

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amy R. Lee,
Appellant-Plaintiff,

v.

Anonymous Physician Group
and Anonymous Hospital,
Appellees-Defendants,

and

Commissioner of the Indiana
Department of Insurance and Neil
Bemenderfer, Panel Chair,

Interested Parties

January 31, 2024

Court of Appeals Case No.
23A-MI-1228

Appeal from the Wayne Circuit
Court

The Honorable April R. Drake,
Judge

Trial Court Cause No.
89C01-2211-MI-172

Memorandum Decision by Judge May

Judges Bailey and Felix concur.

May, Judge.

- [1] Amy R. Lee appeals the trial court’s dismissal, with prejudice, of her proposed medical malpractice complaint pending before the Indiana Department of Insurance (“IDOI”). The trial court dismissed Lee’s proposed complaint because Lee repeatedly failed to comply with submission deadlines without good cause shown therefor. Lee argues the trial court abused its discretion by dismissing her claim. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] Lee filed a proposed complaint against Anonymous Hospital and Anonymous Physician Group (hereinafter, “Medical Providers”) with the IDOI on January 19, 2021. The IDOI confirmed that Medical Providers were qualified providers under the Medical Malpractice Act (“the Act”), Indiana Code article 34-18, on February 9, 2021, and on March 12, 2021, Medical Providers served interrogatories and requests for production on Lee. Lee’s responses were due April 11, 2021.
- [3] When Lee had not responded by June 30, 2021, Medical Providers’ counsel contacted Lee’s counsel to inquire about the overdue responses. Lee’s counsel responded the next day to report difficulty contacting Lee and to request thirty additional days to provide responses. On July 29, 2021, Lee’s counsel again asked for a thirty-day extension to provide Lee’s responses. Medical Providers

agreed to what they called a “final discovery extension” until August 30, 2021. (Appellant’s App. Vol. 2 at 7.) When Medical Providers had not received discovery responses from Lee by September 2, 2021, Medical Providers informed Lee that, if she did not provide discovery by September 16, 2021, they would request court intervention. On September 16, 2021, Lee requested a fourteen-day extension for responses, and Medical Providers again agreed to an extension. Lee finally tendered discovery responses on September 29, 2021.

[4] Also on September 29, 2021, Lee asked to take a deposition of one of the Medical Providers (hereinafter, “Dr. A”), requested formation of a Medical Review Panel (hereinafter, “the Panel”), and nominated Neil Bemenderfer as Chair of the Panel (hereinafter, “Chair Bemenderfer”). By March 3, 2022, formation of the Panel was complete, so Chair Bemenderfer established a submission schedule that required Lee to file her evidentiary submission with the Panel by April 14, 2022. Lee deposed Dr. A on April 1, 2022. Lee neither submitted her evidence by April 14, 2022, nor requested an extension for that filing.

[5] On June 14, 2022, Chair Bemenderfer requested an update on Lee’s submission. Lee’s counsel indicated he missed the deadline because he had not properly calendared it, and he requested an extension of sixty days, from June 14 to August 13, 2022. On August 12, 2022, Lee’s counsel requested another thirty-day extension, to September 11, 2022 – a delay that would mean the plaintiff’s submission would not be filed before the Act’s 180-deadline for the Panel to render its opinion, which was on August 26, 2022. Lee did not request

an extension of the 180-day deadline, and Medical Providers neither waived that deadline nor agreed to extend that deadline. On September 14, 2022, Lee's counsel contacted Chair Bemenderfer to request another sixty-day extension for filing Plaintiff's evidence. Medical Providers objected to any such extension. Over Medical Providers' objection, Lee was given until November 14, 2022, to file her submission. Lee did not file her evidence with the Panel before November 15, 2022.¹

[6] On November 21, 2022, Medical Providers filed a motion in the trial court that requested the trial court make a preliminary determination of law and dismiss Lee's action based on Lee's failure to comply with the terms of the Act. On November 30, 2022, Lee asked the trial court for a forty-five-day extension to respond to Medical Providers' motion for preliminary determination. Medical Providers objected to the request for an extension. The trial court granted a thirty-day extension. Lee filed a response on December 29, 2022. Medical Providers and Lee filed briefs and exhibits with the trial court, and then the court held a hearing on February 21, 2023. On May 19, 2023, the trial court entered a thirteen-page order containing findings and conclusions, in which the court found Lee "failed to act as required by" the Act and "good cause has not been shown for the failure to act." (Appellant's App. Vol. 2 at 17.) The trial court therefore dismissed Lee's proposed complaint with prejudice.

¹ Lee finally submitted her evidence to the Panel on January 12, 2023, during the trial court's proceedings on Medical Providers' request for preliminary determination and dismissal of Lee's proposed complaint.

Discussion and Decision

- [7] Whether and how a plaintiff should be sanctioned after failing to timely submit evidence to a medical review panel is “a question of law and fact that may be preliminarily determined by the trial court in the exercise of its discretion after a hearing.” *Mooney v. Anonymous M.D.* 4, 991 N.E.2d 565, 575 (Ind. Ct. App. 2013), *reh’g denied, trans. denied*. We therefore review such decisions for an abuse of discretion. *Id.* at 576. “An abuse of discretion exists when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.* To the extent the parties raise any issues of law, such as statutory interpretation, we review those issues de novo. *Quillen v. Anonymous Hosp.*, 121 N.E.3d 581, 584 (Ind. Ct. App. 2019), *trans. denied*.
- [8] Before a party may adjudicate a claim of medical malpractice in an Indiana court, the party must submit a proposed complaint to a medical review panel and receive an opinion from that panel. *Reck v. Knight*, 993 N.E.2d 627, 630 (Ind. Ct. App. 2013), *trans. denied*; *see also* Ind. Code § 34-18-8-4 (requiring actions against a health care provider be presented to medical review panel prior to commencement of court case). The panel consists of three health care providers and one attorney who acts as panel chairman. Ind. Code § 34-18-10-3. The chairman is tasked with “expedit[ing] the selection of the other panel members, conven[ing] the panel, and expedit[ing] the panel’s review of the proposed complaint.” Ind. Code § 34-18-10-3(c).

[9] A “party, attorney, or panelist who fails to act as required by this chapter [34-18-10] without good cause is subject to mandate or appropriate sanctions upon application to the court designated in the proposed complaint as having jurisdiction.” Ind. Code § 34-18-10-14. Pursuant to that statute, a trial court may dismiss a complaint “only when two conditions have been met: 1) a party, attorney, or panelist has failed to act as required by Indiana Code chapter 34-18-10 and 2) good cause has not been shown for the failure to act.” *Adams v. Chavez*, 874 N.E.2d 1038, 1043 (Ind. Ct. App. 2007), *reh’g granted with opinion*, 877 N.E.2d 1246, 1247 (Ind. Ct. App. 2007) (clarifying unrelated issues but affirming the original opinion “in its entirety”). We consider Lee’s arguments as they relate to each of those two prongs of Indiana Code section 34-18-10-14.

1. Failure to Act as Required by Indiana Code chapter 34-18-10

[10] Lee argues she could not have failed to act as required by chapter 34-18-10 because “there are no timelines set forth in the [Act] regarding the submissions of evidence” to the Panel. (Appellant’s Br. at 30.) Lee is correct that no section of Indiana Code chapter 34-18-10 explicitly sets timelines for evidentiary submissions by parties. Nevertheless, in light of the statutes that do exist and the construction being given to those statutes for at least thirty years to effectuate our Legislature’s intent, we hold her argument fails.

[11] The Act provides that a medical review panel is expected to render its opinion “within one hundred eighty (180) days after the selection of the last member” of the panel, Ind. Code § 34-18-10-13(a), and if it has not, the panel must explain its delay in a report to the Commissioner of the IDOI. Ind. Code § 34-18-10-

13(b). To meet this deadline, the chairman of the medical review panel “may establish a reasonable schedule for submission of evidence to the medical review panel.” Ind. Code § 34-18-10-3(c). Any evidence that the parties wish the medical review panel to consider “shall be promptly submitted by the respective parties.” Ind. Code § 34-18-10-17. “Implicit in these provisions is the corresponding duty upon the parties to comply with the schedule, if one is set by the chair, and upon the parties and the panel to comply with the 180 day limit; an available remedy for any breach is court-ordered sanctions.” *Galindo v. Christensen*, 569 N.E.2d 702, 705 (Ind. Ct. App. 1991).

Thus, a defendant may file a motion with the trial court for a preliminary determination on the plaintiff’s failure to adhere to the submission schedule, and the defendant may request the sanction of dismissal. The court may dismiss the complaint pending before a medical review panel if the plaintiff fails to show good cause for not adhering to the submission deadline.

Ramsey v. Moore, 959 N.E.2d 246, 250 (Ind. 2012).

[12] Had there been any doubt about the importance of the timelines, our Indiana Legislature added a new section to the Act in 2017 to emphasize their importance. That section provides:

The general assembly emphasizes, to the parties, the courts, and the medical review panels, that adhering to the timelines set forth in this article is of extreme importance in ensuring the fairness of the medical malpractice act. Absent a mutual written agreement between the parties for a continuance, all parties subject to this article, and all persons charged with implementing this article, including courts and medical review panels, shall carefully follow

the timelines in this article. No party may be dilatory in the selection of the panel, the exchange of discoverable evidence, or in any other matter necessary to bring a case to finality, and the courts and medical review panels shall enforce the timelines set forth in this article so as to carry out the intent of the general assembly.

Ind. Code § 34-18-0.5-1 (effective July 1, 2017). “It is apparent, therefore, that the general rule is that timelines – including submission schedules created by the medical review panel – must be carefully and strictly followed.” *Quillen*, 121 N.E.3d at 587.

- [13] Lee’s failure to follow the submission schedule set by Chair Bemenderfer – which resulted in the Panel not having her evidence before the expiration of the 180-day deadline for the Panel to release its opinion without “a mutual written agreement between the parties for a continuance,” Ind. Code § 34-18-0.5-1 – was a failure to act as required by Indiana Code chapter 34-18-10. *See Galindo*, 569 N.E.2d at 705 (“Implicit in these provisions is the corresponding duty upon the parties to comply with the schedule, if one is set by the chair, and upon the parties and the panel to comply with the 180 day limit[.]”).

2. Good Cause Shown for Failure to Act

- [14] Regarding good cause, Lee states:

Lee does not allege that Lee’s counsel’s failure to have submitted the submission by the deadline established [by] the chair of the medical review panel was done with good cause. Rather, Lee alleges that counsel’s said failure was not intentional or

contumacious and did not result in significant prejudice to the medical providers.

(Appellant's Br. at 18.)

[15] In *Mooney*, 991 N.E.2d 565, a panel of this court noted that a trial court, when deciding what sanction to impose for a failure to comply with the Act, “should consider whether the breach of duty was intentional or contumacious and whether prejudiced resulted.” *Id.* at 576; *see also Galindo*, 569 N.E.2d at 706 (“As in the violation of a discovery order, appropriate considerations for the trial court in exercising its discretion as to the appropriate sanction is whether the breach of duty was intentional or contumacious and whether prejudice resulted.”). That such considerations are appropriate, or even that such matters *should* be considered, however, does not make such findings required for dismissal to be appropriate. *See Reck*, 993 N.E.2d at 634 (“[A] party requesting dismissal is not required to show prejudice. . . . Prejudice, rather, is merely one factor that the trial court can consider when ruling on a motion to dismiss a proposed complaint.”).

[16] We believe this to be especially true after the legislature's reiteration of its intention being that “adhering to the timelines . . . is of extreme importance[.]”²

² We accordingly decline Lee's invitation to “call . . . into question,” (Appellant's Br. at 20), that “dismissal appears to have become accepted as the typical sanction to be imposed when a plaintiff fails to timely make a submission to the medical review panel, without good cause.” (*Id.* at 19.) Dismissing for failure, without good cause, to timely submit evidence appears to be exactly what the legislature intended when it drafted Indiana Code section 34-18-10-14. *See* Ind. Code § 34-18-0.5-1 (emphasizing importance of timely action

Ind. Code § 34-18-0.5-1. Based thereon, we cannot find an abuse of discretion in the trial court's dismissal of Lee's proposed complaint when she openly acknowledged she lacked good cause for failing to timely file her evidence. *See Quillen*, 121 N.E.3d at 587 (holding trial court did not err in dismissing proposed medical malpractice complaint when plaintiff failed to comply with panel's submission schedule, object to the schedule, or request an extension of time and plaintiff's counsel did not give a reason for the delinquency until his response to defendants' motion to dismiss).

Conclusion

[17] Lee's submission of the evidence required for the Panel to make its determination did not occur until more than four months after expiration of the 180-day limit for the Panel to render its opinion. Medical Providers did not agree to an extension of that deadline, and Lee acknowledges she did not have good cause for failing to timely file the evidence. We accordingly hold the trial court did not abuse its discretion when it dismissed Lee's proposed complaint with prejudice, and we affirm the trial court's judgment.

[18] Affirmed.

Bailey, J., and Felix, J., concur.

under the Act). Based on the same reasoning, we reject Lee's invitation to read requirements for dismissal under Trial Rule 37 or Trial Rule 41 into the requirements for dismissal under section 34-18-10-14.