04-2189 (La. App. 1st Cir. 8/8/07), 965 So.2d 489, 494; *Zachary Taylor Post No. 3784 v. Riley*, 481 So.2d 699, 701 (La. App. 1st Cir. 1985). The trial of a

² Under our rules of court, an appellee is required to make reference to specific page numbers in the appellate record on which he relies in making his argument. See Uniform Rules--Courts of Appeal, Rules 2-12.4(A)(9)(a) & 2-12.5. In this case, BRGMC’s brief does not reference any specific pages in the appellate record supporting its contention that it served its exceptions of prematurity and no cause of action on plaintiff by certified mail on January 19, 2016, or that the district court provided notice to all parties of the order setting the March 21, 2016 hearing date on the exceptions.

case is unquestionably one of the meaningful occasions at which the parties must be given an opportunity to be heard, and adequate notice thereof is one of the most fundamental requirements of procedural due process. *Spiers*, 965 So.2d at 494. A judgment rendered against a party who has not been served, when service is required, and who has not appeared is an absolute nullity. See La. C.C.P. art. 2002(A)(2); *Adair Asset Mgmt., LLC/US Bank*, 138 So.3d at 11; *Nunez v. Superior Hospitality Systems, Inc.*, 14-668 (La. App. 5th Cir. 12/23/14), 166 So.3d 1004, 1008.

In this case, BRGMC's difficulty in effecting service upon plaintiff through the sheriff's office unquestionably was occasioned by plaintiff's violation of the La. C.C.P. art. 891(A) requirement that he provide the district court with a current address that is not a post office box. Nevertheless, the Code of Civil Procedure provides methods for service to be effected upon a party whose current address is unknown. Under La. C.C.P. art. 1313(C), service of an order setting a court date may be made by certified or registered mail. Further, La. C.C.P. art. 1571(B) provides that "[t]he failure of a party to provide [an address] does not affect the validity of any judgment rendered *if notice of trial or other matters was sent to the party's last known address of record.*" (Emphasis added.) Pursuant to these provisions, BRGMC could have attempted to effect service by sending notice of the hearing date by certified or registered mail to the post office box address provided by plaintiff. Further, since plaintiff was not represented by counsel and his street address was unknown, another method of effecting service would have been to have the sheriff deliver a copy of the order setting the hearing date to the clerk of court in accordance with La. C.C.P. art. 1314(A)(2)(a).

In this case, BRGMC did not attempt service upon plaintiff through either of these methods. Nor is there evidence in the record that actual service was ever effected upon plaintiff. Accordingly, the judgment rendered against plaintiff

without notice must be vacated as absolutely null. See La. C.C.P. art. 2002(A)(2); *Adair Asset Mangement, LLC/US Bank*, 138 So.3d at 11; *Nunez*, 166 So.3d at 1008.

CONCLUSION

For the above reasons, the judgment of the district court sustaining the exceptions of prematurity and no cause of action and dismissing plaintiff, Brian Lewis', medical malpractice claims against defendant, Baton Rouge General Medical Center, without prejudice is vacated. This matter is remanded to the district court for further proceedings consistent with this opinion. The district court is instructed to order plaintiff to comply with La. C.C.P. arts. 891(A) and 1571(B) by providing the court with a current address that is not a post office box and to advise the court of any changes in his address. The costs of this appeal are assessed equally to plaintiff and Baton Rouge General Medical Center.

JUDGMENT VACATED AND REMANDED WITH INSTRUCTIONS.