DOCKET NO.: DBD-CV-24-5020482-S

SUPERIOR COURT

ROBERT RUSH

J. D. OF DANBURY

V.

AT DANBURY

DENTAL ASSOC.

MAY 13, 2024

MEMORANDUM OF DECISION
RE: DEFENDANT'S MOTION TO DISMISS #103

PROCEDURAL HISTORY

On February 22, 2024, the plaintiff, Robert Rush, filed a small claims complaint alleging malpractice by the defendant, Dental Assoc. On March 4, 2024, the court granted the defendant's motion to transfer the matter to the regular docket of the Superior Court. Docket Entry #102.01. The defendant then filed a motion to dismiss the complaint claiming the plaintiff failed to comply with General Statutes § 52-190a in that he failed to file a written opinion from a similar healthcare provider as required by the statute for a malpractice action. The plaintiff, who is self-represented, has not filed an objection to the motions to dismiss. The court held a remote hearing on May 13, 2024 at which time oral argument was held on the motion.

FACTS

In his original small claims complaint, the plaintiff alleged "malpractice [sic] one weeke [sic] TCU [sic] Danbury CT." No other allegations were made. At oral argument, the plaintiff argued that following the treatment by the defendant he spent a week in the ICU at Danbury Hospital and has suffered damages as a result.

STANDARD OF LAW

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be

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heard by the court." (Internal quotation marks omitted.) *Santorso* v. *Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc.* v. *Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde* v. *Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

Section 52-190a (a) provides in relevant part: "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. . . . To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion."

DISCUSSION

The defendants argue that the plaintiff has failed to satisfy § 52-190a because she did not file with the complaint an opinion letter from a similar health care provider. The plaintiff has not filed any objection to the defendant's motion.

As a preliminary matter, the court finds that the plaintiff's claim sounds in medical malpractice. "[T]he relevant considerations in determining whether a claim sounds in medical malpractice are whether (1) the defendants are sued in their capacities as medical professionals, (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment." *Trimel* v. *Lawrence & Memorial Hospital Rehabilitation Center*, 61 Conn. App. 353, 358, 764 A.2d 203, cert. granted, 255 Conn. 948, 769 A.2d 64, cert. dismissed, 258 Conn. 711, 784 A.2d 889 (2001). The plaintiff made clear at oral argument that his claim of malpractice stems from treatment by the defendant as a medical professional.

In *Morgan* v. *Hartford Hospital*, the court held that "[t]he failure to provide a written opinion letter, or the attachment of written opinion letter that does not comply with § 52-190a, constitutes insufficient process and, thus, service of that insufficient process does not subject the defendant to the jurisdiction of the court. . . . The jurisdiction that is found lacking, however, is jurisdiction over the person, not the subject matter." (Citation omitted; internal quotation marks omitted.) *Morgan* v. *Hartford Hospital*, 301 Conn. 388, 21 A.3d 451 (2011). Recently, the Connecticut Supreme Court overturned *Morgan* v. *Hartford Hospital* when the court considered "the extent to which the opinion letter requirement [in § 52-190a] is jurisdictional in nature." *Carpenter* v. *Daar*, 346 Conn. 80, 99, 287 A.3d 1027 (2023). *Carpenter* held "that the opinion letter requirement is a unique, statutory procedural device that does not implicate the court's jurisdiction in any way. . . . [F]or purposes of the motion to dismiss pursuant to § 52-190a (c), the sufficiency of the opinion letter is to be determined solely on the basis of the allegations in the complaint and on the face of the opinion letter, without resort to the jurisdictional fact-finding process . . . ." Id., 87.

In relevant part, the "only question at the motion to dismiss stage [is] whether the author of the good faith letter is a similar health care provider to the defendant as their respective qualifications are pleaded in the complaint and described in the opinion letter." Id., 125. The ultimate holding in *Morgan*, that "the order of the pleadings provided by Practice Book §§ 10-6 and 10-7 continues to render dismissal under § 52-190a waivable for failure to file a timely motion to dismiss . . . and requires that the motion to dismiss be filed early in the action" remains good law. (Citation omitted.) Id., 126.

The change in the case law does not affect the case at hand. Here, the court is not deciding the sufficiency of an opinion letter under § 52-190a. Rather, in this case, the plaintiff has altogether failed to file a written opinion from a similar health care provider as required by the statute. While the court has the authority to permit amendments to the complaint to attach an opinion letter that existed at the time the action was commenced, no such request has been made by the plaintiff. The motion to dismiss was timely filed consistent with the provisions of the Practice Book. It has not been objected to. The failure to include the written opinion letter from a similar health care provider subjects the plaintiff's complaint to dismissal under § 52-190a.

CONCLUSION

As the plaintiff's complaint did not have appended to it a written opinion letter from a similar health care provider as required by General Statutes § 52-190a and in that he has not requested to amend his complaint to file a written opinion that existed at the time the action was commenced, the court grants the motion to dismiss.

Shaban, J.

Decision entered in accordance with the foregoing on 5/13/24. Pro se pltf + Atty. of Record notified on 5/13/24.

[illegible]
Clerk