



Ashley Kim <thatsmoontears2@gmail.com>

FAR-27473 - Notice: FAR denied

1 message

SJCCommClerk@sjc.state.ma.us <SJCCommClerk@sjc.state.ma.us>

Fri, Feb 12, 2021 at 6:00 PM

Reply-To: SJCCommClerk@sjc.state.ma.us

To: ThatMoonTears2@gmail.com

Supreme Judicial Court for the Commonwealth of Massachusetts

RE: Docket No. FAR-27473

ASHLEY Y. (YOO HYANG) KIM

vs.

HUONG TRAN & others

Middlesex Superior Court No. 1881CV02088

A.C. No. 2019-P-0684

NOTICE OF DENIAL OF APPLICATION FOR FURTHER APPELLATE REVIEW

Please take note that on February 12, 2021, the application for further appellate review was denied. (Wendlandt, J., recused)

Francis V. Kenneally Clerk

Dated: February 12, 2021

To: Ashley Y. Kim


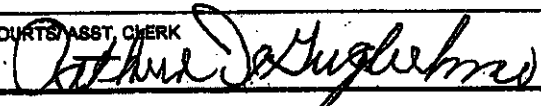
Curtis R. Diedrich, Esquire

Molly Kathleen Corcoran, Esquire

Daniel Braun, Esquire

APPENDIX A

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JUDGMENT ON MOTION TO DISMISS		Trial Court of Massachusetts The Superior Court 
DOCKET NUMBER 1881CV02088		Michael A. Sullivan, Clerk of Court Middlesex County
CASE NAME Ashley Y. (Yoo Hyang) Kim vs. Dr. Huong Tran, M.D. et al		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) Tran, M.D., Dr. Huong Smith, N.P., Mary Ellen Boston Medical Center		
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) Kim, Ashley Y. (Yoo Hyang)		
<p>This action came on before the Court, Hon. Kenneth J Fishman, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Ch.P. 12(b);</p> <p>It is ORDERED AND ADJUDGED:</p> <p>That the plaintiff Ashley Y. Kim's complaint be and hereby is dismissed with prejudice.</p>		
DATE JUDGMENT ENTERED 02/01/2019	CLERK OF COURTS/ASST. CLERK X 	

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationales. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-684

ASHLEY Y. (YOO HYANG) KIM

vs.

HUONG TRAN & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Ashley Y. Kim, appeals from the judgment dismissing her amended complaint for failure to state a claim, pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), and purports to appeal from the order denying her motion for reconsideration.² We affirm.

Kim's amended complaint³ asserted three claims apparently arising from (i) her diagnosis for a mental disorder, which she contends resulted in the creation of medical records stating

¹ Boston Medical Center and Mary Ellen Smith, N.P.

² The plaintiff's notice of appeal does not mention the order denying her motion for reconsideration. See Rothkopf v. Williams, 55 Mass. App. Ct. 294, 295 n.2 (2002) (notice of appeal failing to mention postjudgment motion does not bring order before appellate court).

³ Kim's original complaint also was dismissed for failure to state a claim; a Superior Court judge allowed Kim leave to amend the complaint, which she did.

APPENDIX B

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that she has chronic paranoid schizophrenia, and (ii) her treatment for illness she maintains relates to her exposure to unidentified toxins after she opened mail. After a Superior Court judge dismissed the amended complaint for failure to state a claim, Kim moved for reconsideration. The judge denied the motion for failure to comply with rule 9A of the Rules of the Superior Court (2018). We affirm.

Discussion. "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief" (citation omitted).

Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-636 (2008). A plaintiff must provide "factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief" (quotation and citation omitted).⁴ Id. at 636.

Counts I and II present as medical malpractice claims in that they pertain to medical treatment by the defendants, Dr. Huong Tran and nurse practitioner Mary E. Smith. A medical malpractice plaintiff must "(1) show that the defendant is a provider of health care as defined in G. L. c. 231, § 60B;

⁴ General Laws c. 231, § 60B, requires medical malpractice claims to be heard by a tribunal in order for the tribunal to make an initial determination whether the plaintiff's "evidence presented if properly substantiated is sufficient to raise a legitimate question of liability appropriate for judicial inquiry." The parties do not address the applicability of this provision to the present action.

(2) demonstrate that the health care provider did not conform to good medical practice; and (3) establish resulting damage."

Saunders v. Ready, 68 Mass. App. Ct. 403, 404 (2007). The amended complaint fails to allege a cognizable injury from the negligence alleged. For count I, Kim alleged only that Tran's negligence (a purported failure to alert her that the consultation with Smith might lead to a diagnosis of schizophrenia) resulted in "very obnoxious amounts of medical record pages" in her medical records. Similarly, count II alleged Tran's and Smith's negligence (purportedly the failure to disclose to her that Smith's evaluation would result in a diagnosis for schizophrenia) resulted in "a lot of disgusting and unbelievable mess on [her] medical records, where there are tons of psychological wordings to describe [her] mental conditions." As such, Kim failed to set forth a cognizable injury.⁵

At the hearing on the motion, Kim was asked to identify her claimed injury. She speculated that her medical records might affect her future employability. However, Kim admitted that she had not applied for (let alone been denied) employment; given this, she cannot claim that her medical records in any manner affected her employment. Furthermore, Kim does not allege that

⁵ Kim admitted at the hearing on the defendants' motion that she has no basis to challenge the diagnosis itself as incorrect; she has consulted neither another physician nor an expert.

her private medical records were shared with anyone. To the contrary, she stated that she was not concerned about publication of her records, stating only, "[I]t's just that I don't like that chronic paranoid schizophrenia diagnosis; that the fact that I had to see somebody for my mental[] illness. I just don't want that in me." These allegations do not plausibly suggest Kim has suffered damages to sustain her claim. See Donovan v. Philip Morris USA, Inc., 455 Mass. 215, 222 (2009) ("A negligence action may not be maintained unless one has suffered injury or damage" [citation omitted]).

Count III alleged that Tran failed to provide the tests and "particular medications" and an "urgent medical needle shot" Kim believed were required to get rid of her symptoms from her exposure to toxins in the mail. Kim's speculation that these unspecified treatments were required is insufficient to plausibly suggest that Tran did not conform to the standard

of care. The judge properly dismissed Kim's amended complaint.^{6,7}

Judgment affirmed.

By the Court (Wolohojian,
Massing & Wendlandt, JJ.⁸),

Joseph F. Stanton


Clerk

Entered: April 21, 2020.

⁶ We note that the motion for reconsideration was properly denied. See Arthur D. Little, Inc. v. East Cambridge Sav. Bank, 35 Mass. App. Ct. 734, 742-743 (1994) (proper denial of motion to alter or amend judgment for failure to comply with rule 9A of the Rules of the Superior Court).

⁷ To the extent the amended complaint raises a claim of fraud, it does not meet the particularity requirement of Mass. R. Civ. P. 9 (b), 365 Mass. 751 (1974). On appeal, Kim contends that she has stated claims for lack of consortium, libel, slander, and infliction of emotional distress. None are supported by the allegations in the complaint; moreover, having been raised for the first time on appeal, we need not consider them. See Picciotto v. Chief Justice of the Superior Court, 446 Mass. 1015, 1016 n.2 (2006). To the extent that any arguments are not expressly addressed, "they 'have not been overlooked. We find nothing in them that requires discussion.'" Commonwealth v. Brown, 479 Mass. 163, 168 n.3 (2018), quoting Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

⁸ The panelists are listed in order of seniority.

CLERK'S NOTICE	DOCKET NUMBER 1881CV02088	Trial Court of Massachusetts The Superior Court 
CASE NAME: Ashley Y. (Yoo Hyang) Kim vs. Dr. Huong Tran, M.D. et al		Michael A. Sullivan, Clerk of Court Middlesex County
TO: Curtis R Diedrich, Esq. Diedrich & Donohue, LLP 84 State St 10th Floor Boston, MA 02109		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801
<p>You are hereby notified that on 09/10/2018 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for a more Definite Statement (#9.0): Other action taken</p> <p>In response to the defendants' motion for a more definite statement, the court reviewed plaintiff's complaint. Notwithstanding its length, the complaint fails to plead a cause of action against the defendants. It appears, as best as can be discerned from the complaint, that plaintiff disagrees with a mental health diagnosis that appears in her medical records, believes the diagnosis should not be in her medical records, and that she suffered some harm when she viewed her medical records containing her mental health diagnosis. These core contentions are drawn from a long narrative concerning plaintiff's interactions with medical providers at Boston Medical Center, which includes many pages of extraneous comments which do not appear to relate to any particular claim. In sum, a review of the complaint reveals that it fails to state a claim because it fails to identify a cause of action, fails to request a remedy, and fails to allege facts that would support a cause of action, identified or not. In these circumstances, rather than allow the motion for a more definite statement, the court issues this order: 1) dismissing the complaint for failure to state a claim pursuant to Mass. R. Civ. P. 12(b)(6); and 2) providing the plaintiff thirty days, on or before October 8, 2018, in the event plaintiff would like to amend her complaint. Should plaintiff file an amended complaint, she is obligated to conform to Mass. R. Civ. P. 8 which requires "(1) a short and plain statement of the claim showing that the pleader is entitled to relief, (2) a demand for judgment for the relief for which (she) deems (herself) entitled" and (3) that allegations be "simple, concise and direct." In the absence of an amended complaint that conforms to these requirements, filed and served on defendants by October 8, 2018, judgment dismissing the case will enter. So Ordered. Dated: September 8, 2018</p> <p>Judge: Barry-Smith, Hon. Christopher K</p>		
DATE ISSUED 09/10/2018	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. Christopher K Barry-Smith	SESSION PHONES (781)939-2757

APPENDIX C
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