IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT

ERIC ANDERSON,

Appellant,

v.

CASE NO.: 2D23-1630
L.T. CASE NO.: 2023 CA 000999 NC

SARASOTA MEMORIAL HOSPITAL,

Appellee.
_____/

APPELLEE SARASOTA MEMORIAL HOSPITAL'S MOTION TO DISMISS APPEAL

Appellee, SARASOTA MEMORIAL HOSPITAL ("SMH"), hereby moves to dismiss this appeal for lack of jurisdiction and states:

Introduction

Appellant ERIC ANDERSON ("ANDERSON") appeals the lower court's Order on Defendant Sarasota Memorial Hospital's Motion to Dismiss Plaintiff's Amended Complaint rendered on July 14, 2023 (the "Order"). A copy of the Order is attached as Exhibit A. The Order on appeal granting the Motion to Dismiss is silent as to whether the dismissal is with prejudice, and is also silent as to whether the Appellant was given leave to amend his Amended Complaint. As such, the Appellee is in doubt as to whether the Order on appeal is a final appealable order.

In an abundance of caution, Appellee moves to dismiss this appeal to resolve the jurisdictional question and to spare the Court and the parties any unnecessary expense from a premature appeal.

Argument

1. Appellant Anderson filed his Amended Complaint on April 10, 2023.

2. Appellee SMH filed its Motion to Dismiss Plaintiff's Amended Complaint on May 1, 2023.

3. The Trial Court, in the Order on appeal, stated "the Motion to Dismiss is GRANTED." However, the Order on appeal does not state whether the dismissal is with prejudice, and does not address leave to amend.

4. Generally, an order granting a motion to dismiss a complaint "without prejudice" signifies a non-final order. See *Al-Hakim v. Big Lots Stores, Inc.*, 161 So. 3d 568 (Fla. 2d DCA 2014).

5. Courts have held that an order merely granting a motion to dismiss is not final. For example, an order that grants a motion to dismiss with prejudice, but does not actually dismiss the complaint, is not a final order. *Knott v. Genung*, 310 So. 3d 990 (Fla. 2d DCA 2020).

6. However, a dismissal that effectively dismisses a complaint

but omits the "with prejudice" language, may be treated as a final order. *Nextgen Restoration Inc. v. Citizens Property Ins. Corp.*, 126 So. 3d 1255 (Fla. 2d DCA 2013).

7. Appellee is in doubt as to whether the Order on appeal is a final appealable order.

WHEREFORE, Appellee requests that the appeal be dismissed or in the alternative abated with a relinquishment of jurisdiction to allow the Trial Court to enter an appealable final order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court of Sarasota County, Florida using the Florida Courts E-Filing Portal and served on by email via the Portal on Eric Anderson, Pro Se, 7 Soco Trail, Ormond Beach, FL 32174, ea1958@gmail.com this 29 day of August, 2023.

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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

Eric Anderson,

Plaintiff,

v. **Case No.: 2023 CA 999 NC**

Sarasota Memorial Hospital,

Defendant.
_____/

ORDER ON DEFENDANT SARASOTA MEMORIAL HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter came before the court on July 12th, 2023, on the Defendant's Motion to Dismiss Plaintiff's Amended Complaint. The Court heard the argument, reviewed the pleadings, and took the matter under advisement. After careful consideration the Court finds as follows;

Allegations within the Amended Complaint

On April 10, 2023, the Plaintiff filed his Amended Complaint. The Amended Complaint contains a single count for Intentional Inflection of Emotional Distress. According to the Amended Complaint, the Plaintiff seeks to bring "the illegal and arbitrary practice of circumcision conducted on newborn children at Sarasota Memorial Hospital into the cognizance of this honorable court.".

The Amended Complaint goes on to say; "As a citizen and a taxpayer of the State of Florida, Plaintiff Eric Anderson, in the instant case seeks to bring the illegal and arbitrary practice of ***forced elective circumcision*** conducted on male babies, at Sarasota Memorial Hospital to an end, so that the Plaintiff---and the Hospital, and our fellow man---may be relieved of the suffering that the continuance of this illegality places upon him."

The Amended Complaint also notes; "The Plaintiff hereby submits that he is severely distressed by the continuance of this practice, to the extent that the plaintiff is losing his mental equilibrium and stability.".

The Plaintiff states that the grounds of the claim have their basis in "the Supremacy Clause, the plain meaning rule, Mischief Rule and the Golden Rule"

Exhibit A

Argument by Sarasota Memorial Hospital

Sarasota Memorial Hospital argues that the Amended Complaint should be dismissed because the Plaintiff has failed to state a cause of action for intentional infliction of emotional distress.

The law

In order to state a cause of action under Florida law for intentional infliction of emotional distress, Plaintiff must allege: (a) the defendant's conduct was intentional and reckless, that is, the defendant intended his behavior when it knew or should have known that emotional distress would likely result; (b) the conduct was outrageous and goes beyond all bounds of decency, and to be regarded as utterly intolerable in a civilized community; (c) the conduct caused emotional distress; and (d) the emotional distress was severe. *See, e.g., Metropolitan Life Ins. Co. v. McCarson,* 467 So.2d 277 (fla.1985); *Johnson v. Thigpen,* 788 So.2d 410 (Fla. 1st DCA 2001).

The issue of whether a plaintiff has met the requirements in a claim for intentional infliction of emotional distress is a question for the trial court to decide as a matter of law. *Baker v. Florida Nat'l Bank,* 559 So.2d 284 (Fla. 4th DCA 1990). Whether alleged conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a matter of law, not a question of fact. *See Gandy v. Trans World Computer Tech. Group,* 787 So.2d 116 (Fla. 2nd DCA 2001).

When a motion to dismiss alleges failure to state a cause of action, the trial court is confined to the four corners of the complaint, and the material allegations of the complaint must be taken as true. *Davis ex rel. Davis v. Bell,* 705 So.2d 108 (Fla. 2nd DCA 1998).

A complaint should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff could prove no set of facts that would entitle him to relief. *Midflorida Sch. Fed. Credit Union v. Fansler,* 404 So.2d 1178, 1180 (Fla. 2nd DCA 1981).

In determining the sufficiency of a complaint, the trial court may not look beyond the four corners of it, consider any affirmative defenses raised by defendant, or consider any evidence likely to be produced by either side.

Ruling and rationale

Based on the four corners of the complaint and the allegations within the complaint, the **Motion to Dismiss is GRANTED.**

The Complaint, the conduct complained of within the Amended Complaint, the circumcision of infants at Sarasota Memorial Hospital, as a matter of law, does not rise to the level of outrageous conduct sufficient to support a claim for intentional infliction of emotional distress and therefore the Amended Complaint must be dismissed.

Done and ordered this 14th day of July, in Sarasota, Sarasota County, Florida.

Charles E. Williams
Circuit Court Judge

cc.

Jennifer Grosso, Esq.
Eric Anderson, Pro Se