

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

Syed Aabir Rizvi, individually and as)	
parent and next friend of H.R., a minor,)	
)	
Plaintiff,)	
)	
v.)	No. 20 L 63039
)	
National Vision, Inc., d/b/a America's Best)	
Contact & Eyeglasses, a corporation, and)	
Quentin Gin Park, O.D.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Admissions in a physician's report control over contradictory claims in a medical malpractice complaint. Further, claims pleaded with a lack of specificity are insufficient as a matter of law. In this case, a physician's report acknowledges the defendant-optometrist correctly issued an initial prescription, while an unrelated claim is inadequately pleaded. For these reasons, the defendant's motion to dismiss is granted, in part, and denied, in part.

Facts

On December 15, 2017, Dr. Quentin Park, a licensed optometrist, examined H.R., a minor, for refractive amblyopia. Park did not examine H.R. after December 15, 2017 but, through June 2018, filled various eyeglasses prescriptions for H.R. at America's Best Contacts & Eyeglasses, where Park worked as an independent contractor. On April 20, 2020, Syed Rizvi, H.R.'s father, filed a two-count complaint against the defendants arising out of Park's alleged negligent care and treatment of H.R.

In count one, Rizvi alleges that Park, as a treating physician, owed H.R. a duty to meet the standard of care for optometrists treating pediatric amblyopia patients. Rizvi claims Park breached his duty by failing to: (a-b) prescribe the correct eyeglasses prescription; (c-d) correct the prescription; (e) refer H.R.; (f) recognize the seriousness of H.R.'s condition as within a critical period of vision improvement; (g) educate H.R. and his family; (h) manage the patient; (i) monitor tolerance for the prescriptions; (j) follow up with H.R.; (k) treat H.R.'s condition; (l) prescribe eyeglasses with an updated prescription; and (m) provide other adequate care. These claimed breaches allegedly caused H.R. to suffer vision loss. As required by the Code of Civil Procedure, Rizvi attached to the complaint a physician's report stating that Rizvi has a meritorious cause of action against Park. *See* 735 ILCS 5/2-622. The optometrist supplying the report indicated, however, that Park's December 15, 2017 prescription "[was] appropriate as an initial prescription." The report also distinguishes between the work of optometrists and ophthalmologists and acknowledges that an ophthalmologist examined H.R. less than three weeks after Park.

On July 21, 2020, Park filed a motion to dismiss count one in its entirety. On July 28, 2020, National Vision, Inc. filed a motion to join Park's motion. Park argues he cannot be held responsible for claims after December 15, 2017 because, according to the physician's report, Park prescribed the correct eyeglasses prescription on that date and never again examined H.R. Rizvi responds that the complaint and physician's report sufficiently outline a series of Park's omissions that make dismissal inappropriate. Park filed a reply brief.¹

¹ Rizvi filed his complaint in the Sixth Municipal Division. Park's motion and the subsequent briefing also occurred there. The case was eventually transferred to the Law Division based, in part, on case value, but, once transferred, was incorrectly docketed in the Law Division for nearly six months. Only on April 21, 2021, did the case finally get assigned to this court.

Analysis

Park seeks dismissal of count one as authorized by the Code of Civil Procedure. Park specifically seeks to dismiss count one based on other affirmative matter outside the four corners of the pleadings, in this instance, the physician's report. 735 ILCS 5/2-619(a)(9); see *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). Affirmative matter is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *Id.* at 485-86. A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. See *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Id.*

The physician's report explicitly provides that Park's December 15, 2017 prescription "[was] appropriate as an initial prescription." That statement directly contradicts Rizvi's first two claims that Park prescribed the wrong eyeglasses prescription on December 15, 2017 and failed to recognize that he prescribed the wrong prescription. Such conflicts are to be resolved against the complaint. As provided: "[w]hen an exhibit is attached to a complaint it becomes part of the complaint, and when the allegations in the complaint differ from those shown in the exhibit attached to the complaint, the exhibit controls." *Bianchi v. Savino Del Bene Int'l Freight Forwarders, Inc.*, 329 Ill. App. 3d 908, 921, (1st Dist. 2002) (citations omitted). Since Park appropriately prescribed H.R.'s first eyeglasses prescription, paragraphs 7(a) and 7(b) must fail.

Paragraph 7(m) fails for a different reason. Illinois is, of course, a fact-pleading jurisdiction. *Doe v. Coe*, 2019 IL 123521, ¶ 32. A plaintiff's complaint need not present evidence, but "must allege facts sufficient to bring a claim within a legally recognized cause of action, not simply conclusions." *Id.* (quoting *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006) (citations

omitted). Paragraph 7(m) alleges no facts about any other omission in Park's optometric care, only that Park "[o]therwise failed to provide adequate optometry care to H.R." Should discovery identify other omissions, Rizvi may seek to file an amended complaint, but paragraph 7(m), as pleaded, can never state a proper claim.

Park's remaining argument is that all other claims should be dismissed because Park examined H.R. only once. Such an argument misreads the complaint and the physician's report. Generally, the physician's report catalogs a variety of Park's claimed omissions, any one of which, if true, could lead to a liability finding. More specifically, the physician's report explains, "if [Park's] practice setting did not allow for the necessary follow-up care, then a referral to another optometrist was indicated (optometrists specialize in this area. Ophthalmologists are medical doctors who specialize in eye surgery and usually do not perform visual therapy)." Regardless of whether an ophthalmologist examined H.R. less than three weeks after Park, the physician's report criticizes Park's lack of follow because an optometrist's standard of care required it. In short, the remaining claims in count one survive the motion.

Conclusion

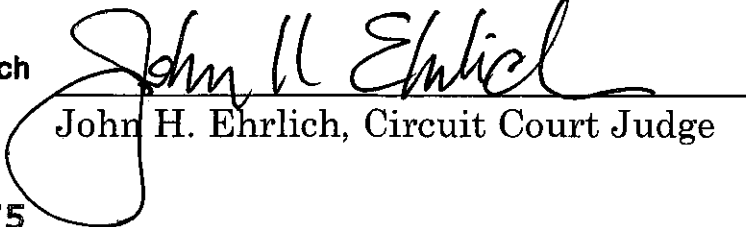
For the reasons presented above, it is ordered that:

1. Park's motion to dismiss is granted, in part, and denied, in part;
2. Paragraphs 7(a), 7(b), and 7(m) are dismissed with prejudice;
3. All remaining claims stand; and
4. Park has until July 26, 2021 to answer the complaint.

Judge John H. Ehrlich

JUN 28 2021

Circuit Court 2075


John H. Ehrlich, Circuit Court Judge