2026 IL App (2d) 250259-U
No. 2-25-0259
Order filed February 9, 2026

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FELICIA NORVILLE, Plaintiff-Appellant,
v. DAVID WOODARD and NORTHWESTERN MEDICINE DELNOR-COMMUNITY HOSPITAL, Defendants-Appellees.

Appeal from the Circuit Court of Kane County.
Honorable Mark A. Pheanis, Judge, Presiding.
No. 24-CH-70

PRESIDING JUSTICE KENNEDY delivered the judgment of the court.
Justices McLAREN and BIRKETT concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing plaintiff's claim for permanent injunction seeking to compel defendant physician to perform a surgical procedure, where plaintiff failed to allege sufficient facts to establish that defendant physician's medical judgment that plaintiff needed to undergo a colonoscopy prior to undergoing the procedure was contrary to the applicable standard of care.

¶ 2 Plaintiff, Felicia Norville, appeals from an order of the circuit court of Kane County dismissing, with prejudice, her amended complaint against defendants, David Woodard and Northwestern Medicine Delnor-Community Hospital (Northwestern), for mandatory injunctive relief but granting leave to file an amended complaint seeking other relief. We affirm and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Norville filed her original complaint on June 25, 2024. The case was assigned to Judge Kevin T. Busch. On July 29, 2024, she filed a "revised" complaint. Woodard moved to dismiss the revised complaint for failure to state a cause of action. Judge Busch denied the motion and ordered defendant to file an answer. Before defendant did so, however, plaintiff moved to amend her complaint. The trial court granted the motion. The amended complaint, which added Northwestern as a defendant, alleged that, in November 2023, Norville was diagnosed with diverticulitis by unnamed doctors at Northwestern. The doctors told her that she would need to undergo a two-part surgical procedure. First, a section of her large intestine would be removed and an opening in her abdominal wall—an ileostomy stoma—would be created, from which her small intestine would protrude. Second, after a period of healing of about three months, her small intestine would be reattached to the remaining portion of her large intestine. After recovery from that part of the procedure, she would be able to resume her normal life.

¶ 5 Woodard performed the first part of the procedure in December 2023. The second part was scheduled for April 2024, but Woodard advised Norville that he would not complete the procedure unless she first underwent a colonoscopy. She had not previously been told that a colonoscopy would be necessary. Woodard referred Norville to another physician, Katherine Jelinek, who informed Norville that she would need clearance from a cardiologist before undergoing a colonoscopy. Although a cardiologist cleared Norville for both the colonoscopy and the surgery to reattach her small and large intestines, Norville learned that both Woodard and Jelinek wanted her to have "one or more heart operations," after which, "maybe" Woodward would perform the second procedure. According to the amended complaint, her cardiologist told her to "finish the ileostomy stoma surgery" prior to heart surgery, and her health insurer concurred.

¶ 6 Norville alleged that, for as long as she could remember, doctors had told her that she had a heart murmur, but none suggested that it was serious and it never had any impact on her life. She had no problems with anesthesia during the first procedure to treat her diverticulitis or during any of numerous prior procedures for other conditions. She further alleged that, subsequent to the first procedure for diverticulitis, she had undergone "several operations" and "never had any problems with [her] heart or anesthesia." She had offered to sign a waiver releasing Woodard and Northwestern from liability arising from the second procedure.

¶ 7 Norville's amended complaint described the extreme hardship of life with the stoma. Having lost the use of her left arm and hand due to a stroke many years earlier, Norville was unable to care for the stoma herself. She relied on her husband to do so, but he worked two jobs and was not always available to help. The stoma leaks bodily waste. When Norville lies in bed, waste leaks onto her body and the bed. She has been sleeping upright in a chair in order for waste to properly drain into the bag designed to collect it. Because of the leakage, she cannot go out in public. Norville is on dialysis but cannot drive herself to treatments. When the stoma is leaking, ride services will not take her for her dialysis appointments, nor will the dialysis center administer them. Thus, when her stoma is leaking, she must skip dialysis appointments that are critical to her health.

¶ 8 Norville's amended complaint also included the conclusory allegation that Woodard:

> "is using [her] heart murmur and his refusal to do the second part of the bowel resection operation as leverage to try to force [her] to do unnecessary tests and procedures that would bring in tens of thousands, if not hundreds of thousands of dollars, to the hospital from [her] insurance company."

¶ 9 After being served with the amended complaint, Northwestern filed a motion for substitution of judge as of right under section 2-1001(a)(2) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(2) (West 2024)). The case was reassigned to Judge Mark A. Pheanis. Woodard and Northwestern filed a combined motion under section 2-615 and 2-619(a)(9) of the Code (*id.* §§ 2-615, 2-619) to dismiss the complaint. The portion of the motion seeking dismissal under section 2-615 argued that the amended complaint failed to plead facts establishing the elements of a cause of action for which injunctive relief was available. In the portion of the motion brought under section 2-619(a)(9), Woodard and Northwestern argued that "[Norville] does not provide any evidence other than conclusory statements about medicine." Attached to the motion was an affidavit from Woodard stating that the cardiologist who examined Norville found that she had moderate to severe aortic valve stenosis and heart failure and recommended that Norville undergo additional cardiology tests. According to Woodard's affidavit, Jelinek's chart indicated that she reviewed the cardiologist's recommendations and concluded that Norville needed to follow them before Jelinek could perform a colonoscopy. In his affidavit, Woodard further stated that, in his medical judgment, it was necessary for Norville to undergo a colonoscopy before he performed the second part of the procedure.

¶ 10 Judge Pheanis granted the motion. Ruling from the bench, he cited both section 2-615 and 2-619(a)(9) as grounds for dismissal. His written order entered on June 16, 2025, dismissed the amended complaint "with prejudice *as to issues raised in the pleadings*" (emphasis added) but granted Norville leave for to file an amended complaint, 60 days on or before August 18, 2025, "as to other remedies at law including breach of contract or medical malpractice." Norville filed her notice of appeal on June 26, 2025.

¶ 11 II. ANALYSIS

¶ 12 At the outset, we briefly clarify the jurisdictional basis for this appeal. Prior to briefing, Woodard and Northwestern moved to dismiss the appeal for lack of jurisdiction. They argued that the order appealed from was not a final judgment. We denied the motion. "A final judgment 'ascertains and fixes absolutely and finally the rights of the parties in the lawsuit,' determining 'the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment.' " *Pnevmatikos v. Pappas*, 2025 IL App (1st) 230739, ¶ 37 (quoting *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982)). It is well established that ["a]n order dismissing a complaint with leave to amend is not a final judgment." *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 21. Under the rules for appeals from final judgments, the plaintiff must stand on his or her complaint and secure entry of an order dismissing the complaint with prejudice. *Cole v. Hoogendoorn, Talbot, Davids, Godfrey and Milligan*, 325 Ill. App. 3d 1152, 1156 (2001). Moreover, when a plaintiff does not stand on his or her complaint "the trial court retains jurisdiction to permit the filing of an amended complaint beyond the time allotted to amend." *Knox County v. Switzer*, 151 Ill. App. 3d 873, 874 (1987).

¶ 13 In denying the motion to dismiss this appeal, we reasoned that if the order dismissing Norville's complaint was not a final judgment, we would have jurisdiction to review the order under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which authorizes a party to bring an interlocutory appeal from an order "granting, modifying, *refusing*, dissolving, or refusing to dissolve or modify an injunction." (Emphasis added.) Having now concluded that the order dismissing Norville's complaint with leave to amend was not a final judgment, we clarify that our jurisdiction is based on Rule 307(a)(1). The trial court's order foreclosed Norville from seeking injunctive relief and is therefore subject to interlocutory appellate review.

¶ 14 Turning to the merits, this appeal comes to us for review of an order granting Woodard's and Northwestern's combined motion to dismiss under sections 2-615 and 2-619(a)(9) of the Code. A section 2-615 motion to dismiss for failure to state a cause of action challenges the legal sufficiency of the complaint. *Masters v. Murphy*, 2020 IL App (1st) 190908, ¶ 9. Section 2-619(a)(9) permits a defendant to seek dismissal of s claim on the basis that it "is barred by *** affirmative matter avoiding the legal effect of or defeating the claim." An "affirmative matter" is "any defense other than a negation of the essential allegations of the plaintiff's cause of action." *Barry v. City of Chicago*, 2021 IL App (1st) 200829, ¶ 19.

¶ 15 In the portion of their motion seeking dismissal under section 2-619(a)(9), Woodard and Northwestern argued that "[t]he critical facts at issue require a medical foundation or background to determine whether [Norville] is entitled to a permanent injunction." As noted, they further argued that "[Norville] does not provide any evidence other than conclusory statements about medicine." However, "[a] plaintiff is not required to plead evidence in his complaint but is only required to allege ultimate facts." *Roark v. Macoupin Creek Drainage Dist.*, 316 Ill. App. 3d 835, 848-49 (2000). Norville's failure to plead evidence is not basis for dismissal under section 2-619 of the Code. The section 2-619 portion of the motion—the thrust of which was that Norville ultimately would be unable to prove the necessary elements for a permanent injunction—was an improper attempt to negate the allegations of her amended complaint.

¶ 16 Nonetheless, we agree with Woodard and Northwestern that, as argued in the portion of their motion brought under section 2-615 of the Code, Norville's amended complaint failed to state a cause of action and was properly dismissed. When deciding a section 2-615 motion to dismiss, "[t]he proper inquiry is whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief

may be granted." *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). However, "conclusory factual allegations unsupported by specific facts are not deemed admitted." *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007).

¶ 17 Our review is *de novo*, and we may affirm on any basis supported by the record. *Mazal v. Arias*, 2019 IL App (1st) 190660, ¶ 17.

¶ 18 Our supreme court has explained that "[t]o be entitled to a permanent injunction, a party must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists." (Internal quotation marks omitted.) *Indeck Energy Services, Inc. v. DePodesta*, 2021 IL 125733, ¶ 64. Here, the trial court rested its decision on the second and third requirements. We conclude, however, that the more critical defect with Norville's amended complaint is the failure to establish the first element: a clear and ascertainable right in need of protection.

¶ 19 The question presented is whether one has a legal right to receive a particular form of medical treatment against the medical judgment of his or her physician. This general question received attention nationwide during the COVID-19 pandemic, when those afflicted, or their families, turned to courts to order hospitals and physicians to administer unapproved treatments. We considered the issue in *Abbinanti v. Presence Central and Suburban Hospitals Network*, 2021 IL App (2d) 210763, where the plaintiffs appealed from the denial of their request for "an immediate mandatory injunction (a temporary restraining order or TRO) requiring [the defendant] to administer the medication ivermectin" to Sebastion and Maria Abbinanti, who were being treated for COVID-19 in the intensive care unit of defendant's hospital. *Id.* ¶ 1. Along with their complaint, the plaintiffs submitted a declaration from a physician on staff at the hospital indicating

that he did " 'not see any harm in trying this drug even if only to reassure family members that "everything possible" was done to save' the Abbinantis." *Id.* ¶ 4.

¶ 20 In *Abbinanti*, we explained that:

> "The party seeking the TRO or preliminary injunction must demonstrate that there is a 'fair question' as to each of the following: (1) a clear right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Id.* ¶ 15

We concluded that the plaintiffs failed to demonstrate that there was a fair question as to whether there was "a clear right in need of protection (*id.* ¶ 20) and that by failing to cite any relevant authority that such a right existed, the plaintiffs failed to carry their burden. *Id.* ¶ 17. Likewise in this case, Norville has cited no authority that a patient has a right to particular form of medical treatment from a provider who refuses such treatment based on medical judgment.

¶ 21 In *Abbinanti* we relied, in part, on *Texas Health Huguley, Inc. v. Jones*, 637 S.W.3d 202, 208 (Tex. App. 2021), which vacated a temporary injunction requiring a hospital to grant temporary privileges to a physician who was willing to administer Ivermectin to the plaintiff's husband, who had been admitted to a hospital and placed on a ventilator. The temporary injunction was issued as part of a lawsuit seeking a declaratory judgment that the hospital had a statutory and contractual obligation to administer Ivermectin. In vacating the temporary injunction, the *Jones* court considered "[t]he overarching question [to be] whether the law gives the judiciary the authority to intervene and compel a particular outcome in the hospital's legal exercise of its discretion to make credentialing decisions." *Jones*, 637 S.W.3d at 212. Answering that question in the negative, the *Jones* court observed that:

> "Patients go to the hospital to have physicians, nurses, and similar medical personnel exercise their professional judgment—honed by years of medical training and experience—to recommend and administer medical treatment. As a society, we not only expect, but require, doctors and hospitals to exercise their independent professional judgment." *Id.*

¶ 22 Notably, the *Jones* court refused to defer to the medical judgment of a physician over that of a hospital by ordering the hospital to credential the physician to treat one of its patients. As the court observed:

> "A hospital is not a mere hostery providing room and board and a place for physicians to practice their craft, but owes independent duties of care to its patients. Because [o]ne of a hospital's primary functions is to provide a place in which doctors dispense health care services," and because [t]he quality of a health care provider's medical staff is intimately connected with patient care[, a] hospital's credentialing of doctors is necessary to that core function and is, therefore, an inseparable part of the health care rendered to patients." (Internal quotation marks omitted.) *Id.* at 213.

The court ultimately concluded that "in this unique context, the law does not allow this court, the trial court, or any other court to substitute our nonmedical judgment for the professional medical judgment of health care providers—whether we agree with their decisions, have serious doubts about them, or disagree with them entirely." *Id.* at 223-24.

¶ 23 We are aware that *Jones*, like *Abbinanti*, involved a provisional remedy, whereas Norville seeks a permanent remedy. It could be argued, perhaps, that permitting Norville's case to proceed to a full trial on the merits, after an opportunity for discovery, would enable the trial court to decide the types of questions that the *Jones* court was unwilling to decide on a more expedited basis. Even

if we were to accept that argument in theory, we would still conclude that Norville's complaint is insufficient as a matter of law. *Jones* makes clear that if a court were ever to order a health care provider to provide treatment against the health care provider's medical judgment, it would do so only upon a showing that that judgment was contrary to the applicable standard of care. *Jones*, 637 S.W.3d at 221-22.

¶ 24 The well-pleaded allegations of Norville's complaint reveal, at most, that there might be a difference of opinion among medical professionals about whether further surgery is appropriate without preliminary procedures. Norville alleges no facts that could establish that Woodard's judgment is a violation of the standard of care.

¶ 25 Although we can express our hope that Norville eventually receives treatment that alleviates her suffering and improves her quality of life, we cannot supervise her treatment and her requests that we do so are inappropriate. We reiterate, however, that this is an interlocutory appeal and there is authority that "the trial court retains jurisdiction to permit the filing of an amended complaint beyond the time allotted to amend." *Switzer*, 151 Ill. App. 3d at 874. Thus, the trial court's order does not necessarily automatically foreclose any action for damages, if properly pleaded.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the circuit court of Kane County's interlocutory order denying injunctive relief and we remand for further proceedings.

¶ 28 Affirmed and remanded.