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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2281-20**

**CANDACE A. MOSCHELLA,
on behalf of herself and the
Estate of ALEXANDRIANNA
LOWE,**

Plaintiffs-Appellants,

v.

**HACKENSACK MERIDIAN
JERSEY SHORE
UNIVERSITY MEDICAL
CENTER and DR. MICHAEL
P. CARSON,**

Defendant-Respondents.

Argued January 25, 2023 – Decided May 8, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Monmouth County, Docket No. L-2347-20.

Candace A. Moschella, appellant, argued the cause pro
se (Candace A. Moschella and Amy Sara Cores, on the
briefs).

Russell J. Malta argued the cause for respondents (Orlovsky, Moody, Schaaff, Conlon, Bedell, McGann & Gabrysiak, attorneys; Paul F. Schaaff, Jr., of counsel; Kelsey M. Barber, on the brief).

PER CURIAM

In this medical malpractice action brought under the Wrongful Death Act, N.J.S.A. 2A:31-1 to -6, plaintiff Candace Moschella, the Administratrix of the Estate of Alexandrianna Lowe (Lowe), appeals from the January 4, 2021 order dismissing the complaint with prejudice for failure to comply with the Affidavit of Merit (AOM) statute, N.J.S.A. 2A:53A-27 to -29. We affirm.

Lowe was admitted to Hackensack Meridian Jersey Shore University Medical Center (JSUMC)¹ from July 20, 2018 through July 22, 2018 through the Emergency Department. Defendant, Michael P. Carson, M.D. was the admitting physician. Lowe died on July 22 while in the hospital.

On July 21, 2020, plaintiff filed a complaint against JSUMC and Dr. Carson, alleging they were negligent in their care and treatment of Lowe, resulting in her death. Plaintiff contended JSUMC employees failed to check Lowe's blood sugar during a Code Blue after an unknown syringe was found in her intravenous line. She asserts the JSUMC attending staff erroneously

¹ Hackensack Meridian Health Hospitals Corp. was improperly pled as Jersey Shore University Medical Center and Hackensack Meridian.

believed the unknown syringe contained narcotics and not insulin. She further argued the attending medical staff failed to administer insulin or check Lowe's sugar levels while attempting to revive her. Although the medical staff administered Narcan at least four times, plaintiff alleged defendants were negligent in not "ascertaining Lowe's blood sugar level once she had become unresponsive, despite the fact . . . that [Lowe] was a known Type 1 diabetic." Lowe passed away after attempts to resuscitate her were unsuccessful. Weeks later, a toxicology report showed the absence of illicit drugs in Lowe's system.

On August 25, 2020, defendants filed an answer to the complaint which identified Dr. Carson as a board-certified internist. Approximately thirty days later, defendants moved to dismiss Dr. Carson, for non-involvement, under N.J.S.A. 2A:53A-40. An affidavit filed in support of defendants' motion identified Dr. Vikas Singh as the attending physician, and all JSUMC staff present during Lowe's Code Blue. Plaintiff did not move to amend the complaint.

Prior to the Ferreira² case management conference, the court notified plaintiff she needed to serve an AOM no less than thirty days before the

² Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144 (2003).

conference scheduled for September 30, 2020. Plaintiff did not file an AOM and the court adjourned the Ferreira conference to November 30, 2020.

Plaintiff did not file an AOM within the sixty-day requirement of N.J.S.A. 2A:53A-27. Dr. Carson moved to dismiss the complaint and the unopposed motion was granted, which left JSUMC as the remaining defendant.

Thereafter, JSUMC moved to dismiss plaintiff's complaint with prejudice for failure to provide an AOM. On October 31, 2020, plaintiff submitted an "affidavit" from Jennifer Colangelo, a retired licensed practical nurse. In the affidavit, Colangelo stated, based on her knowledge of the case "there [was] reasonable probability that the care, skill or knowledge exercised" in the care of Lowe by "[defendant JSUMC, and defendant Dr. Carson] . . . which resulted in her death . . . fell outside professional treatment standards." The document was neither notarized nor conformed to the requisites of Rule 1:4-4(b).

JSUMC objected to the Colangelo "affidavit," arguing that she was not a similarly licensed physician under N.J.S.A. 2A:53A-41. In opposing JSUMC's motion, plaintiff alleged extenuating circumstances, not receiving notice of eCourts filings as a pro se litigant and the COVID-19 pandemic, which permitted the late filing of the AOM. Also, in support of the motion, plaintiff submitted copies of a printout of a hospital webpage about a diabetic coma and two

scholarly articles on the treatment and management of diabetic patients in the emergency room.

On December 2, 2020, plaintiff filed a sur-reply which acknowledged she had not met the requirements of the AOM statute. Plaintiff also submitted a letter from Tirissa J. Reid, M.D., a board-certified endocrinologist, which provided general information about diabetic ketoacidosis and the standard of care for patients diagnosed with diabetic ketoacidosis. Plaintiff also submitted a letter from Rachel Leininger, RN, MSN, opining that the "[s]tandard of care for a patient in [diabetic ketoacidosis] being treated with insulin is hourly glucose checks until the acidosis has resolved."

Following oral argument, the motion judge found plaintiff had not filed an AOM within the initial sixty-day period. However, the judge granted plaintiff an additional sixty-day extension which extended the AOM deadline to December 23, 2020.

On December 23, 2020, plaintiff served an AOM and curriculum vitae of Joseph Fallon, M.D., board certified in internal medicine and endocrinology. Dr. Fallon opined, based upon his review of plaintiff's complaint, "there exists a reasonable probability that the care, skill or knowledge exercised or exhibited by one or more of the [d]efendants therein (including Dr. Singh . . .) in the

treatment, practice or work that is the subject of the [c]omplaint fell outside acceptable professional or occupational standards or treatment practices." JSUMC again objected to the AOM, arguing Dr. Fallon failed to directly allege negligence on the part of a cognizable defendant and failed to rely on any treatment records.

On January 4, 2021, the motion judge entered an order accompanied by a written decision dismissing plaintiff's complaint with prejudice for failure to provide a proper AOM. The motion judge concluded: plaintiff lacked standing to bring the underlying action; the four separate AOM submissions failed to meet the statutory requirements against any cognizable defendant; and plaintiff was not entitled to dismissal without prejudice pursuant to the language of N.J.S.A. 2A:53A-29, or any alternative equitable relief. In the statement of reasons, the judge explained that Dr. Fallon made blanket allegations against Dr. Vikas Singh, a non-party to the action, Dr. Carson, and "one or more ... defendants," who were allegedly negligent in the care of Lowe. The motion judge also found Dr. Fallon's AOM failed to identify any of the defendants as employees of the only remaining defendant, JSUMC, or identify JSUMC in the affidavit.

Plaintiff moved for reconsideration of the dismissal of her complaint and, in the alternative, sought leave to amend her complaint to "expand" her cause of action. Defendants filed opposition.

In February 2021, following oral argument on plaintiff's motions, the motion judge denied plaintiff's motion for reconsideration. The court found plaintiff had not substantially complied with the AOM statute. The judge found Dr. Fallon's AOM could not extend to Dr. Singh and failed to identify how Dr. Carson deviated from the acceptable standard of care. Nor did the AOM specifically address a named defendant. The motion judge further determined none of plaintiff's AOMs "remotely" satisfied the statute. Accordingly, the motion judge denied plaintiff's motion to amend her complaint. This appeal followed.

Plaintiff's argument on appeal is limited to her assertion that the trial court erred as a matter of law in finding Dr. Fallon's AOM was deficient. Plaintiff contends the motion judge "generally" examined the AOM statute before focusing on JSUMC, as a "health care facility" and the "only remaining defendant." Plaintiff further contends it was "impossible" to file a compliant AOM because she was not aware of the identity of the medical professional who participated in the Code Blue until after Dr. Carson moved to dismiss the

complaint. In addition, the motion judge should have reasonably read N.J.S.A. 2A:53A-27 to include Dr. Singh, although he was not named in the complaint. Lastly, plaintiff argues the trial judge erred because two pages of medical notes were provided to Dr. Fallon for his review.

We apply a plenary standard in our review of a judge's order dismissing a complaint. Giannakopoulos v. Mid State Mall, 438 N.J. Super. 595, 599 (App. Div. 2014). As the application of a statute of limitations is a question of law, we owe "no special deference to [the] trial judge's legal interpretations." Id. at 600.

An action alleging personal injuries due to a wrongful act or neglect of a person must be "commenced within two years . . . after the cause of . . . action shall have accrued." N.J.S.A. 2A:14-2(a). In a medical malpractice action, "a cause of action generally accrues on the date that the alleged act or omission occurred." Baird v. Am. Med. Optics, 155 N.J. 54, 65 (1998) (citing Bauer v. Bowen, 63 N.J. Super. 225, 230 (App. Div. 1960)).

Under N.J.S.A. 2A:53A-27, a plaintiff who brings an action alleging an "act of malpractice or negligence by a licensed person in his profession or occupation" must provide an affidavit of merit to each defendant within the timeframe set out in the statute. JSUMC and Dr. Singh are licensed persons

within N.J.S.A. 2A:53A-26. Consequently, to proceed on any claims of professional negligence against JSUMC, plaintiff was required to serve the appropriate AOM.

Here, two years after the cause of action accrued, plaintiff filed a medical malpractice action against JSUMC and a physician, whom she believed was the attending physician at the time of the Code Blue. When plaintiff filed the complaint, she acknowledged an awareness of an actionable claim against the hospital and the individual physician.

After the filing of the complaint, defendants informed plaintiff that Dr. Singh was the attending physician and provided names of the other involved medical personnel when JSUMC filed its answer. Yet, plaintiff did not amend the complaint to add Dr. Singh as a defendant.

The court granted plaintiff an additional sixty days or until December 23, 2020 to provide an AOM that complied with the statute. Although plaintiff did serve an affidavit from Dr. Fallon, it did not comply with the statute.

The motion judge's order dismissing the complaint is supported by the record. First, plaintiff never amended the complaint to include Dr. Singh as a defendant. Dr. Fallon AOM concludes that Dr. Singh was negligent in his care and treatment of Lowe. But he is not a named defendant. Dr. Fallon's AOM

attempt to link Dr. Singh, a nonparty, to any alleged negligence was likewise fatally defective. Nor does Dr. Fallon's AOM address the negligence of JSUMC, the only remaining defendant.

Next, plaintiff contends that she substantially complied with the AOM requirements. She argues there is no prejudice to JSUMC because it had reasonable notice of her claim. Additionally, strict compliance is not required under Ferreira because she needed to only take "a series of steps" toward compliance, which she has done. Nor did she have the information to identify the medical personnel responsible for the malpractice until "shortly" before the deadline for the filing of the AOM. And due to her pro se litigant status, delays in receiving electronic notices through the Judiciary Electronic Documents System (JEDS),³ as well as COVID-19, amounted to extraordinary circumstances; and therefore, dismissal should have been without prejudice. We find plaintiff's arguments unavailing.

We note "plaintiff's status as a pro se litigant in no way relieves her of her obligation to comply with the court rules." Venner v. Allstate, 306 N.J. Super. 106, 110 (App. Div. 1997). While "[l]itigants are free to represent themselves

³ JEDS allows self-represented litigants to electronically submit documents and record requests to the court.

if they so choose, . . . in exercising that choice they must understand that they are required to follow accepted rules of procedure promulgated by the Supreme Court to guarantee an orderly process." Tuckey v. Harleysville Ins. Co., 236 N.J. Super. 221, 224 (App. Div. 1989). "Procedural rules are not abrogated or abridged by [a litigant's] pro se status." Rosenblum v. Borough of Closter, 285 N.J. Super. 230, 241 (App. Div. 1995).

Plaintiff was aware she required a compliant AOM to support her complaint. The judge granted her an extension to do so. She was unable to procure the requisite AOM.

Plaintiff's contentions regarding COVID-19 judicial omnibus orders are not applicable to excuse here noncompliance with the AOM statute. The Seventh Omnibus Order ended the extension to file AOMs as of July 26, 2020, five months prior to plaintiff's deadline to serve an AOM. Order: COVID-19—Seventh Omnibus Order on Court Operations and Legal Practice ¶ 4(b) (July 24, 2020).

JSUMC moved to dismiss plaintiff's complaint after the filing deadline. The record shows plaintiff had ample opportunity to provide an AOM that complied with the statute after receiving notice of the requirement, appearing at a case management conference, and receiving an extension. The record does not

demonstrate that COVID-19 created extraordinary circumstances that would permit the court to accept an AOM lacking in specificity as to unnamed individuals, a failure to identify JSUMC and a review of medical records. We are satisfied the motion judge appropriately determined plaintiff failed to demonstrate extraordinary circumstances and dismissed plaintiff's complaint with prejudice.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION