IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Danielle Le Roy, Plaintiff, v. Ingalls Memorial Hospital, through its servants and agents, and Dr. Zehra Aftab, Defendants.	)	No. 20 L 6976

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure requires a plaintiff to set out each cause of action on which a separate recovery might be had in a separate count. Additionally, the Code is liberally construed to authorize amended pleadings so cases may be resolved on their merits. Although the plaintiff's complaint in this case fails to meet the pleading requirement, an amended complaint may cure the defects; accordingly, the defendants' motions to dismiss are granted, but without prejudice.

Facts

At approximately 8:00 a.m. on July 3, 2018, Danielle Le Roy arrived at the University of Chicago Medical Center emergency room suffering from extreme stress and sleep deprivation. An emergency room physician examined Le Roy and determined that she was disoriented. Le Roy refused psychotropic medication, but the doctor ordered its administration by force. The medication allegedly increased Le Roy's disorientation. The emergency room physician determined that Le Roy needed emergency admission as authorized by the Mental Health and Developmental Disabilities Code (MHDDC) because she presented a risk to herself and others. *See* 405 ILCS 5/3-600 – 601.2. The emergency room doctor completed a necessary petition for involuntary admission. *See* 405 ILCS 5/3-601. The hospital did not give Le Roy a copy of the petition.

On July 4, 2018, the University of Chicago Hospitals transferred Le Roy to Ingalls Memorial Hospital, where doctors admitted her. After arriving at Ingalls, Le Roy repeatedly asked to be informed about the release process and to discuss her rights with an attorney. Le Roy was not allowed to contact an attorney.

On July 5, 2018, counselor Kathy Brkejani entered Le Roy's room and asked her to sign voluntary admission paperwork. After Le Roy requested time to read the documents, Brkejani frowned and left the room with the paperwork. Brkejani returned and gave Plaintiff a "Notification of Hearing" for involuntary commitment, which set a hearing date for July 9, 2018. When Le Roy asked for immediate access to an attorney, Brkejani informed her that she did not have enough time.

Le Roy alleges that, on or about July 6, 2018, Dr. Zehra Aftab and Brkejani falsely told Le Roy that the only way they would release her was if she signed an authorization for the release of her medical records to her husband and an application for voluntary admission. Le Roy claims that Aftab and Brkejani threatened her with a longer involuntary commitment if she did not sign the paperwork. Le Roy additionally asserts that Aftab and Brkejani made these false statements to coerce Le Roy's consent to a voluntary admission; that result, Le Roy claims, would allow Ingalls and Aftab to avoid presenting the involuntary petition in court within five days of admission as required by the Code.

As the July 9 hearing date approached, Le Roy continued to inquire as to whether she would be transported to court to attend the hearing and whether she would have access to an attorney in advance. Brkejani and Aftab refused to answer any of these questions. After July 9 passed without a hearing, Le Roy gave Aftab a written request to be discharged on July 10, which Aftab refused to accept.

On July 12, 2018, Brkejani gave Le Roy another notification of a hearing for involuntary commitment that set a hearing date for July 16, 2018. According to Le Roy, Brkejani falsely told Le Roy that her husband would be attending the hearing to "have her involuntarily committed." Le Roy claims that her husband had no intention of attending; in fact, her husband had not been given any information as to why Le Roy remained at Ingalls. That same day, in reliance on the false statements made by Aftab and Brkejani, Le Roy signed an application for voluntary admission in hopes of being released. Ingalls continued to hold Le Roy until July 17, 2018, and neither Ingalls nor Aftab ever took her to court.

Le Roy also asserts that, during her stay at Ingalls, Ingalls's actual and apparent agents forcefully administered psychotropic medications without her consent on at least seven different occasions. Le Roy claims that Ingalls's agents administered these injections to restrain, punish, and control Le Roy for the staff's convenience. At no time did Ingalls inform Le Roy of

her rights with respect to the use of chemical restraints, including her right to receive incident notices.

Le Roy also alleges that Ingalls's staff subjected her to bullying and physical and sexual abuse. Specifically, Le Roy claims that on July 7, Courtney H., a behavioral health technician, physically attacked Le Roy while she stood outside of her room. On July 12, Courtney H. allegedly called Le Roy a "slut" and accused her of having sex with male patients.

On or about July 13, 2018, a male behavioral health technician solicited sex from Le Roy and told her that patients sometimes have sex with behavioral health technicians to secure a release. The same day, another male behavioral health technician solicited sex from Le Roy by explaining to her that he had a sexual relationship with the patient next door. On July 14, another male behavioral health technician asked Le Roy to perform a private dance for him. Although Le Roy refused, the behavioral health technician began recording Le Roy with his cellphone. On two other occasions, male staff entered Le Roy's room unannounced. On July 16, another Ingalls employee attempted to slam a door on Le Roy's foot when she requested water from the nursing station.

On April 25, 2022, Le Roy filed a six-count, third amended complaint. Count one is based on various violations of the MHDDC. Count two is a cause of action for battery based on seven forceful administrations of medications. Count three is a cause of action for assault based on the multiple instances of bullying and coercion by male staff members. Court four is a cause of action for fraudulent inducement based on the attempt to have Le Roy execute an application for voluntary admission in exchange for a shorter commitment. Count five brings a cause of action for intentional infliction of emotional distress based on the bullying and harassment by Ingalls's staff members. Count six is a cause of action for civil conspiracy based on the conduct of unnamed agents and apparent agents associated with Ingalls who agreed to violate Le Roy's right to discharge and to harass and assault her. Counts one, four, five, and six are asserted against Ingalls and Aftab; all other counts are asserted against Ingalls only.

Analysis

Section 2-619.1 of the Illinois Code of Civil Procedure authorizes the filing of one pleading incorporating motions to dismiss under sections 2-615 and 2-619. 735 ILCS 5/2-619.1. "A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based." *Id.*

A motion's failure to follow these procedural requirements "should not be countenanced by trial judges." *Premier Elec. Constr. Co. v. La Salle Nat'l Bank*, 115 Ill. App. 3d 638, 642 (2d Dist. 1983).

A section 2-615 motion tests a complaint's legal sufficiency, while a section 2-619 motion admits a complaint's legal sufficiency, but asserts affirmative matter to defeat the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21; *Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. A section 2-1005 motion attempts to show that the complaint, when considered together with the evidentiary record, raises no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(d).

Here, both Aftab and Ingalls raise several arguments, each of which may be appropriate under section 2-615, 2-619, or 2-1005. Aftab and Ingalls fail, however, to separate these arguments into parts, specify the sections under which each argument is made, and clearly show the points or grounds on which they rely under the respective, appropriate sections. For that reason alone, this court would be justified in denying Aftab's and Ingalls's motions. *See Premier*, 115 Ill. App. 3d at 642. Despite these pleading defects, and recognizing this is Le Roy's fourth attempt at pleading, this court considers it worthwhile to analyze the defendants' arguments in greater depth.

A court considering a motion under either section 2-615 or 2-619 must accept as true all well-pleaded facts and reasonable inferences arising from them, *Doe v. Chicago Bd. of Ed.*, 213 Ill. 2d 19, 23-24 (2004), but not conclusions unsupported by facts, *Pooh-Bah Enterps., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). *See also Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17. Pleadings are to be construed in the light most favorable to the plaintiff. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 19; *Czarobski v. Lata*, 227 Il. 2d 364, 369 (2008). The Illinois Code of Civil Procedure requires that:

> Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered[.]

735 ILCS 5/2-603(b). The Code also requires all pleadings to be "liberally construed with a view to doing substantial justice between the parties." Substantial justice generally requires permitting parties to amend pleadings to present their alleged cause or causes of action as fully as possible. *Wilson v. Quinn*, 2013 IL App (5th) 120337, ¶ 18 (5th Dist. 2013) (citing *Grove v. Carle Found. Hosp.*, 364 Ill. App. 3d 412, 417 (4th Dist. 2006)).

In count one, Le Roy alleges several instances in which one or both defendants violated of the MHDDC. 405 ILCS 5/1-100 *et seq.* These allegations raise a threshold issue of whether the MHDDC, in addition to establishing the rights of recipients of mental health services, creates a private right of action for violations of those rights. In *Montague v. George J. London Mem'l Hosp.*, the First District found that an old version of the mental health code did create an implied right of action, reasoning that the Code's "public policy expression of concerns for individual liberty" provided sufficient basis for finding that the legislature intended civil actions for damages as a remedy for violations of the MHDDC. 78 Ill. App. 3d 298, 303 (1st Dist. 1979). The Federal District Court for the Northern District of Illinois relied on *Montague* to find similarly that the present version of the MHDDC creates a private right of action. *Marx v. Northwestern Mem'l Hosp.*, 2007 U.S. Dist. LEXIS 31620, *4 (finding Illinois Supreme Court likely to find implied right of action); *accord Dobrzeniecki v. Salisbury*, 2012 U.S. Dist. LEXIS 59536, *29 (N.D. Ill. 2012). That the legislature did not reject the *Montague* court's recognition of an implied cause of action when approving the modern version of the MHDDC bolsters the conclusion of these courts. *See Glencoe v. Hurford*, 317 Ill. 203, 219 (1925). Thus, Le Roy can plead a cause of action for MHDDC violations.

Yet the complaint in its current form does not properly state such claims. Le Roy alleges several MHDDC violations corresponding to conduct by one or both of the defendants, but fails to explain how the alleged conduct violates the respective statutory provision. Specifically, the conduct alleged in paragraphs 20, 22, 27, and 50—subparagraphs b, d, e, h, and i—does not precisely fit the substantive requirements of the statutory provisions that Le Roy claims such conduct violates.

Le Roy also asserts count one against both Aftab and Ingalls, but it is not clear which allegations are made against which defendant. While Le Roy states in her brief that paragraph 11 contains the allegations against Aftab, this fails to explain the numerous allegations made against "defendants"—plural—elsewhere in count one. To add to the confusion, Le Roy alternates between making allegations against "defendants" and a singular "defendant," without specifying which one. As noted above, section 2-603(b) requires "[e]ach separate cause of action upon which a separate recovery might be had [to] be stated in a separate count[.]" Moreover, the test for determining whether a pleading is substantively sufficient is whether the pleading "contains such information as reasonably informs the opposite party of the nature of the claim or defense which he is called upon to meet." 735 ILCS 5/2-612.

Here, count one clearly attempts to allege violations against Aftab that are distinct from the allegations against Ingalls. Separate recoveries might be available against each defendant, but the current allegations against unspecified defendants do not reasonably inform Aftab and Ingalls of the claims they are called on to meet. *See id.* Therefore, consistent with this court's prior order dismissing La Roy's second amended complaint, count one of the current complaint must be dismissed for failing to plead causes of action against each defendant separately based on that defendant's alleged acts or omissions. Counts four and five must also be dismissed for the same reason.

Similarly, it is unclear from Le Roy's complaint whether she seeks to hold Ingalls liable for the various statutory violations and common law torts alleged under a theory of direct liability or *respondeat superior*. Illinois courts recognize several theories under which an employer may be held directly liable for a tort committed by its employee, if the tort is attributable to the employer's own act or omission. *See e.g., Western Stone Co. v. Whalen,* 151 Ill. 472, 483 (1894) (negligent hiring and retention); *Doe v. Coe,* 2019 IL 123521, ¶ 52 (negligent supervision); *McNerney v. Allamuradov,* 2017 IL App (1st) 153515, ¶ 62 (negligent training). The *respondeat superior* doctrine provides that an employer may be vicariously liable for the torts of an employee who is acting within the scope of employment. *Vancura v. Katris,* 238 Ill. 2d 352, 375 (2010). Each doctrine has its own corresponding pleading requirements. While Le Roy's complaint seemingly sounds in *respondeat superior*, it also alleges that Ingalls "knew that the male Behavioral Health Technicians it employed routinely sexually harassed female inmates[,]" along with supervisory and policy failures under which Ingalls could be held directly liable. Again, separate recoveries might be available for these allegations. *See McQueen v. Green,* 2022 IL 126666, ¶ 60 (2022). Therefore, Le Roy must re-plead in a manner that reasonably informs the defendants of the claims each is called on to meet. *See* 735 ILCS 5/2-612.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motions to dismiss are granted without prejudice;
2. Le Roy is granted leave to amend her complaint by November 1, 2022; and
4. Ingalls and Aftab are given until November 29, 2022, to file their responsive pleadings.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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