IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 17, 2020 Session

ARTHUR WOODS v. ADAM ARTHUR, M.D. ET AL.

Appeal from the Circuit Court for Shelby County
No. CT-001886-18 Felicia Corbin-Johnson, Judge

No. W2019-01936-COA-R3-CV

This appeal concerns the dismissal of a health care liability action for failure to comply with a pre-suit notice content requirement in Tenn. Code Ann. § 26-29-121(a)(2). The trial court determined that the plaintiff failed to provide the defendant doctors and hospital with medical authorization forms that would permit pre-suit investigation of his claims. The plaintiff contends the dismissal was unwarranted because the medical authorizations substantially complied with the statute and the defendants already had the relevant records. The defendants argue that the forms were invalid because they lacked several required elements, including a description of the purpose for which the records could be disclosed and used. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and CARMA DENNIS MCGEE, J., joined.

Arthur Woods, appellant, pro se.

Buckner Potts Wellford, Memphis, Tennessee, for the appellee, Methodist Healthcare-Memphis Hospitals.[1]

Albert C. Harvey, Justin N. Joy, and Patrick S. Quinn, Memphis, Tennessee, for the appellees, Adam Arthur, M.D. and Jeffrey Sorenson, M.D.

[1] Methodist Healthcare-Memphis Hospitals was incorrectly named in the complaint and case style as "Methodist Le Bonheur Healthcare (Methodist-University Site)."

OPINION

FACTS AND PROCEDURAL HISTORY

In October 2016, Arthur Woods ("Plaintiff") underwent spinal surgery performed by Dr. Adam Arthur and Dr. Patrick Lingo at Methodist University Hospital ("Methodist Hospital"). In January 2017, Plaintiff underwent a second spinal surgery performed by Dr. Jeffrey Sorenson. Both Dr. Arthur and Dr. Lingo were employees of Semmes-Murphey Clinic, P.C.

In August 2017, Plaintiff sent a Notice of Filing Suit to Methodist Hospital, Dr. Arthur, and Dr. Sorenson (collectively, "Defendants"). The notices alleged that Plaintiff sustained personal injuries due to Defendants' negligence, which resulted from using the wrong screw size during the first surgery. Plaintiff further alleged that he suffered additional injuries because of the corrective surgery in January 2017. A similar notice was sent to Dr. Lingo, but Dr. Lingo has not made an appearance in this case and is not a party to the appeal.

In September 2017, Drs. Arthur and Sorenson replied to the notice and informed Plaintiff they were investigating the matter. In a following telephone conversation, counsel for Drs. Arthur and Sorenson discussed the merits of Plaintiff's claim with Plaintiff's counsel. Counsel for Drs. Arthur and Sorenson stated that he had the Operative Reports for both the October 2016 surgery and the January 2017 surgery.

No settlement was reached and, in April 2018, Plaintiff filed his complaint. Two months later, Drs. Arthur and Sorenson filed a joint motion to dismiss, alleging that the applicable statute of limitations had expired. *See* Tenn. Code Ann. § 29-26-121 (providing a one-year limitations period). Methodist Hospital filed a motion to dismiss on the same basis.

Defendants contended that Plaintiff did not qualify for the extension in § 29-26-121(c) because the Notices of Filing Suit did not include medical authorizations that complied with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). *See id*. § 121(a)(2)(E) (requiring pre-suit notice to include HIPAA compliant authorizations). Defendants included copies of the authorizations they received. The authorizations lacked two of the six core elements required by HIPAA: (1) identification of "the person(s) . . . authorized to make the requested use or disclosure"; and (2) identification of "the persons(s) . . . to whom the covered entity may make the requested use or disclosure." *See* 45 C.F.R. § 164.508(c)(1)(ii) to (iii).

In response, Plaintiff asserted that Defendants were relying on the wrong medical authorizations. In an affidavit, Plaintiff's counsel said that he sent four other medical authorizations with the Notices of Filing Suit. The first two authorized Defendants to

"disclose [Plaintiff's] health information" to Plaintiff's counsel. The second two authorized Drs. Arthur and Sorenson, collectively, to "obtain/request copies of [Plaintiff's] health information" from Methodist Hospital and vice versa.

Additionally, Plaintiff argued that Defendants were not prejudiced by any defect in the authorizations because they each independently possessed the "relevant" records. According to Plaintiff, the Operative Reports were the only relevant medical records because they established the size of screws used during his surgeries. Plaintiff contended that Methodist Hospital included the Operative Reports in its disclosure to Plaintiff's counsel. Plaintiff also filed a transcript of the 2017 telephone conversation in which counsel for Drs. Arthur and Sorenson said that he had the Operative Reports in his possession.[2] Further, Plaintiff filed the affidavit of the custodian of medical records at the Semmes-Murphey Clinic, Karen Adams. Ms. Adams included the Operative Reports in a list of medical records that Semmes-Murphey held on behalf of Drs. Arthur and Sorensen.[3]

Because resolution of the dispute required consideration of documents outside of the pleadings, Plaintiff argued that the court should treat the motions to dismiss as motions for summary judgment.

In their replies, Defendants maintained that the additional medical authorizations were also defective because they lacked "[a] description of each purpose of the requested use or disclosure." *See* 45 C.F.R. § 164.508(c)(1)(iv). Defendants also argued authorizing one party to "obtain/request" records did not authorize the other to "disclose" records. Regardless, Defendants pointed out that Plaintiff had not provided any forms to obtain or disclose records from Dr. Lingo.

In a supplemental response, Plaintiff argued that Dr. Lingo did not have any relevant records and, even if he did, Dr. Arthur had access to those records because Dr. Lingo was a resident under Dr. Arthur's supervision. Plaintiff also argued that the purpose for the disclosure and use was implicit because the authorizations were sent with the Notices of Filing Suit.

After hearings in March and April 2019, the trial court granted Defendants' motions to dismiss. As an initial matter, the court determined that Drs. Arthur and Sorenson were not a "single provider." Thus, while the medical authorizations allowed Methodist Hospital to disclose Plaintiff's records, the court found the authorizations did not allow Drs. Arthur and Sorenson to disclose Plaintiff's records to each other. The court also concluded that

[2] For the purposes of this appeal, Defendants do not dispute the admissibility of the telephone conversation transcript.

[3] Plaintiff also contended that Defendants had free access to each other's records because Plaintiff signed a consent for treatment and release of information form prior to being admitted to the hospital. At the March 2019 hearing, the trial court ruled that these documents were insufficient for the purposes of Tenn. Code Ann. § 29-26-121(a)(2)(E). Plaintiff has not appealed that ruling.

Plaintiff failed to comply with § 29-26-121(a)(2) because he did not specify the purpose for which the records could be used and failed to authorize any disclosure from Dr. Lingo.

In May 2019, Plaintiff filed a motion to set aside the orders or, in the alternative, make additional findings of fact and conclusions of law. The trial court denied the motion, but it clarified its finding that Defendants were prejudiced by the noncompliant forms because they were not able to evaluate Plaintiff's claims as required by § 29-26-121. The court declined to rule on whether the parties, as a matter of fact, already had the necessary records when they received pre-suit notice.

This appeal followed.

STANDARD OF REVIEW

A motion to dismiss filed pursuant to Tenn. R. Civ. P. 12.02(6) "is an appropriate means of invoking the statute of limitations as a ground for dismissing a complaint." *Martin v. Rolling Hills Hosp., LLC*, 600 S.W.3d 322, 330 (Tenn. 2020) (citing *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 455 n.11 (Tenn. 2012)). It is also an appropriate means for challenging a plaintiff's compliance with the pre-suit notice requirement in Tenn. Code Ann. § 29-26-121(a). *Id.* Once a defendant establishes that a medical authorization is noncompliant, "the plaintiff then bears the burden of establishing substantial compliance with Section 121 . . . . , and by affidavits or another means provided in [Tenn. R. Civ. P.] 56, 'set[ting] forth specific facts' demonstrating that the noncompliance did not prejudice the defense." *Id*. at 335 (quoting *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 265 (Tenn. 2015)).

When matters outside the pleadings are submitted in support of a 12.02(6) motion, the motion must "be treated as a motion for summary judgment . . . ." Tenn. R. Civ. P. 12.02; *see Martin,* 600 S.W.3d at 330. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. Appellate courts review a decision on a motion for summary judgment de novo without a presumption of correctness. *Rye*, 477 S.W.3d at 250.

ANALYSIS

The dispositive issue in this case is whether the trial court erred when it dismissed Plaintiff's complaint based upon (1) Plaintiff's failure to provide pre-suit medical authorizations pertaining to Dr. Lingo and (2) Plaintiff's failure to describe the purpose for which Defendants could use and disclose Plaintiff's medical records.[4]

[4] Plaintiff states the issue as "Whether the trial court erred in granting [Defendant]s' motions to dismiss."

Tennessee Code Annotated § 29-26-121(a)(1) requires plaintiffs to provide pre-suit notice to potential defendants before commencing a health care liability action. The notice must contain, *inter alia*, "[a] HIPAA compliant medical authorization." *Id*. § 121(a)(2)(E). The content requirements in § 29-26-121(a)(2) "are directory and may be satisfied by substantial compliance." *Martin*, 600 S.W.3d at 331.

In *Martin v. Rolling Hills Hospital, LLC*, the Tennessee Supreme Court restated the framework for considering whether a plaintiff has substantially complied with the medical authorization requirement:

> HIPAA generally "prohibits medical providers from using or disclosing a plaintiff's medical records without a fully compliant authorization form." [T]herefore . . . "it is a threshold requirement of [Section 121] that the plaintiff's medical authorization must be sufficient to enable defendants to obtain and review a plaintiff's relevant medical records." And . . . "[f]ederal regulations" mandate the following six "core" elements for a HIPAA compliant medical authorization:
>
> > (i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
> >
> > (ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
> >
> > (iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.
> >
> > (iv) A description of each purpose of the requested use or disclosure . . . .
> >
> > (v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure . . . .
> >
> > (vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.
>
> . . . [O]mitting any of these core elements may render a medical authorization noncompliant with HIPAA and ineffective "to enable defendants to obtain and review a plaintiff's relevant medical records." . . . . [W]hen determining whether a plaintiff "has substantially complied with [Section 121(a)(2)(E),] a reviewing court should consider the extent and significance of the

> plaintiff's errors and omissions and whether the defendant was prejudiced by the plaintiff's noncompliance."

Id. at 332 (citations omitted). "Nevertheless, . . . '[a] plaintiff's less-than-perfect compliance with [Section 121(a)(2)(E)]' will not always 'derail a healthcare liability claim' because '[n]on-substantive errors and omissions will not always prejudice defendants by preventing them from obtaining a plaintiff's relevant medical records.'" *Id*. at 333 (quoting *Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 555 (Tenn. 2013)).

In *Martin*, the Court also clarified that "prejudice is not a separate and independent analytical element;" instead, prejudice is one "consideration relevant to determining . . . . the extent and significance of the plaintiff's noncompliance." *Id*. at 333–34. Of particular significance is whether "a plaintiff's noncompliance with Section 121 frustrates or interferes with the purposes of Section 121 or prevents the defendant from receiving a benefit Section 121 confers." *Id*. at 334.

Tennessee Code Annotated § 29-26-121 "ensures that a plaintiff give[s] timely notice to a potential defendant of a health care liability claim so it can investigate the merits of the claim and pursue settlement negotiations before the start of the litigation." *Martin*, 600 S.W.3d at 331 (quoting *Runions v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 549 S.W.3d 77, 86 (Tenn. 2018)). As is relevant here, the medical authorization "serve[s] an investigatory function, equipping defendants with the actual means to evaluate the substantive merits of a plaintiff's claim by enabling early discovery of potential co-defendants and early access to a plaintiff's medical records." *Id*. at 332 (quoting *Stevens*, 418 S.W.3d at 554).

As the court recognized in *Martin*, "HIPAA generally 'prohibits medical providers from using or disclosing a plaintiff's medical records without a fully compliant authorization form.'" *Id*. at 332 (quoting *Stevens*, 418 S.W.3d at 555). Thus, in *Stevens ex rel. Stevens v. Hickman Community Health Care Services, Inc.*, the Court determined that the plaintiff had not substantially complied with § 121 when the medical authorizations lacked several core elements required by HIPAA. 418 S.W.3d at 556; *see also J.A.C. by & through Carter v. Methodist Healthcare Memphis Hosps.*, 542 S.W.3d 502, 513 (Tenn. Ct. App. 2016) ("The forms merely contained blanks where . . . information was to be presented.")

Nonetheless, "substantial compliance, as it is used in the context of pre-suit notice, does not refer solely to the number of satisfied elements, but rather to a degree of compliance that provides the defendant with the ability to access and use the medical records for the purpose of mounting a defense." *Lawson v. Knoxville Dermatology Grp., P.C.*, 544 S.W.3d 704, 711 (Tenn. Ct. App. 2017) (citing *Stevens*, 418 S.W.3d at 555); *see*

Rush v. Jackson Surgical Assocs. PA, No. W2016-01289-COA-R3-CV, 2017 WL 564887, at *4 (Tenn. Ct. App. Feb. 13, 2017) (recognizing that "there is no bright line rule that determines whether a party has substantially complied with the requirements of Tenn. Code Ann. § 29-26-121(a)(2)(E)"). Thus, in *Hunt v. Nair*, No. E2014-01261-COA-R9-CV, 2015 WL 5657083 (Tenn. Ct. App. Sept. 25, 2015), we found a plaintiff's medical authorization fulfilled all the requirements despite the fact that it "d[id] not use certain language specified in 45 C.F.R. § 164.508(c)(ii)–(iii)." *Id*. at *6. We have also concluded that the omission of a date did not render a medical authorization invalid. *See Hamilton v. Abercrombie Radiological Consultants, Inc.*, 487 S.W.3d 114, 122 (Tenn. Ct. App. 2014).

That said, "[p]laintiffs who sent imperfect medical authorizations have been found substantially compliant in very few instances." *Martin*, 600 S.W.3d at 345 (Holly Kirby, J., concurring in part and dissenting in part). This is because HIPAA is "a strict statute," *id.* at 344; federal regulations state that an authorization is invalid if it has "not been filled out completely with respect to [the core elements]," 45 C.F.R. § 164.508(b)(2)(ii). Likewise, "[t]he comments to the HIPAA regulations state that '[p]ursuant to § 164.508(b)(1), an authorization is not valid under the Rule unless it contains all of the required core elements and notification statements.'" *Carrasco v. N. Surgery Ctr., LP*, No. W2019-00558-COA-R3-CV, 2020 WL 2781588, at *3 (Tenn. Ct. App. May 28, 2020) (quoting Standards for Privacy of Individually Identifiable Health Information, 67 Fed. Reg. 53182, 53220-21 (Aug. 14, 2002)).

In other words, omitting one of the core elements from 45 C.F.R. § 164.508(c) is likely a "substantive error [or] omission" because the omission will prevent defendants "from obtaining a plaintiff's relevant medical records" and, thus, "frustrate[] or interfere[] with the purposes of Section 121 or prevent[] the defendant from receiving a benefit Section 121 confers." *Martin*, 600 S.W.3d at 333–34; *see id*. at 334 ("One means of [demonstrating prejudice] is by alleging that the plaintiff's Section 121(a)(2)(E) medical authorization lacks one or more of the six core elements required by federal law for HIPAA compliance."); *see, e.g.*, *Parks v. Walker*, 585 S.W.3d 895, 899 (Tenn. Ct. App. 2018) (affirming trial court's holding "that the omission of a core element constituted a lack of substantial compliance"); *Dial v. Klemis*, No. W2019-02115-COA-R3-CV, 2020 WL 6393393, at *4 (Tenn. Ct. App. Nov. 2, 2020) (concluding that lack of access to records is evidence of prejudice because it shows the defendants "were 'deprived . . . of a benefit Section 121 confers.'" (quoting *Martin*, 600 S.W.3d at 334)).

Moreover, we have generally declined to look beyond the language of the medical authorization form when determining whether the authorization complied with HIPAA. *See J.A.C. by and through Carter*, 542 S.W.3d at 514 (rejecting "[p]laintiffs' contention that the authorization forms were sufficient when considered alongside the pre-suit notice letters that accompanied the forms"); *Lawson*, 544 S.W.3d at 712 (same). This has led us

to conclude that "[w]hen a pre-suit medical authorization is facially invalid, the recipient is per se prejudiced." *Hancock v. BJR Enterprises, LLC*, No. E2019-01158-COA-R3-CV, 2020 WL 2498390, at *7 (Tenn. Ct. App. May 14, 2020) (citing *Buckman v. Mt. States Health Alliance*, 570 S.W.3d 229, 239 (Tenn. Ct. App. 2018), *abrogated on other grounds*, *Martin*, 600 S.W.3d at 322), *appeal denied* (Sept. 16, 2020).

With the foregoing authority in mind, we will consider whether Plaintiff substantially complied with the content requirements in § 29-26-121(a)(2) despite his failure to provide pre-suit medical authorizations pertaining to Dr. Lingo and to describe the purpose for which Defendants could use and disclose his medical records.

I. Authorization to Access Dr. Lingo's Records

Plaintiff contends that his failure to authorize the disclosure of medical information from Dr. Lingo is immaterial because Dr. Lingo was a resident physician under the supervision of Drs. Arthur and Sorenson, i.e., Dr. Lingo had no records of his own. Considering the above authority, we find this argument unavailing.

As stated, plaintiffs must provide pre-suit notice "to each health care provider that will be a named defendant," Tenn. Code Ann. § 29-26-121(a)(1), and the medical authorizations must allow each provider "to obtain complete medical records **from each other provider being sent a notice**," *id*. § 121(a)(2)(E). Thus, regardless of whether the authorizations sent to Defendants were HIPAA compliant, Plaintiff failed to comply with § 29-26-121(a). *See Brookins v. Tabor*, No. W2017-00576-COA-R3-CV, 2018 WL 2106652, at *5 (Tenn. Ct. App. May 8, 2018) (concluding that the plaintiff failed to substantially comply when he sent authorizations that did not even purport to allow disclosure from another provider named in the pre-suit notice).

Plaintiff also contends that compliance with the content requirements in Tenn. Code Ann. § 29-26-121(a)(2)(E) did not prejudice Defendants because each independently possessed the "relevant records." Plaintiff, however, failed to carry his burden of establishing this before the trial court.

In addition to clarifying the role of prejudice in the substantial-compliance analysis, the Court in *Martin* clarified the "the burdens each party bears when seeking to establish, or to challenge, compliance with Section 121." 600 S.W.3d at 334. The Court adopted a burden-shifting approach:

> By statute, a health care liability plaintiff bears the initial burden of establishing compliance with Section 121 by stating in the pleadings and providing "the documentation specified in subdivision (a)(2)," or of alleging "extraordinary cause" for any noncompliance. A defendant wishing to challenge a plaintiff's compliance with Section 121(a)(2) must file a 12.02(6)

> motion to dismiss . . . . describ[ing] "how the plaintiff has failed to comply with [Section 121] by referencing specific omissions," and by explaining "the extent and significance of the plaintiff's errors and omissions and whether the defendant was prejudiced by the plaintiff's noncompliance." . . . .
>
> Once a defendant files a motion that satisfies the foregoing prima facie showing, the plaintiff then bears the burden of establishing substantial compliance with Section 121, which includes the burden of demonstrating that the noncompliance did not prejudice the defense. **The plaintiff "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or another means provided in Tennessee Rule 56, "set forth specific facts" demonstrating that the noncompliance did not prejudice the defense.**

Id. at 334–35 (emphasis added) (footnotes omitted) (citations omitted).

To satisfy the purpose and intent of Tenn. Code Ann. § 29-26-121(a)(2)(E), a defendant must have access to the plaintiff's "complete medical records," which we have interpreted as requiring "access to all medical records that are relevant to the particular claim at issue." *Woodruff by & through Cockrell v. Walker*, 542 S.W.3d 486, 499–500 (Tenn. Ct. App. 2017) (quoting *Stevens*, 418 S.W.3d at 558). Plaintiff, however, did not establish by "affidavits or another means provided in Tennessee Rule 56" that the Operative Reports were the only relevant documents. *See Martin*, 600 S.W.3d at 335. Thus, "we have no way of knowing . . . how the medical record before us . . . would be evaluated by an expert witness or consultant." *Lawson*, 544 S.W.3d at 713; *see also Dial*, 2020 WL 6393393, at *5 (finding expert's opinion that certain records would prove plaintiff's case did not constitute evidence that none of the other records were relevant); *Rush*, 2017 WL 564887, at *3 ("Appellees did not know, during the pre-suit notice phase, that Bolivar General did not have relevant medical records."); *Dolman v. Donovan*, No. W2015-00392-COA-R3-CV, 2015 WL 9315565, at *6 (Tenn. Ct. App. Dec. 23, 2015) (finding defendants could not ascertain whether other defendants had relevant records without a valid authorization).

Here, it is undisputed that Plaintiff named Dr. Lingo as a provider being sent pre-suit notice. It is also undisputed that Plaintiff did not send HIPAA compliant medical authorizations permitting Defendants to obtain medical records from Dr. Lingo. Accordingly, we agree with the trial court's determination that Plaintiff failed to substantially comply with the content requirements in Tenn. Code Ann. § 29-26-121(a)(2).

II. DESCRIPTION OF PURPOSE

Plaintiff also objects to the trial court's finding that omitting the purpose for obtaining and using his medical records rendered the authorizations invalid.

As stated, to comply with HIPAA, a medical authorization must include six core elements, including "[a] description of each purpose of the requested use or disclosure." 45 C.F.R. § 164.508(c)(1)(iv). If this element is not filled out completely, the authorization is invalid under federal law. *See id.* § 164.508(b)(2). "[O]btaining medical records with a HIPAA noncompliant medical authorization would violate federal regulations and could result in the imposition of severe penalties." *Martin*, 600 S.W.3d at 334.

Plaintiff contends that the purpose of the disclosure and use was manifest because "there is language by [Plaintiff] authorizing the release of the medical records that make it clear what its purpose is." In other words, Plaintiff argues that the authorization complied with 45 C.F.R. § 164.508(c)(1)(iv); thus, Defendants did not "satisf[y] the . . . prima facie showing." *See Martin*, 600 S.W.3d at 334. Plaintiff, however, cites no valid authority for the proposition that the purpose element may be inferred.

The opinion on which Plaintiff relies, *Short ex rel. Short v. Metro Knoxville HMA, LLC*, No. E2018-02292-COA-R3-CV, 2019 WL 3986280 (Tenn. Ct. App. Aug. 23, 2019), was designated as Not for Citation by the Tennessee Supreme Court. *See* Tenn. Sup. Ct. R. 4(E) ("If an application for permission to appeal is hereafter denied by this Court with a 'Not for Citation' designation, the opinion of the intermediate appellate court has no precedential value."). On the contrary, in the published opinion from *Parks v. Walker*, this court noted that 45 C.F.R. § 164.508 specifically requires authorizations to be "filled out **completely**, with respect to [every] element described." 585 S.W.3d at 899 (emphasis added) (quoting 45 C.F.R. § 164.508(b)(2)(ii)).[5] Accordingly, we held that failing to fill out the purpose section of a release form rendered it invalid. *Id.*; *see also Hancock*, 2020 WL 2498390, at *7 (holding that authorization must be valid on its face), *appeal denied* (Sept. 16, 2020); *but see Parks*, 585 S.W.3d at 900–01 (D. Michael Swiney, C.J., dissenting) (opining that the pre-suit notice was HIPAA compliant when considered as a whole).

Thus, we agree with the trial court's conclusion that Plaintiff failed to substantially comply with Tenn. Code Ann. § 29-26-121(a)(2)(E) because the authorizations lacked a description of the purpose for disclosing and using Plaintiff's records.

III. EXTRAORDINARY CAUSE

Plaintiff also argues that the trial court erred by not fully analyzing whether noncompliance was excused by extraordinary cause. In a health care liability action, the

[5] "Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction." Tenn. Sup. Ct. R. 4(G)(2).

plaintiff "bears the initial burden of establishing compliance with Section 121 by stating in the pleadings and providing 'the documentation specified in subdivision (a)(2),' or of alleging 'extraordinary cause' for any noncompliance." *Martin*, 600 S.W.3d at 334 (quoting Tenn. Code Ann. § 29-26-121(b)).

We consider this issue waived because Plaintiff did not raise it before the trial court. *See, e.g.*, *Martin*, 600 S.W.3d at 336 (recognizing that issues raised for the first time on appeal are waived). Moreover, Plaintiff fails to develop a complete legal argument in his appellate brief regarding what circumstances constituted "extraordinary cause." *See Sneed v. Bd. of Prof'l Responsibility of Supreme Court*, 301 S.W.3d 603, 615 (Tenn. 2010) ("[W]here a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

IV. SUMMARY JUDGMENT STANDARD

Finally, Plaintiff contends that the trial court should have applied a summary judgment standard to Defendants' motions because the court considered matters outside of the pleadings.

As explained in *Martin*, when a defendant properly challenges a plaintiff's compliance with § 121, "[t]he plaintiff 'may not rest upon the mere allegations or denials of [its] pleading,' but must respond, and by affidavits or another means provided in Tennessee Rule 56, 'set forth specific facts' demonstrating that the noncompliance did not prejudice the defense." 600 S.W.3d at 335 (quoting *Rye*, 477 S.W.3d at 265).

Plaintiff filed several affidavits and other documents to show that Defendants had the "relevant" records when they received pre-suit notice. The trial court considered this evidence and found it was unhelpful to Plaintiff's case. Thus, it is apparent that the trial court's analysis was in line with the framework in *Martin*.

IN CONCLUSION

Based on the foregoing, the judgment of the trial court dismissing Plaintiff's complaint is affirmed, and this matter is remanded with costs of appeal assessed against Arthur Woods.

FRANK G. CLEMENT JR., P.J., M.S.