

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA12-535

ELIZABETH WORDEN and
DOUGLAS SPIRES as Heirs at Law for
ALFRED SPIRES (Deceased)

APPELLANTS

V.

DR. JEFFREY KIRCHNER, M.D.
(INDIVIDUALLY) and ARKANSAS
HEALTH GROUP, d/b/a NORTH
LITTLE ROCK EMERGENCY
DOCTORS GROUP and/or
ARKANSAS HEALTH GROUPS
separate commercial liability insurers
JOHN DOE INSURANCE
COMPANIES A to Z and BAPTIST
HEALTH, d/b/a BAPTIST HEALTH
MEDICAL CENTER-NORTH
LITTLE ROCK and/or BAPTIST
HEALTH'S separate commercial liability
insurers JOHN DOE INSURANCE
COMPANIES A to Z and BAPTIST
MEDCARE, INC. d/b/a PRACTICE
PLUS

APPELLEES

Opinion Delivered: MARCH 6, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION [NO. 60CV-2011-5618]

HONORABLE TIMOTHY DAVIS
FOX, JUDGE

AFFIRMED

RHONDA K. WOOD, Judge

Appellants Elizabeth Worden and Douglas Spires appeal the circuit court's order dismissing with prejudice their medical-malpractice action against appellees Dr. Jeffrey Kirchner, Arkansas Health Group, et al. We affirm the circuit court.

In cases where the appellant claims that the trial court erred in granting a motion to dismiss, appellate courts review the trial court's ruling using a de novo standard of review. *Nucor Corp. v. Kilman*, 358 Ark. 107, 186 S.W.3d 720 (2004). We will not reverse a finding of fact unless it is clearly erroneous. *Sanford v. Sanford*, 355 Ark. 274, 137 S.W.3d 391 (2003). We treat the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff. *Biedenharn v. Thicksten*, 361 Ark. 438, 206 S.W.3d 837 (2005). In viewing the facts in the light most favorable to the plaintiff, the facts should be liberally construed in plaintiff's favor. *Id.* Finally, our standard of review for the granting of a motion to dismiss on a Rule 12(b)(6) motion is whether the circuit judge abused his or her discretion. *Doe v. Weiss*, 2010 Ark. 150.

Appellants originally filed this medical-malpractice action on June 24, 2010, and filed their first amended complaint on October 1, 2010, naming additional defendants. Appellants voluntarily non-suited their complaint approximately five months later. Appellants refiled their lawsuit on November 21, 2011, and on December 5, 2011, appellees filed individual motions to dismiss. Appellee Kirchner's motion to dismiss was primarily based on appellants' failure to state facts upon which relief could be granted against him. Appellees Arkansas Health Group, Baptist MedCare, Inc., and Baptist Health Medical Center's motions were primarily based on appellants' failure to comply with the applicable statute of limitations. Appellants did not respond to the motions to dismiss, and after appellants' time to respond passed, counsel for appellees submitted a proposed order granting the motions to dismiss, which the circuit court granted and filed on February 3, 2012. After the motions to dismiss were granted, the appellants requested a

hearing on the motions and later filed a motion to reconsider, which was deemed denied March 15, 2012. Appellants then filed this appeal.

Appellee Kirchner's motion to dismiss focused on the failure of the appellants to state facts upon which relief could be granted. The appellants must show that the circuit court abused its discretion when ruling on such a motion. *Dockery v. Morgan*, 2011 Ark. 94, 380 S.W.3d 377. Here, the appellants did not respond to the motion to dismiss within the time required or request a hearing on the motion, and the trial court reviewed the pleadings before reaching its decision. Following the dismissal, the appellants' motion to reconsider was deemed denied. There is nothing in the record to indicate that the circuit court judge abused his discretion in deciding appellee Kirchner's motion to dismiss. Because the appellants have failed to demonstrate an abuse of discretion, we must affirm the dismissal of the complaint against appellee Kirchner.

The complaint against the remaining appellees Baptist MedCare, Inc., Baptist Health, and Arkansas Health Group was also properly dismissed by the circuit court. This is a wrongful-death action arising from an alleged medical injury, and is therefore governed by Ark. Code Ann. § 16-114-203. The wrongful acts alleged by the appellants occurred on June 27, 2008. Therefore, the statute of limitations as to this action expired on June 27, 2010. Appellees Baptist MedCare, Inc., Baptist Health, and Arkansas Health Group were not named as party defendants until the first amended complaint was filed by the appellants on October 1, 2010, over three months after the statute of limitations had expired. We affirm the dismissal of the complaint against appellees Baptist MedCare, Inc., Baptist Health, and Arkansas Health Group.

Affirmed.

GLADWIN, C.J., and WYNNE, J., agree.

Elizabeth Worden and Douglas Spires, pro se appellants.

Friday, Eldredge & Clark, LLP, by: Kathryn A. Kirkpatrick, for appellees.