

Circuit Court for Calvert County
Case No. C-04-CV-21-000008

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 114

September Term, 2021

GHISLAINE PAUL

v.

VARKEY MATHEW, M.D., *et al.*

Fader, C.J.
Leahy,
Moylan, Charles E. Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 30, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On January 19, 2021, Ghislaine Paul, appellant, filed a complaint for medical malpractice and wrongful death in the Circuit Court for Calvert County against Varkey Mathew, M.D., Vasundhara Muthu, M.D., and Patuxent Cardiology Associates, LLC, appellees. In the complaint, Ms. Paul alleged that her daughter, Justine Paul-Hynes, had died on December 25, 2017, and that the medical examiner had determined that she “had died because of Diltiazem intoxication and concluded that she died by suicide.” Ms. Paul further claimed that, after her daughter’s death, she reviewed prescription records from Walgreens and discovered that Dr. Muthu had prescribed appellant a “daily dosage of 480 mg of Diltiazem” in December 2017. According to the complaint, this “disclaim[ed] the conclusion of [the medical examiner]” and demonstrated that her daughter had “died of an intoxication provoked by the daily dosage of 480 mg of Diltiazem that was prescribed to her by Dr. Muthu.”

Appellees filed a motion to dismiss the complaint on the grounds that: (1) Ms. Paul had failed to comply with the provisions of the Maryland Health Care Malpractice Claims Act (HCMCA) before filing the complaint; (2) the complaint failed to state a claim upon which relief could be granted; (3) the claims raised in the complaint were barred by the statute of limitations; and (4) Ms. Paul had failed to establish her standing to file the complaint. The court granted the motion to dismiss without a hearing. On appeal, Ms. Paul raises six issues, which reduce to one: whether the court erred in dismissing her complaint. For the reasons that follow, we shall affirm.

The HCMCA requires that all claims “against a health care provider for damage due to a medical injury” be filed with the Health Care Alternative Dispute Resolution Office

(HCADRO), which administers a nonbinding arbitration procedure. Cts. & Jud. Proc. §§ 3–2A–01(g), 3–2A–04. “If a claimant files an action in a circuit court without having first submitted the claim to arbitration, the court must dismiss the action.” *Manzano v. Southern Maryland Hosp., Inc.*, 347 Md. 17, 23 (1997). In Ms. Paul’s complaint, she alleged that appellees, all of whom were health care providers, had negligently rendered health care to her daughter, resulting in her death. Thus, the provisions of the HCMCA applied. Because the record does not indicate that Ms. Paul submitted her claims for arbitration with the HCADRO prior to filing her complaint, the court was required to dismiss the action for that reason alone.¹

Moreover, we note that, even if Ms. Paul had complied with the HCMCA, her complaint failed to state a claim upon which relief could be granted. Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them. *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121–22 (2007). However, the well-pleaded facts setting forth the cause of action must be pleaded

¹ Although Ms. Paul contended that she was permitted to waive arbitration, “there can be no unilateral avoidance of mandatory arbitration until such time as the claimant has filed [a] ‘certificate of qualified expert.’” *Watts v. King*, 143 Md. App. 293, 306-07 (2002). Because Ms. Paul did not submit her claims to HCADRO, much less file a certificate of qualified expert, she could not unilaterally waive the mandatory arbitration requirements of the HCMCA.

with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice. *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000).²

Ms. Paul’s survival action claimed medical malpractice, the elements of which “translate into a duty of care owed by the health care provider to the patient; a breach of the applicable standard of care; proximate causation of a medical injury; and damages.” *State v. Copes*, 175 Md. App. 351, 370 (2007) (citations omitted). However, the complaint addressed only the actions of one appellee, Dr. Muthu. And as to Dr. Muthu, it failed to allege why his having prescribed Diltiazem to Ms. Paul-Hynes constituted a breach of the standard of care. Moreover, the complaint did not indicate how Dr. Muthu’s actions had proximately caused Ms. Paul-Hynes’s death, other than the “bald assertion” that evidence of the prescription “disclaim[ed] the conclusion of [the medical examiner]” that the death had been a suicide. For these reasons, the court also did not err in dismissing the complaint for failure to state a claim upon which relief could be granted.³

**JUDGMENT OF THE CIRCUIT COURT
FOR CALVERT COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

² We note that Ms. Paul has included numerous materials in her brief that were not submitted to the circuit court. However, “an appellate court must confine its review to the evidence actually before the trial court when it reached its decision.” *Cochran v. Griffith Energy Serv.*, 191 Md. App. 625, 663 (2010). Moreover, in reviewing the grant or denial of a motion to dismiss, we are “limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010). Therefore, we may not consider those materials on appeal.

³ Ms. Paul also asserts that the court should have allowed her to amend her complaint to add the pharmacy that filled the prescription as a defendant. However, in making this request, she similarly failed to indicate why the decision to fill the prescription would have constituted a breach of the applicable standard of care. Thus, there was no basis for the court to have allowed such an amendment.