

COURT OF APPEALS OF VIRGINIA

Record No. 0615-25-2

DAVID E. SIMPSON
v.
BABAK SALAHBIN, ET AL.

Present: Judges Malveaux, Friedman and Bernhard

Argued at Richmond, Virginia

Opinion Issued September 8, 2026*

FROM THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

Ricardo Rigual, Judge

David E. Simpson, *pro se*.

No brief or argument for appellees.¹

MEMORANDUM OPINION BY JUDGE DAVID BERNHARD

David E. Simpson appeals the circuit court's dismissal of his medical malpractice suit arising from dental implant surgery. Simpson argues that his claims required no expert certification under Code § 8.01-20.1 and that the circuit court erred in applying that statute's deadline for responding to a defendant's request for one. We hold that certification was required. The standard of care governing dental implant surgery does not lie within the range of a lay jury's common knowledge and experience; neither does the cause of the sinus infection and

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ One appellee filed his brief after the deadline set by Rule 5A:19(b)(3). We need not decide what consequence attaches, because nothing in that brief could alter the disposition. That brief argues in the alternative that the absence of a transcript of the hearing on the motion to dismiss bars consideration of Simpson's assignments of error, *see* Rule 5A:8(b)(4)(ii), and that certification was required in any event. Both are grounds for affirmance, which is what we order. This appellee waived oral argument.

other conditions Simpson alleges. Either ground alone suffices. Simpson obtained no certifying expert opinion, and the circuit court was therefore authorized to dismiss his suit. Because that ground resolves the appeal, we do not reach Simpson’s second argument. We thus affirm the circuit court.

BACKGROUND²

Simpson, *pro se*, sued Dr. Babak Salahbin, Dr. John W. Willhide, and Heritage Dental, LLC for medical malpractice.³ His complaint alleged that Dr. Willhide referred Simpson to Dr. Salahbin at Heritage Dental for surgical implants. Simpson claimed that during his surgery, Dr. Salahbin “perforated [Simpson’s] nasal sinus causing a severe infection which led to the failing of all four implants.” The complaint also asserted that the surgical stitches “was poor done [sic]” and “came undone” after the surgery. Simpson stated that after the surgery, “something” poked out from the upper roof of his mouth “causing pain at the touch.” The complaint alleged that Simpson had to seek additional medical treatment elsewhere and take antibiotics to resolve an infection caused by “the failed infected implants.”

² The circuit court dismissed the case based on its review of Simpson’s complaint. Accordingly, we accept the allegations of the complaint as true “to determine whether they are sufficient for the case to move forward.” *Doe v. Baker*, 299 Va. 628, 636 (2021). “Our recitation of the facts, of course, restates only factual allegations that, even if plausibly pleaded, are as yet wholly untested by the adversarial process.” *A.H. ex rel. C.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 614 (2019).

³ Simpson filed an amended complaint without permission from the circuit court, so we limit our discussion and analysis to the original complaint. *See* Rule 1:8 (“No amendments may be made to any pleading after it is filed save by leave of court.”); *Mechtensimer v. Wilson*, 246 Va. 121, 122-23 (1993) (holding that an amended pleading filed without leave of court is “without legal efficacy” and does not vest the trial court with jurisdiction over the causes of action it alleges). Dr. John W. Willhide and Heritage Dental, LLC therefore remained defendants below, although the amended complaint purported to remove them and neither appeared or responded to the complaint. The circuit court dismissed the complaint in its entirety and without prejudice.

Simpson asserted that the defendants “deviated from the standard of care in their examination, treatment, and care of Plaintiff.” The complaint also alleged that the defendants “failed to advise nor provide [sic] the Plaintiff of the known risks associated with the absence of treatment provided to him, and otherwise failed to refer the Plaintiff to a specialist.” Simpson claimed that he was “caused to incur doctor, drug and other medical expenses and may be reasonably expected to incur additional such expenses in the future.” The complaint also alleged ongoing physical and mental injuries, sinusitis, rhinitis, damage to specific nerves, migraine headaches, PTSD, lost wages, and “loss of consortium.” He requested \$500,000 in compensatory and punitive damages.

Dr. Salahbin moved to dismiss the suit because Simpson had not obtained an expert certification or responded to his request for that certification within ten business days, as required by Code § 8.01-20.1.⁴ In response, Simpson argued that an expert opinion was unnecessary to support his medical malpractice claims and that Dr. Salahbin had “served” the expert certification request improperly. After hearing argument, the circuit court granted the motion to dismiss without prejudice. Simpson appealed.⁵

⁴ A medical malpractice defendant could then demand that “the plaintiff shall, within [ten] business days . . . provide the defendant with a certification form that affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain” one. Code § 8.01-20.1. Unless otherwise noted, all references in this opinion to Code § 8.01-20.1 are to the version in effect from July 1, 2013 until June 30, 2025. 2013 Va. Acts chs. 65, 610. The General Assembly amended the statute effective July 1, 2025, removing the procedure quoted above and instead requiring the plaintiff to certify compliance within 21 days after a defendant files an answer. 2025 Va. Acts ch. 359.

⁵ Simpson’s notice of appeal names Dr. Salahbin as an appellee, along with two parties the amended complaint sought to add; it does not name Dr. Willhide or Heritage Dental, LLC. The parties the amended complaint sought to add were never properly before the circuit court and so are not properly appellees here. Simpson’s briefs press a theory of postoperative abandonment resting on allegations that appear only in the amended complaint; we address the original complaint’s allegations instead.

ANALYSIS

Whether Code § 8.01-20.1 required Simpson to obtain a certifying expert opinion depends on the theory of liability his complaint asserts, and so presents “pure questions of law” that we review de novo. *Va. Mfrs. Ass’n v. Northam*, 74 Va. App. 1, 12 (2021) (quoting *Philip Morris USA Inc. v. Chesapeake Bay Found., Inc.*, 273 Va. 564, 572 (2007)). Whether to dismiss a suit in which the plaintiff obtained no required certification, by contrast, is committed to the circuit court’s discretion. Code § 8.01-20.1 (providing that the court “may dismiss the case with prejudice”).

“The general rule in medical malpractice cases is that an expert is required to establish that the defendant ‘deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed.’” *Summers v. Syptak*, 293 Va. 606, 613 (2017) (quoting Code § 8.01-20.1); *Coston v. Bio-Med. Applications of Va., Inc.*, 275 Va. 1, 5 (2008) (collecting cases). “[I]ssues involving medical negligence often fall beyond the realm of the common knowledge and experience of a lay jury.” *Coston*, 275 Va. at 5; *Perdieu v. Blackstone Fam. Prac. Ctr.*, 264 Va. 408, 421-22 (2002) (noting that the relevant standards of care were “not within the common knowledge of a jury”). Thus, expert testimony is required to explain the standard of care. *See, e.g., Perdieu*, 264 Va. at 422 (requiring expert testimony to explain the standard of care for preventing falls in nursing homes); *Summers*, 293 Va. at 614 (requiring expert testimony to establish that a medical provider’s behavior caused a deterioration of plaintiff’s preexisting mental health conditions). Code § 8.01-20.1 requires medical malpractice plaintiffs to certify that they have obtained a supporting expert opinion at the time they request service of process. “If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant as required under this section, the

court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.” Code § 8.01-20.1.

“There is an exception to this rule, although its application is ‘rare.’” *Summers*, 293 Va. at 613 (quoting *Beverly Enters.-Va., Inc. v. Nichols*, 247 Va. 264, 267 (1994); *Raines v. Lutz*, 231 Va. 110, 113 n.2 (1986)). “Under this exception, ‘expert testimony is unnecessary [when] the alleged act of negligence clearly lies within the range of the jury’s common knowledge and experience.’” *Id.* (alteration in original) (quoting *Beverly Enters.-Va.*, 247 Va. at 267).

Examples of this exception include an employee who left a tray of food alone with a nursing home patient known to choke on food, *Beverly Enters.-Va.*, 247 Va. at 269; a doctor who forgot to perform one of two surgeries, *Webb v. Smith*, 276 Va. 305, 308 (2008); a surgeon who left a hypodermic needle in a patient after a surgery, *Dickerson v. Fatehi*, 253 Va. 324, 326 (1997); and an employee who knowingly placed a dialysis patient in a defective chair, *Coston*, 275 Va. at 7. Accordingly, a certified expert opinion “is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury’s common knowledge and experience.” Code § 8.01-20.1.

We reject Simpson’s argument that the expert certification exception applied to his medical malpractice suit. Simpson alleged that Dr. Salahbin violated the standard of care and injured his nasal sinus, resulting in a “severe infection.” He claimed that Dr. Salahbin’s negligence resulted in several medical diagnoses—including sinusitis and rhinitis—as well as nerve damage, migraines, and PTSD. The standard of care governing dental surgery is “not within the common knowledge of a jury.” *Perdieu*, 264 Va. at 421-22. That alone required a certifying expert opinion, whatever a lay jury might make of the link between a perforated sinus and the infection that followed. Nor could Simpson prove, “within the range of the jury’s

common knowledge and experience,” that the perforation he alleges caused the sinusitis, rhinitis, nerve damage, migraines, and PTSD he claims. *Summers*, 293 Va. at 613 (quoting *Beverly Enters.-Va.*, 247 Va. at 267). The mere fact that a patient’s condition deteriorates “after seeing a physician does not mean that the doctor’s actions were a proximate cause of the plaintiff’s worsened condition.” *Id.* at 615 (finding that expert evidence was necessary to establish that the alleged negligence resulted in injury to the plaintiff).

Simpson’s remaining allegations fare no better. The complaint alleged that Dr. Salahbin failed to advise Simpson of the risks associated with the absence of treatment and otherwise failed to refer him to a specialist. Both theories turn on what a reasonably prudent practitioner was required to disclose or to do in these circumstances—a standard that expert testimony is ordinarily necessary to establish. *Raines*, 231 Va. at 113; *Bly v. Rhoads*, 216 Va. 645, 653 (1976). Nothing Simpson alleges brings this case within the narrow exception for negligence lying within a jury’s common knowledge. *Beverly Enters.-Va.*, 247 Va. at 267; *see Raines*, 231 Va. at 113 n.2.

To establish the elements of a medical malpractice claim, Simpson was required to provide supporting expert evidence setting forth the relevant standards of care, identifying the actions that breached those standards, and how those actions proximately caused his injuries. The certification requirement of Code § 8.01-20.1 therefore applied to Simpson’s suit. He never asserted in the circuit court that he had obtained a certifying expert opinion; he argued only that he needed none. Simpson’s request for service of process was itself deemed a certification that he had obtained such an opinion. Code § 8.01-20.1. Having neither responded to Dr. Salahbin’s request nor claimed at any point to hold one, Simpson gave the circuit court no basis to credit that deemed certification, and the court could conclude that he had obtained none. The statute accordingly permitted dismissal, and the court dismissed the complaint without prejudice—a

disposition short of the dismissal with prejudice that is authorized.⁶ The statute also directs the imposition of sanctions under Code § 8.01-271.1; the circuit court imposed none, and no party assigns error to that omission. Nothing before us shows that the court abused its discretion.⁷

CONCLUSION

For the foregoing reasons, the circuit court's judgment is affirmed.

Affirmed.

⁶ Simpson also assigns error to the dismissal of his suit without a determination on the merits, invoking Virginia's preference for substantive adjudication over dismissal on procedural grounds. The premise fails. Simpson opposed the motion in writing. The circuit court heard argument before ruling. More fundamentally, a general preference for reaching the merits cannot displace a statutory prerequisite to suit. Code § 8.01-20.1 permitted the circuit court to dismiss Simpson's case with prejudice; it dismissed without prejudice instead. To the extent Simpson argues in reply that the dismissal was effectively one with prejudice because the limitations period had run, that argument was not assigned as error and was raised for the first time in reply, and we do not consider it.

⁷ Because the requirement of a certifying expert opinion resolves this appeal, we do not reach Simpson's contention that the circuit court erred in applying the deadline for responding to Dr. Salahbin's request for a certification. *See Harris v. Wash. & Lee Univ.*, 82 Va. App. 175, 205 n.15 (2024). That contention rests on the notice of change of address that Simpson filed on December 2, 2024, and mailed to each defendant. Dr. Salahbin's request was delivered to the address that notice superseded. During oral argument Simpson asserted that even if he had been noticed properly he would have maintained the same position that he did not need to file the certification. Thus, Simpson confirmed that resolution of this case hinges exclusively on whether certification was required.