

Health Law

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Appellate Courts Recognize Standard for Obtaining Relief Under Supreme Court Rule 224

Anyone who has examined medical records knows that the handwriting and signatures of medical professionals can be difficult to decipher. Because of this, a plaintiff's attorney may have legitimate difficulty identifying a party that he intends to sue in a medical negligence claim. Under such circumstances, Illinois Supreme Court Rule 224 ("Rule 224") provides potential plaintiffs with a means to conduct limited discovery before suit to identify persons or entities that may be responsible for damages. The focus of Rule 224 is solely upon the identity of a potentially responsible person, and not upon the determination of responsibility of those identified. *Roth v. St. Elizabeth's Hospital*, 241 Ill. App. 3d 407, 414, 607 N.E.2d 1356, 1361 (5th Dist. 1993). Rule 224 is inapplicable to any case where identity is already known. *Guertin v. Guertin*, 204 Ill. App. 3d 527, 532, 561 N.E.2d 1339, 1342 (3d Dist. 1990). Inevitably, at least some plaintiff's attorneys will seek to obtain additional discovery not authorized by Rule 224. See generally *Roth*, 241 Ill. App. 3d 407. To prevent such an abuse of Rule 224, defense counsel should be familiar with the standard imposed upon a petitioner before relief is appropriate under Rule 224.

On its face, Rule 224 provides for certain requirements that a petitioner must meet to be entitled to relief under the rule. First, a petitioner must file an independent action in support of the requested relief; the petitioner cannot seek relief under Rule 224 as part of an ongoing action. S. Ct. R. 224(a)(1)(i). Second, a petitioner is required to file a verified petition. S. Ct. R. 224(a)(1)(ii). Third, Rule 224 states that the verified petition must set forth, "(A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery." S. Ct. R. 224(a)(1)(ii). However, as discussed later, Illinois courts have further interpreted what is meant by "the reason the proposed discovery is necessary." Fourth, a petitioner is required to serve the respondent with a copy of the verified petition, along with a summons as specifically set forth in the rule. S. Ct. R. 224(a)(2). Finally, Rule 224 requires service of the verified petition and summons to occur at least 14 days prior to the date of hearing on the petition. S. Ct. R. 224(a)(2).

The plain language of Rule 224 further emphasizes that the purpose of the rule is to obtain identity only, by requiring a specific order to that effect from the court. The rule provides that the "order allowing the petition will limit discovery to the identification of responsible persons and entities." S. Ct. R. 224(a)(1)(ii). Defense counsel should be sure that any order allowing discovery pursuant to Rule 224 contains such limiting language.

Recently, two Illinois appellate courts have examined the circumstances under which a petitioner is entitled to relief under Rule 224. Specifically, the courts have addressed the petitioner's pleading requirements to satisfy Rule 224.

Petitioner Is Required to Plead Facts that Would Withstand a §2-615 Motion to Dismiss

In *Maxon v. Ottawa Publishing Company*, 402 Ill. App. 3d 704, 929 N.E.2d 666 (3d Dist. 2010), the Third District expounded upon what a petitioner must plead to properly state "the reason the proposed discovery is necessary." The *Maxon* court found that this required a Rule 224 petition to "state[] with particularity the facts that would establish a cause of action," and the court, upon hearing the petition, to determine that the petition sufficiently states a cause of action against the unidentified person. *Maxon*, 402 Ill. App. 3d at 711. The court explained that, in determining whether this standard has been met, the trial court should examine whether sufficient facts have been alleged such that the petition would withstand a motion to dismiss under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615). *Maxon*, 402 Ill. App. 3d at 711-12. Subsequently, in *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, 961 N.E.2d 380, 389 (1st Dist. 2011), the First District agreed that to be successful in a Rule 224 petition, the petitioner must allege sufficient facts to overcome a section 2-615 motion to dismiss.

It is important to note that in both *Maxon* and *Stone*, the court was considering the application of Rule 224 to cases in which the petitioner was seeking the identity of anonymous website commentators, and the potential causes of action at issue involved defamation. Nevertheless, each court recognized that a uniform standard applies to Rule 224 petitions, no matter the underlying cause of action. *Maxon*, 402 Ill. App. 3d at 711; *Stone*, 961 N.E.2d at 388 ("Rule 224 applies not only to petitioner's potential defamation claim, but to any instance in which an unknown individual may be liable under any cause of action"). As such, application of the same standard in a medical negligence context is necessary.

Therefore, when a healthcare organization, such as a hospital or clinic, is named as a respondent in a Rule 224 petition, the petition must allege a cause of action for medical negligence against a specific unidentified individual that would be sufficient to withstand a motion to dismiss under section 2-615. To be successful, the petition must allege sufficient facts, demonstrating the standard of care applicable to the unidentified individual, breach of the standard of care, and proximate cause of injury to the petitioner. See *Purtill v. Hess*, 111 Ill. 2d 229, 241-42, 489 N.E.2d 867 (1986).

Meeting such a standard may prove difficult for the petitioner's counsel in some medical negligence cases. Namely, the petitioner may argue that he is unable to identify the applicable standard of care or breach because he does not know the licensure or specialty of the unidentified individual. However, no exception to this standard has been articulated by the courts. And, defense counsel will serve his client well by requiring the petitioner to meet such a standard before discovering the identity of those individuals, which will prevent the petitioner's counsel from engaging in a fishing expedition to determine liability issues, which is beyond the scope of Rule 224.

Must the Petitioner Support the Petition with a §2-622 Affidavit and Report?

No Illinois decision has addressed whether the petitioner in a Rule 224 proceeding must comply with the additional pleading requirements of a medical negligence action. In every medical negligence action, the plaintiff is required to file an affidavit and report from a consulting medical professional indicating that there is a reasonable and meritorious cause for filing the medical negligence action. 735 ILCS 5/2-622. As mentioned

above, *Maxon* and *Stone* involve alleged defamation and thus, would not address the section 2-622 requirement.

A petitioner will likely argue that such an affidavit and report are not required to be filed. As the petitioner might point out, failure to comply with the requirements of section 2-622 is grounds for dismissal under section 2-619 of the Code of Civil Procedure, not section 2-615. The petitioner may point out that *Maxon* and *Stone* only require a Rule 224 petition to survive scrutiny under section 2-615. Practically, the petitioner may argue that he does not know the unknown person's identity or professional licensure, and therefore, it is impossible for him to consult with an expert who can affirm that the unknown person breached the applicable standard of care.

Nevertheless, defense counsel should raise this issue before the trial court in response to a Rule 224 petition. Requiring a petitioner to support his Rule 224 petition with a section 2-622 affidavit and report is a logical extension of the *Maxon* and *Stone* decisions. *Maxon* and *Stone* both require the Rule 224 petition to set forth a cause of action against the unknown person, and section 2-622 sets forth specific pleading requirements for a medical negligence action. Furthermore, in most instances, the petitioner will be well aware of the licensure and/or speciality of the unknown person.

Conclusion

In many instances, a Rule 224 petition may present a straightforward issue of determining an illegible signature on a medical record. In other instances, though, a petitioner may attempt to go beyond the scope of Rule 224, and use the process to support liability or other elements of a medical negligence claim. Defense counsel should prevent such attempts by insisting that a petitioner comply with the pleading requirements for a Rule 224 petition and insisting that the court issue an order limiting any discovery to identification.

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