

NOT DESIGNATED FOR PUBLICATION

JUSTO E. ROQUE, JR.	*	NO. 2018-CA-0021
VERSUS	*	COURT OF APPEAL
DOUGLAS CROSS, D.D.S.	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-00254, DIVISION "C"
Honorable Sidney H. Cates, Judge

Judge Joy Cossich Lobrano

(Court composed of Judge Terri F. Love, Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins)

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AFFIRMED.
JUNE 27, 2018

The plaintiff/appellant, Justo E. Roque, Jr., filed a medical malpractice claim against defendants/appellees, Douglas Cross, D.D.S. and EXCELth Dental Clinic (hereinafter “defendants”) for alleged negligence with regard to Roque’s dental care and treatment. He has appealed the judgment by the district court dismissing his lawsuit. We note that Roque has appeared *pro se* from the filing of the suit through this appeal.

The lawsuit was instituted on January 10, 2017, when Roque filed two pleadings with the district court. The first was entitled, “the petition statement compensatory and order;” the second was entitled “the motion for judgment or offer of judgment.” It seems that Roque is alleging that he was dissatisfied by some dental treatment by Dr. Cross who apparently works or worked at the named dental clinic.

On October 9, 2017, the defendants filed a number of declinatory and dilatory exceptions, including: (1) exception of insufficiency of citation; (2) exception of insufficiency of service of process; (3) exception of lack of personal

jurisdiction; (4) exception of nonconformity of the petition with La. C.C.P. art. 891; (5) exception of vagueness and ambiguity; and (6) exception of unauthorized use of summary proceeding.

The exceptions were heard on November 17, 2017, at which the district court dismissed the lawsuit against the defendants. Roque was assisted by an interpreter at the hearing. The judgment was signed on November 28, 2017. This timely appeal followed.

As pointed out by the defendants, Roque failed to assign any errors for our review and, therefore, did not brief any assignment of error, as required by Uniform Rules of the Louisiana Courts of Appeal, Rule 2-12.4(B)(3). However, as a *pro se* litigant, we recognize that Roque did his best under the circumstances. Thus, we will review the district court's judgment for any errors.

The record reveals that when the pleadings were filed, Roque requested that a citation and service be issue on the defendants. Instead of properly requesting service, Roque merely mailed the pleadings to the defendants through U.S. mail.

La. C.C.P. art. 1201 provides in pertinent part:

A. Citation and service thereof are essential in all civil actions except summary and executory proceedings, divorce actions under Civil Code Article 102, and proceedings under the Children's Code. Without them all proceedings are absolutely null.

In addition, La. C.C.P. art. 6(A)(1) provides that the “legal power and authority of a court to render a personal judgment against a party to an action or proceeding.... requires ... [t]he service of process on the defendant, or on his agent

for service of process, or the express waiver of citation and service under Article 1201.”

As stated in La. C.C.P. art. 1201(C), “service of the citation **shall** be requested on all named defendants within ninety days of commencement of the action.” [Emphasis supplied.] This is further supported by La. C.C.P. art. 1672(C), which provides that a judgment dismissing the action without prejudice **shall** be rendered when a plaintiff fails to request service with ninety days “unless good cause is shown why service could not be requested.”

Reading Roque’s appellant brief, we find no explanation of good cause that would have prevented him from serving the defendants with the pleadings comprising his lawsuit within ninety days of its filing. Thus, we find that the trial court correctly granted the defendants’ exceptions of insufficiency of service of process under La. C.C.P. art. 925(A)(2), as well as the exception of lack of personal jurisdiction under La. C.C.P. art. 925(A)(5). Consequently, we pretermit discussion of the other exceptions filed by the trial court.

Based on the foregoing, we affirm the district court’s judgment granting the exceptions filed by the defendants and dismissing the proceedings with prejudice.

AFFIRMED.