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

Mary Owens, as independent administrator of the estate of Tempie Owens, deceased,	)	
Plaintiff,	)	
v.	)	No. 17 L 9349
Berkshire Nursing and Rehab Center, LLC, an Illinois limited liability company, d/b/a Aperion Care Forest Park, LLC, and Lory Arquilla-Maltby,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure requires that all points of error in a post-trial motion be pleaded with specificity and that the motion be timely filed. In this instance, the plaintiff's timely post-trial motion failed to identify points of error against a nurse practitioner, but the plaintiff now seeks to correct those omissions in a late filed, amended post-trial motion. For those reasons, the plaintiff's motion for leave to file an amended post-trial motion must be denied.

Illinois Supreme Court Rule 304(a) permits an appeal from a final judgment as to one or more but fewer than all parties or claims if a motion seeking a Rule 304(a) finding is filed within 30 days of the final judgment. Here, the nurse practitioner failed to file her motion seeking Rule 304(a) language within 30 days of the final judgment. Although the motion is untimely, it is of no moment because the nurse practitioner does not need a Rule 304(a) finding given that she previously received a final and appealable judgment against the plaintiff. The nurse practitioner's motion is, therefore, stricken with prejudice.

Facts

On February 23, 2023, Presiding Judge James P. Flannery assigned this matter to Judge Joan E. Powell for trial. The case proceeded to trial on that date. On March 13, 2023, Lory Arquilla-Maltby presented a motion for a mistrial based on statements made by one of Mary Owens's expert witnesses. The same day, Judge Powell granted the motion and entered an order declaring a mistrial. On March 27, 2023, Judge Maura Slattery Boyle entered an order setting July 24, 2023, as the new trial date.

On July 24, 2023, this matter proceeded to trial before Judge Robert E. Senechalle. Judge Senechalle adopted all of Judge Powell's rulings on motions *in limine*. On August 8, 2023, the jury rendered a verdict in favor of Berkshire Nursing and Rehab Center, LLC, and Arquilla-Maltby. Judge Senechalle entered an order the same day stating that: "Judgment is hereby entered in favor of defendants Berkshire Nursing & Rehab LLC and Lory Arquilla-Maltby, and against the plaintiff."

On September 7, 2023, Owens filed a post-trial motion seeking a new trial based on various points of alleged error. On September 11, 2023, Judge Senechalle entered an order permitting Owens to file her post-trial motion instanter and in excess of 15 pages. Also on September 11, 2023, Arquilla-Maltby filed a motion requesting a finding pursuant to Illinois Supreme Court Rule 304(a). In her motion, Arquilla-Maltby argued that Owens's post-trial motion failed to raise any points of error as to Arquilla-Maltby's conduct; consequently, Owens had waived any post-trial relief as to Arquilla-Maltby. According to Arquilla-Maltby, a Rule 304(a) finding was appropriate to authorize an immediate appeal as to her.

On September 12, 2023, Judge Senechalle retired.

On September 13, 2023, Judge Toya T. Harvey entered an order setting an agreed briefing schedule on Owens's post-trial motion. On September 19, 2023, Judge Harvey entered another order setting an agreed briefing schedule on Arquilla-Maltby's motion for a Rule 304(a) finding.

On September 25, 2023, Owens filed a motion incorporating: (1) a response to Arquilla-Maltby's motion for a Rule 304(a) finding; and (2) a motion for leave to file an amended motion for a new trial. The proposed amended motion for a new trial raised, for the first time, points of error explicitly as to Arquilla-Maltby.

On October 3, 2023, Judge Harvey issued an order transferring the parties' post-trial motions to this court for consideration. On October 10, 2023, this court entered an order setting an agreed briefing schedule for both pending motions.

The parties subsequently informed this court that they agreed to hold in abeyance the briefing on Owens's post-trial motion as to Berkshire pending this court's decision on the two motions addressed in this memorandum opinion and order.

Analysis

A post-trial motion following a jury trial serves various functions. First, the motion permits a trial judge—the person most familiar with the evidence and the

witnesses—to review past rulings, correct any errors, and decide whether a new trial or a judgment notwithstanding the verdict is appropriate. *Crim v. Dietrich*, 2020 IL 124318, ¶ 34. Second, a post-trial motion allows an appellate court to determine from the record whether the trial judge had an adequate opportunity to assess any allegedly erroneous rulings and the jury's verdict. *Id.* Third, the requirement that the movant plead with specificity prevents a party from raising on appeal issues not presented to the trial judge. *Id.* (citing *Brown v. Decatur Mem'l Hosp.*, 83 Ill. 2d 344, 349-50 (1980)). Finally, a post-trial motion eliminates uncertainty as to whether there is a dispute concerning the jury's verdict and allows the opposing party an opportunity to respond. *Crim*, at ¶ 34 (citing *1010 Lake Shore Ass'n v. Deutsche Bank Nat'l Trust Co.*, 2015 IL 118372, ¶ 14).

This is an instance in which the trial judge has retired and is no longer available to consider the post-trial proceedings. Although this court did not hear the trial, this court has carefully reviewed the parties' submissions, including the trial transcripts and evidentiary exhibits. This opinion is based solely on a review of the cold record.

Arquilla-Maltby's motion argues that a Rule 304(a) finding is appropriate because "[p]laintiff did not raise any post-trial issues as to [Nurse Practitioner] Maltby within 30 days of the verdict. . . ." A-M Mtn. at 1. In her response and motion to file an amended post-trial motion, Owens admits that "the focus of Plaintiff's Post-Trial Motion was as to Berkshire," but adds, "these same errors also impacted Plaintiff's case against NP Maltby, who was a member of the interdisciplinary team at Berkshire." Owens Resp. at 1. To that end, Owens argues that both Berkshire and Arquilla-Maltby had a duty to implement a care plan to prevent Owens's falls and should have ordered a thyroxine test.

This court's consideration of both Owens's and Arquilla-Maltby's motions is guided by the same Code of Civil Procedure sections and Illinois Supreme Court rules. The Code provides the framework for any post-trial motion:

> (b) Relief desired after trial in jury cases, heretofore sought by reserved motions for directed verdict or motions for judgment notwithstanding the verdict, in arrest of judgment or for new trial, must be sought in a single post-trial motion. . . . The post-trial motion must contain the points relied upon, particularly specifying the grounds in support thereof, and must state the relief desired, as for example, the entry of a judgment, the granting of a new trial or other appropriate relief. . . .
>
> (c) Post-trial motions must be filed within 30 days after the entry of judgment or the discharge of the jury, if no verdict is reached, or within any further time the court may allow within the 30 days or any extensions thereof.

> (e) Any party who fails to seek a new trial in his or her post-trial motion, either conditionally or unconditionally, as herein provided, waives the right to apply for a new trial, except in cases in which the jury has failed to reach a verdict.

735 ILCS 5/2-1202(b), (c) & (e).

The Supreme Court also provides guidance in this court's consideration of both motions. The relevant rules are as follows:

> If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement of appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. . . .

Ill. S. Ct. R. 304(a).

> The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion direct against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. . . .

Ill. S. Ct. R. 303(a)(1)

> A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion.

Ill. S. Ct. R. 366(b)(2)(iii).

The Code of Civil Procedure and Supreme Court rules are subject to the same rules of statutory interpretation. *McCarthy v. Taylor*, 2019 IL 123622, ¶ 17. The cardinal rule of statutory construction is to "ascertain and effectuate the legislature's [or the Supreme Court's] intent. . . ." *McElwain v. Illinois Sec'y of State*, 2015 IL 117170, ¶ 12. The primary source from which to infer this intent is the statute's or rule's language. *See id.* "If the language . . . is clear, the court should give effect to it and not look to extrinsic aids for construction." *Bogseth v.*

Emanuel, 166 Ill. 2d 507, 513 (1995). *See O'Casek v. Children's Home & Aid Soc'y*, 229 Ill. 2d 421, 446 (2008). A court may not, "depart from plain statutory language by reading into [a] statute exceptions, limitations, or conditions not expressed by the legislature." *McElwain*, 2015 IL 117170, ¶ 12. Further, Illinois statutes and Supreme Court rules regarding legal proceedings are not suggestions but must be followed by all parties. *Manning v. City of Chicago*, 407 Ill. App. 3d 849, 851 (1st Dist. 2011), citing *Trentman v. Kappel*, 333 Ill. App. 3d 440, 441 (5th Dist. 2002) (Illinois rules and procedures bind all legal proceedings and are "not aspirational in nature" but "meant to be followed by all who seek justice in the court system").

Code subsections 2-1202(b), (c), and (e) and the Supreme Court's rules direct this court's analysis in five respects. First, Owens plainly failed to file a "single post-trial motion" as the statute requires. 735 ILCS 5/2-1202(b). Owens admits as much by acknowledging that her September 7, 2023, post-trial motion focused exclusively on Berkshire. The statute's explicit language does not authorize a new-and-improved amended post-trial motion to replace one previously filed, and the statute certainly does not infer that the filing of a second motion is permissible. Further, no order entered by any judge authorized the filing of an amended post-trial motion. Owens's filing of a motion for leave to file an amended post-trial motion along with the amended post-trial motion is precisely the confusing scenario the statute seeks to prevent.

Second, Owens's September 7, 2023, motion fails to "particularly specify[]" the points relied on in support of the motion for a new trial as against Arquilla-Maltby. *Id.* It is unassailable that errors pleaded without sufficient particularity are waived. *Perez v. Baltimore & Ohio R. Co.*, 24 Ill. App. 2d 204, 210 (1st Dist. 1960). Owens's motion fails to identify any trial court errors that led the jury to find for Arquilla-Maltby; indeed, the motion does not even mention Arquilla-Maltby's name. Rather, in her opening paragraph of her motion for leave to file, Owens explains that the scope of her motion extends to Judge Senechalle's rulings that stymied her ability "to present evidence on staffing and jury instructions on falls, under the Nursing Home Care Act, against Berkshire." Owens Mtn. at 1. Owens's September 23, 2023, motion argues that the same errors she directed against Berkshire were also meant to be directed against Arquilla-Maltby because she was a member of Berkshire's interdisciplinary team. Even if an agency relationship existed between Arquilla-Maltby and Berkshire, that mere fact does not eliminate Owens's requirement under subsection 2-1202(b) to plead with specificity. That conclusion reflects directly on Owens's failure to identify in the September 7, 2023, motion the type of post-trial relief she was seeking against Arquilla-Maltby.

Third, subsection 2-1202(c) expressly requires a party to file a post-trial motion within 30 days post judgment or to bring a motion for an extension of time within 30 days post judgment or any additional extension a court may authorize.

735 ILCS 2-1202(c). Absent a timely filing, the circuit court loses jurisdiction. *Manning v. City of Chicago*, 407 Ill. App. 3d 849, 852 (1st Dist. 2011). Further, the failure to amend a post-trial motion within 30 days is untimely. *Mallory v. Digney York Assocs., L.L.C.*, 2015 IL App (1st) 143609-U ("Mallory's motion to amend his post-judgment motion to request relief in the form of a new trial, not having been filed within 30 days after the entry of the trial court's order of July 10, 2014, entering judgment on the verdict, was untimely"). The statute is so strict that it divests a court of jurisdiction after 30 days even if a party files a motion for extension of time to file a post-judgment motion, but the court fails to extend the deadline within the 30-day period. *See Mo v. Hergan*, 2012 IL App (1st) 113179, ¶ 32. To qualify as a post-judgment motion, a motion must be directed against the judgment and request one or more of the types of relief specified in section 2-1203. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 461-62 (1990). Here, it is uncontested that Owens timely filed her September 7, 2023, motion within 30 days after judgment as subsection 2-1202(c) requires. She failed, however, within those 30 days to bring either a motion for an extension of time to file a post-trial motion after the 30-day cutoff or a motion to file an amended post-trial motion after the 30-day cutoff. Absent either request, Owens's September 23, 2023, motion for leave to file an amended post-trial motion is untimely.

Fourth, subsection 2-1202(e) plainly informs all potential appellants that the failure to request a new trial in a post-trial motion waives the right for a new trial. 735 ILCS 5/2-1202(e). Owens's September 7, 2023, motion merely requests "that this court grant Plaintiff a new trial." The request does not specify against which defendants Owens wants a new trial. Considering that the 20-page motion does not even mention Arquilla-Maltby's name or any of her conduct, it is a fair reading that Owens was not seeking a new trial against Arquilla-Maltby.

Fifth, Supreme Court Rule 366(b)(2)(iii) serves as an exclamation point to the statute by making plain that a party may raise as error on appellate review only points included in the post-trial motion. Ill. S. Ct. R. 366(b)(2)(iii). In other words, although Owens timely filed her September 7, 2023, post-trial motion, the lack of any alleged error as to Arquilla-Maltby forecloses any argument on appeal that Owens presented in her late-filed post-trial motion.

As to Arquilla-Maltby's motion for a Rule 304(a) finding, this court lacks jurisdiction to consider that motion. A trial court loses jurisdiction over a case and lacks authority to modify a final judgment after 30 days post judgment. *Habitat Co., LLC v. Peeples*, 2018 IL App (1st) 171420, ¶ 15. Here, Arquilla-Maltby filed her motion for a Rule 304(a) finding only after Owens had filed her post-trial motion. Even if this court had jurisdiction to consider Arquilla-Maltby's motion, the motion would have to be denied because a Rule 304(a) finding is unnecessary under these circumstances. Judge Senechalle's August 8, 2023, order entered judgment on the verdict as to both Berkshire and Arquilla-Maltby. That order concluded all claims

against both Berkshire and Arquilla-Maltby and was, therefore, a final and appealable order. Put another way, as of August 8, 2023, there were no claims or parties remaining that needed adjudication; consequently, there is no need now for a Rule 304(a) finding. In sum, Arquilla-Maltby's must be stricken with prejudice. *See B—G Associates, Inc v. Giron*, 194 Ill. App. 3d 52, 59 (1st Dist. 1990) (order striking motion with prejudice considered final determination).

Conclusion

For the reasons presented above, it is ordered that:

1. Owens's motion for leave to file an amended post-trial motion is denied; and
2. Arquilla-Maltby's motion seeking a Rule 304(a) finding is stricken with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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