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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1281**

Thomas Lang, as trustee for the heirs of Emily F. Lang, decedent,
Appellant,

vs.

Assumption Home, Inc., et al.,
Respondents.

**Filed July 23, 2012
Affirmed
Stauber, Judge**

Stearns County District Court
File No. 73CV11264

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Minnesota (for appellant)

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Minnesota (for respondents)

Considered and decided by Cleary, Presiding Judge; Stauber, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

STAUBER , Judge

Appellant challenges the district court's dismissal of his medical-malpractice
claims for failure to satisfy the requirements of Minn. Stat. § 145.682 (2010), arguing that
(1) the requirements of section 145.682 need not be satisfied because expert testimony is

not necessary for appellant to establish a prima facie case of medical malpractice; (2) the failure to submit a signed affidavit of expert review as required by the statute should not result in the mandatory dismissal of his medical-malpractice claims; and (3) the district court erred by concluding that appellant's expert's affidavit failed to meet the substantive requirements of section 145.682. Respondent filed a notice of related appeal challenging the district court's conclusion that appellant's expert was qualified to provide an expert opinion as to causation. We affirm.

FACTS

In July 2006, 90-year-old Emily Lang was admitted to respondent Assumption Home, Inc., a nursing home facility. Several months later, at approximately 12:20 a.m. on January 19, 2007, Lang was found to have rolled out of the left side of her bed with her neck "caught on the grab bar" and one "leg on the floor." Lang was removed from this position and placed on the floor, where it was determined that she was deceased. An autopsy performed by the medical examiner concluded that Lang died from "asphyxia due to neck compression due to entrapment between the bed and bed rail."

Appellant Thomas Lang, as trustee for the heirs of Emily Lang, brought suit against the nursing home and several of its employees (collectively "respondents"), alleging that respondents were negligent in their care and treatment of Lang and caused her death. Pursuant to Minn. Stat. § 145.682, appellant also served upon respondents the purported expert affidavit of Karon Goldsmith, a registered nurse. The affidavit, however, was neither signed nor notarized. Respondents subsequently moved to dismiss, arguing that section 145.682 requires a signed expert affidavit, which appellant failed to submit. Respondents

also claimed that dismissal was necessary because the expert affidavit failed to meet the substantive requirements of Minn. Stat. § 145.682 and Goldsmith is not qualified to render an expert opinion on causation.

After respondents moved to dismiss, appellants submitted a supplemental affidavit from Goldsmith. This supplemental document was also not signed and not notarized. Thereafter, the district court granted respondents' motion to dismiss, indicating that "dismissal appears to be warranted under [Minn. Stat. § 145.682, subd. 6] because of lack of an expert's signature." The court also concluded that Goldsmith's affidavits failed to meet the substantive requirements of section 145.682 because the affidavits do not set forth the applicable standard of care or the acts and omissions that allegedly violated that standard of care. Finally, the court stated that appellant's expert was qualified to provide an admissible expert causation opinion under section 145.682, but that the "issue is moot since this Court has found [appellant's] affidavits deficient in two other areas." Appellant subsequently filed a notice of appeal and respondents filed a notice of related appeal pertaining to Goldsmith's qualification as an expert.

D E C I S I O N

I.

Minn. Stat. § 145.682, subd. 2, provides that, "[i]n an action alleging malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider which includes a cause of action as to which expert testimony is necessary to establish a prima facie case," the plaintiff must, among other requirements, serve on the defendant an affidavit of expert identification. *See* Minn. Stat. § 145.682, subd. 4 (setting

forth requirements for affidavit of expert identification). There is, however, a limited exception to the expert-testimony requirement. This exception applies when the “acts or omissions complained of are within the general knowledge and experience of lay persons.” *Atwater Creamery Co. v. W. Nat’l Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985). Whether expert testimony is required is a legal question to be reviewed de novo by this court. *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 58 (Minn. 2000).

Appellant argues that respondents’ negligent acts are within the general knowledge and experience of lay people and, therefore, the requirements of Minn. Stat. § 145.682 need not be satisfied here because expert testimony is not necessary to establish a prima facie case against respondents. But it is well-settled that appellate review is limited to issues raised and addressed below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Here, the record reflects that the district court did not determine whether expert testimony was necessary in this case because appellant failed to raise the issue below. Consequently, appellant has waived the issue. Moreover, even if we were to address the issue on the merits, we would conclude that a nursing home’s standard of care when dealing with elderly people with various ailments such as those suffered by Lang are not within the general knowledge and experience of lay persons. Therefore, expert testimony is necessary in this case, and the requirements of section 145.682 must be satisfied.

II.

Appellant challenges the district court’s conclusion that because appellant’s expert failed to sign her affidavits, dismissal is warranted under Minn. Stat. § 145.682, subd. 6(c).

This court will not reverse a dismissal for failure to comply with the requirements of section 145.682 absent a showing that the district court abused its discretion. *See Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990). But construing the requirements of section 145.682 requires statutory interpretation, a question of law that we review de novo. *Tousignant*, 615 N.W.2d at 58.

“The Minnesota legislature enacted Minn. Stat. § 145.682 for the purpose of eliminating nuisance medical malpractice lawsuits by requiring plaintiffs to file [expert] affidavits verifying that their allegations of malpractice are well-founded.” *Stroud v. Hennepin Cnty. Med. Ctr.*, 556 N.W.2d 552, 555 (Minn. 1996). Minn. Stat. § 145.682, subd. 4(a), provides that the expert affidavit “must be signed by each expert listed in the affidavit and by the plaintiff’s attorney.” The failure of a plaintiff to comply with subdivision 4 because of deficiencies in the affidavits compels the mandatory dismissal of the malpractice claim with prejudice. Minn. Stat. § 145.682, subd. 6(c); *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005).

Appellant argues that dismissal of the claim was not warranted because the failure to submit a signed affidavit was “[a]t worse . . . a technicality for which a case such as this must not be decided on.” We disagree. The statute is unambiguous; it states that the expert affidavit required by Minn. Stat. § 145.682, subd. “*must be signed* by each expert listed in the affidavit.” Minn. Stat. § 145.682, subd. 4(a) (emphasis added). And subdivision 6(c) provides that the failure to comply with subdivision 4 results “in mandatory dismissal.” Minn. Stat. § 145.682, subd. 6(c). Moreover, this issue was addressed in *Tousignant*, where the affidavit submitted by the plaintiff “was not signed

by any of the identified experts.” 615 N.W.2d at 60. The court stated that “[i]t is clear from the record that had an affidavit been required to establish a prima facie case for [the plaintiff’s] action, then the affidavit submitted was deficient and section 145.682 would have mandated dismissal.” *Id.* at 61.

Here it is undisputed that both of Goldsmith’s affidavits were unsigned. In fact, the affidavits not only were not signed by Goldsmith, they also were not signed by appellant’s attorney. *See* Minn. Stat. § 145.682, subd. 4(a) (stating that the “affidavit required by subdivision 2, clause (2), must be signed by each expert listed in the affidavit *and by the plaintiff’s attorney*” (emphasis added)). Moreover, not being signed or notarized, Goldsmith’s purported “affidavits” are not affidavits. *See Norton v. Hauge*, 47 Minn. 405, 506, 50 N.W. 368, 368 (1891) (stating that an affidavit is a written statement or declaration sworn to or affirmed “before some officer who has authority to administer an oath or affirmation”). Therefore, appellant failed to satisfy the requirements of section 145.682, and the district court properly concluded that this failure results in the mandatory dismissal of appellant’s claims.

Because the district court properly concluded that appellant’s failure to satisfy the requirements of section 145.682 compels the mandatory dismissal of appellant’s claims, we need not address the remaining issues raised by the parties, which involve challenges to (1) the district court’s conclusion that Goldsmith was qualified to provide an expert opinion as to causation and (2) the district court’s thorough and well-reasoned conclusion that Goldsmith’s affidavit failed to meet the substantive requirements of section 145.682.

Affirmed.