

Circuit Court for Charles County
Case No.: C-08-CV-22-000311

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1984

September Term, 2022

TORINA A. COLLIS

v.

MID ATLANTIC SKIN
SURGERY INSTITUTE, *et al.*

Wells, C.J.,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Torina A. Collis, appellant, sued George K. Verghese and Mid Atlantic Skin Surgery Institute, appellees, in the Circuit Court for Charles County alleging “Lack of Informed Consent.” Her claim stems from a procedure Verghese performed where he injected Kenalog into a small bump on Collis’s nose. “[S]ome days” later, the bump had grown larger. The Institute, on behalf of itself and Verghese, moved to dismiss for failure to state a claim, and Collis opposed. Both parties requested a hearing under a separate heading at the end of their filings, but neither noted the request in the title of their filings. The court granted the motion without a hearing. This appeal followed.

Maryland Rule 2-311(f) forbids a circuit court from “render[ing] a decision that is dispositive of a claim or defense without a hearing if one was requested[.]” The party desiring a hearing must say so in both the title and body of their motion or response. *Id.* The titling requirement was added “for the convenience of the judiciary” in 2011 to create a more conspicuous signal of the party’s request. Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 335 (5th ed. 2019).

Here, both parties requested hearings under separate headings in the bodies of their filings. But neither mentioned the request in the title of their filing. Though the requests were faulty, we believe “form requirements [generally] should not overrule substance.” Niemeyer & Schuett, *supra*, at 56. “Attacking a pleading or paper based on improper form or titling alone accomplishes nothing but added delay and expense and, in most cases, is inconsistent with the responsibility of . . . the judicial system.” *Id.* We therefore conclude that both parties requested a hearing on the dispositive motion. This triggered Rule 2-311(f)’s requirement that the circuit court hold one. Thus, its failure to do so was error.

Still, the Institute argues that Collis was not prejudiced by the failure to hold a hearing. And we agree.

Whether dismissal was proper is a legal question. *Cain v. Midland Funding, LLC*, 475 Md. 4, 33 (2021). Our review is therefore *de novo*. *Id.* In doing so, we assume the truth of all well-pleaded facts and view all inferences reasonably drawn from them in the light most favorable to the plaintiff. *Morris v. Goodwin*, 230 Md. App. 395, 401 (2016). Dismissal is proper “only if the allegations and permissible inferences, if true, . . . do not state a cause of action for which relief may be granted.” *Id.* (cleaned up). We may affirm the judgment “on any ground adequately shown by the record, whether or not relied upon by the trial court.” *Id.* (cleaned up).

To adequately plead a claim for lack of informed consent, the complaint must allege: (1) an existence of a material risk, which the physician must explain to the patient; (2) the failure of the physician to inform the patient of the material risk; (3) the physician knew or should have known of the material risk; and (4) a causal connection between the lack of informed consent and the harm. *See Shannon v. Fusco*, 438 Md. 24, 46 (2014). In the light most favorable to Collis, the complaint pleads generally that Kenalog treatment carries the possible material risk of atrophy, that Verghese knew this, and that he failed to disclose it. But it does not allege that Collis suffered from atrophy or that the harm she did suffer was

caused by her lack of informed consent. The complaint therefore failed to state a claim for lack of informed consent, and the circuit court did not err in dismissing it.

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