

A - Order - from the Supreme court of Pa. Eastern District

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MARGUERITE DUTTON,

: No. 542 EAL 2017

Petitioner

: Petition for Allowance of Appeal from
the Order of the Superior Court

v.

NIKKISHA P. MCCREA, M.D.,

Respondent

ORDER

PER CURIAM

AND NOW, this 1st day of May, 2018, the Petition for Allowance of Appeal is
DENIED.

A True Copy
As Of 5/1/2018

Attest: Patricia A. Johnson
Patricia A. Johnson
Chief Clerk
Supreme Court of Pennsylvania

B- Order - from the Superior Court of Pa.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MARGUERITE DUTTON : IN THE SUPERIOR COURT OF
Appellant : PENNSYLVANIA
v. :
NIKKISHA P. MCCREA, M.D. :
Appellee : No. 555 EDA 2017

Appeal from the Order Entered January 20, 2017
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): September Term, 2016 No. 0014

BEFORE: GANTMAN, P.J., PANELLA, J., and DUBOW, J.

JUDGMENT ORDER BY GANTMAN, P.J.: **FILED OCTOBER 30, 2017**

Appellant, Marguerite Dutton, appeals *pro se* from the order entered in the Philadelphia County Court of Common Pleas, which granted the motion to dismiss of Appellee, Nikkisha P. McCrea, M.D., in this medical malpractice action. On September 4, 2016, Appellant filed a *pro se* medical malpractice complaint against Appellee, alleging negligent treatment by Appellee from May 5, 2013 through June 17, 2013. Appellee filed preliminary objections on September 23, 2016, based on, *inter alia*, improper service. Appellee also filed a motion to dismiss on September 27, 2016, per Pa.R.C.P. 233.1 (explaining court can grant motion to dismiss where *pro se* plaintiff is alleging same or related claims which *pro se* plaintiff raised in prior action against same or related defendants and claims have already been resolved in court proceeding). Appellant responded to the preliminary objections and

Dutton Vs McCrea-APORA



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motion to dismiss on October 13, 2016. On November 2, 2016, the court sustained Appellee's preliminary objection for improper service and dismissed the remaining objections without prejudice. The court also dismissed Appellee's motion to dismiss without prejudice to her right to refile that motion once service was perfected. The court gave Appellant twenty days to perfect service.

On November 18, 2016, Appellant served her complaint on Appellee. Appellee filed preliminary objections on November 22, 2016, and another motion to dismiss per Rule 233.1. On December 8, 2016, Appellant filed separate motions for extension of time to file a certificate of merit and an amended complaint. Appellant responded to Appellee's preliminary objections and motion to dismiss on December 12, 2016. On January 20, 2017, the court entered four orders: denying Appellant's motion to extend the time for filing a certificate of merit, denying Appellant's motion for extension of time to file an amended complaint, sustaining Appellee's preliminary objections, and granting Appellee's motion to dismiss the complaint with prejudice.¹ Appellant timely filed a *pro se* notice of appeal on January 31, 2017. No Pa.R.A.P. 1925(b) statement was ordered or filed.

Preliminarily, appellate briefs must conform in all material respects to the briefing requirements in the Pennsylvania Rules of Appellate Procedure.

¹ The order granting Appellee's motion to dismiss also barred Appellant from pursuing additional litigation against Appellee.

Pa.R.A.P. 2101. Where an appellant fails to raise or develop her issues on appeal properly, or where her brief is wholly inadequate to present specific issues for review, this Court will not consider the merits of the claims raised.

Butler v. Illes, 747 A.2d 943 (Pa.Super. 2000) (holding appellant's failure to cogently explain why trial court abused its discretion or committed error of law constitutes waiver of claim on appeal; this Court cannot act as counsel for appellant and craft argument on her behalf). ***See also In re Ullman***, 995 A.2d 1207 (Pa.Super. 2010), *appeal denied*, 610 Pa. 600, 20 A.3d 489 (2011) (stating although this Court is willing to liberally construe materials filed by *pro se* litigant, *pro se* status confers no special benefit upon appellant; any person choosing to represent herself in legal proceeding must, to reasonable extent, assume her lack of expertise and legal training will be her undoing).

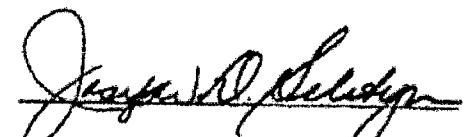
Instantly, Appellant's appellate brief contains only a three-sentence argument section with no citation whatsoever to supporting legal authority. ***See*** Pa.R.A.P. 2119(a) (stating argument section shall be divided into as many sections as there are questions presented, followed by discussion and citations to pertinent legal authorities). Appellant's failure to develop her issue on appeal in a meaningful way compels waiver.² ***See id.***; ***Butler***,

² Moreover, the record makes clear Appellant unsuccessfully litigated the same claims against Appellee in at least one prior action. Thus, the court properly granted Appellee's motion to dismiss under Pa.R.C.P. 233.1.

supra. Accordingly, we affirm.

Order affirmed. Case is stricken from the argument list.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/30/2017

C- Opinion from Court of Common Pleas of Pa.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

MARGUERITE DUTTON
Plaintiff-Appellant

v.

NIKKISHA P. MCCREA, M.D.
Defendant-Appellee

Dutton Vs McCREA-OPFLD



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SUPERIOR COURT
555 EDA 2017

COURT OF COMMON PLEAS
CASE NO. 160900014

CONTROL NOS. 16112850
16112883
16121169
16121191

OPINION

CARPENTER, J.

APRIL 18, 2017

Plaintiff Marguerite Dutton ("Dutton") appeals this Court's four January 20, 2017 Orders, disposing of Preliminary Objections, a Motion to Dismiss, a Motion to Extend Time for Filing a Certificate of Merit, and a Motion for Extension of Time to File an Amended Complaint, which collectively ended the proceedings against Defendant Nikkisha P. McCrea, M.D. ("Dr. McCrea) in the instant matter. For the reasons that follow, this Court respectfully requests that the Superior Court affirm this Court's Orders.

PROCEDURAL HISTORY

On September 4, 2016, Dutton filed a Complaint in negligence alleging personal injury sustained while under the care of Dr. McCrea.¹ On September 23, 2016, Dr.

¹ This is the third action Dutton has brought against Dr. McCrea and/or the Hospital of the University of Pennsylvania for the same claims. A discussion of all of the actions is provided below.

McCrea filed Preliminary Objections (Control No. 16093339) to Dutton's Complaint and, on September 27, 2016, Dr. McCrea filed a Motion to Dismiss (Control No. 16093639).

On October 13, 2016, Dutton filed her respective opposition to the Preliminary Objections as well as the Motion to Dismiss. On November 2, 2016, this Court docketed two Orders, wherein the Preliminary Objection to improper service was sustained, the remaining Preliminary Objections were dismissed without prejudice, and the Motion to Dismiss was dismissed without prejudice to refile once service of original process was perfected.

On November 22, 2016, Dr. McCrea filed Preliminary Objections (Control No. 16112850) and a Motion to Dismiss (Control No. 16112883), to which Dutton filed her respective opposition on December 14, 2016 and December 12, 2016. On December 8, 2016, Dutton filed a Motion to Extend Time for Filing a Certificate of Merit (Control No. 16121169) and a Motion for Extension of Time to File an Amended Complaint (Control No. 16121191), to which Dr. McCrea filed her respective opposition on December 15, 2016 and Dutton filed her respective Reply on December 29, 2016.

On January 20, 2017, this Court issued four Orders disposing of all pending motions: 1) this Court sustained Dr. McCrea's Preliminary Objections to Dutton's Complaint and ordered that the Complaint was stricken with prejudice (Control No. 16112850); 2) this Court granted Dr. McCrea's Motion to Dismiss and ordered that the Complaint was stricken with prejudice (Control No. 16112883); 3) this Court denied Dutton's Motion to Extend Time for Filing a Certificate of Merit (Control No. 16121169); and 4) this Court denied Dutton's Motion for Extension of Time to File an Amended Complaint (Control No. 16121191). On January 31, 2017, Dutton filed a timely Notice of

Appeal of all four Orders to the Superior Court of Pennsylvania.

DISCUSSION

Under the Pennsylvania Rules of Civil Procedure, Preliminary Objections are governed by Rule 1028. The Rule, in pertinent part, provides that

- (a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:
 - (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
 - (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
 - (3) insufficient specificity in a pleading;
 - (4) legal insufficiency of a pleading (demurrer);
 - [. . .].²

In the instant matter, Dr. McCrea presented this Court with objections under each of the above listed subsections Pa.R.C.P. 1028(a): improper service of the Complaint, pursuant to Pa.R.C.P. 402; failure of the Complaint to conform to Pa.R.C.P 1022; insufficient specificity of Paragraphs 18 and 19; and legal insufficiency of the Complaint, pursuant to Pa.R.C.P 233.1. Rule 233.1 states, in pertinent part, that:

- (a) Upon the commencement of any action filed by a *pro se* plaintiff in the court of common pleas, a defendant may file a motion to dismiss the action on the basis that
 - (1) the *pro se* plaintiff is alleging the same or related claims which the *pro se* plaintiff raised in a prior action against the same or related defendants, and
 - (2) these claims have already been resolved pursuant to a written settlement agreement or a court proceeding.³

Our Superior Court has opined that the function of this Rule allows for "the expeditious dismissal of duplicative *pro se* actions" thereby sparing potential defendants from

² Pa.R.C.P. 1028(a).

³ Pa.R.C.P. 233.1(a).

defending against such actions.⁴ Moreover, the Court has held that, unlike the doctrines of res judicata or collateral estoppel, Rule 233.1 does not require that the resolution of the prior action involve a final judgment on the merits.⁵

Here, Dutton filed her first action⁶ against Dr. McCrea and the Hospital of the University of Pennsylvania on May 15, 2015, related to medical treatment received between April 16, 2013 and June 5, 2013. On July 17, 2015, the court docketed a judgment of non pros for Dutton's failure to file a Certificate of Merit, pursuant to Pa.R.C.P. 1042.6. Dutton subsequently filed a Petition to Strike Non Pros, which was denied and reconsideration thereof was denied as well. Dutton filed an untimely notice of appeal to the Superior Court and said appeal was quashed on January 20, 2016.

Dutton filed her second action⁷ against the Hospital of the University of Pennsylvania on February 29, 2016, again related to the same medical treatment received between April 16, 2013 and June 5, 2013. Dutton entered a default judgment against the hospital which was subsequently opened upon application to the Court. Thereafter, on August 23, 2016, the Court granted Dr. McCrea's Motion to Dismiss pursuant to Rule 233.1 and Dutton appealed the entry of such Order to the Superior Court. As of the filing of this Opinion, that appeal remains pending at docket 2835 EDA 2016.

Dutton filed the third/instant action against Dr. McCrea on September 4, 2016, *again* related to the same medical treatment received between April 16, 2013 and June 5, 2013. This Court has, above, delineated the full procedural history of the instant matter.

⁴ *Gray v. Buonopane*, 53 A.3d 829, 835 (Pa. Super. 2012).

⁵ *Id.* at 836.

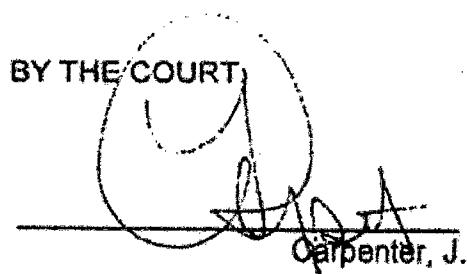
⁶ Court of Common Pleas case No. 150501655.

⁷ Court of Common Pleas case No. 160204412.

This Court's January 20, 2017 Orders properly sustained Dr. McCrea's Preliminary Objection for legal insufficiency of the Complaint, pursuant to Pa.R.C.P 233.1, and properly granted Dr. McCrea's Motion to Dismiss, pursuant to Pa.R.C.P 233.1, as Dutton is alleging the same claims that have already been raised in the prior two actions against Dr. McCrea and/or the Hospital of the University of Pennsylvania, which have already been resolved via court proceeding. Additionally, Dr. McCrea's remaining Preliminary Objections presented under Rule 1028(a)(1), (2) and (a)(3) were also properly sustained, via this Court's January 20, 2017 Order, based upon the glaring deficiencies in the substance, form, and service of the Complaint. This Court also denied Dutton's Motion to Extend Time for Filing a Certificate of Merit and her Motion for Extension of Time to File an Amended Complaint because the instant proceeding was necessarily dismissed pursuant to Rule 233.1, as discussed.

CONCLUSION

For the reasons set forth in this Opinion, the Superior Court should affirm this Court's Orders, which collectively ended the proceedings against Defendant Nikkisha P. McCrea, M.D. in the instant matter.

BY THE COURT

Carpenter, J.

D- (4) Orders from Court of Common Pleas of Pa.

FILED

15 DEC 2016 03:05 pm

Civil Administration

E. MASCUILLI

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

Marguerite Dutton

vs.

Nikkisha P. McCrea, M.D.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

SEPTEMBER TERM, 2016

NO. 0014

ORDER

AND NOW, this 19th day of

Jan , 2017 upon consideration of

Plaintiff's Motion to Extend Time for Filing Certificate of Merit and defendant, Nikkisha P. McCrea, M.D.'s Response to same, it is hereby ORDERED that said Motion is DENIED.

Dutton Vs McCrea-ORDER



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BY THE COURT:

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JAN 19 2017

OFFICE OF JUDICIAL
RECORDS

Case ID: 160900014

Control No.: 16121169

FILED
22 NOV 2016 03:41 pm
Civil Administration
S. MASCULLI

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

Marguerite Dutton

vs.

Nikkisha P. McCrea, M.D.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
SEPTEMBER TERM, 2016
NO. 0014

ORDER

AND NOW, this 19th day of Jan, 2017, upon consideration of Defendant, Nikkisha P. McCrea, M.D.'s Motion to Dismiss Pursuant to Pa. R.C.P. 233.1 and any response hereto, it is hereby ORDERED that said Motion is GRANTED.

Plaintiff's Complaint is STRICKEN WITH PREJUDICE. Plaintiff's lawsuit is DISMISSED WITH PREJUDICE. Plaintiff is BARRED from pursuing additional litigation against Nikkisha P. McCrea, M.D.

Dutton Vs McCrea-ORDRF



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BY THE COURT:

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JAN 19 2017
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Case ID: 160900014
Control No.: 16112883

FILED
15 DEC 2016 03:04 pm
Civil Administration
E. HAURIN

**IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

Marguerite Dutton

vs.

Nikkisha P. McCrea, M.D.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
SEPTEMBER TERM, 2016
NO. 0014

ORDER

AND NOW, this 19th day of Jan, 2017 upon consideration of Plaintiff's Motion for Extension of Time to File Amended Complaint and defendant, Nikkisha P. McCrea, M.D.'s Response to same, it is hereby ORDERED that said Motion is DENIED.

Dutton Vs McCrea-ORDER



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BY THE COURT:

RECEIVED
JAN 19 2017
OFFICE OF JUDICIAL
RECORDS

Case ID: 16090004
Control No.: 16121191



IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

Marguerite Dutton

vs.

Nikkisha P. McCrea, M.D.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

SEPTEMBER TERM, 2016

NO. 0014

ORDER

AND NOW, this 19th day of Jan, 2017 upon consideration of Defendant, Nikkisha P. McCrea, M.D.'s Preliminary Objections to Plaintiff's Complaint and any response hereto, it is hereby ORDERED that said Preliminary Objections are SUSTAINED:

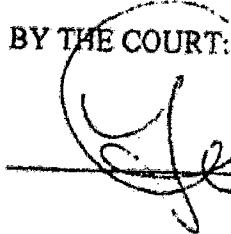
1. Plaintiff's Complaint is STRICKEN WITH PREJUDICE in its entirety for improper service.
2. Plaintiff's Complaint is STRICKEN WITH PREJUDICE and her case DISMISSED pursuant to Pa. R.C.P. 233.1.
3. Plaintiff's Complaint is STRICKEN for failing to conform with Pa.R.C.P. 1022 which provides pleadings shall be divided into consecutive numbered paragraphs.
4. Paragraphs 18 and 19 are STRICKEN WITH PREJUDICE for factual insufficiency of pleadings.
5. Plaintiff's Complaint, including the Wherefore Clause is STRICKEN for failing to comply with Pa. R.C.P. 1021.

Dutton Vs McCrea-ORDER



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BY THE COURT:



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JAN 19 2017

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Case ID: 1609000 4

Control No.: 16112850

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Clerk's Office.**