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2013 IL App (4th) 121030-U

NO. 4-12-1030

FILED
August 29, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MICHAEL BALDING and JUDITH BALDING,	)	Appeal from
Plaintiffs-Appellants,	)	Circuit Court of
v.	)	Sangamon County
THOMAS H. TARTER, M.D.; SIU PHYSICIANS AND	)	No. 07L324
SURGEONS, INC.; and ST. JOHN'S HOSPITAL,	)	
Defendants-Appellees.	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) As plaintiffs failed to set forth sufficient facts establishing defendants' actions were the proximate cause of their injuries, summary judgment in favor of defendants was appropriate; (2) the trial court did not err in denying plaintiffs' motion for leave to file an amended complaint.

¶ 2 In December 2007, plaintiffs, Michael Balding and Judith Balding, filed a medical-malpractice complaint against defendants, Thomas H. Tarter, M.D.; Southern Illinois University (SIU) Physicians and Surgeons, Inc.; and St. John's Hospital. In October 2012, the trial court granted defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment. The court also denied plaintiffs' request for leave to amend their complaint.

¶ 3 On appeal, plaintiffs argue the trial court erred in (1) granting summary judgment in favor of defendants and (2) denying their request for leave to amend their complaint. We

affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2005, plaintiff was diagnosed with prostate cancer. He later met with Dr. Tarter, a board-certified urologist and an associate professor at SIU School of Medicine, to discuss treatment options. In December 2005, Dr. Tarter performed a laporascopic robot-assisted radical prostatectomy on Michael at St. John's Hospital.

¶ 6 In December 2007, plaintiffs filed a multicount complaint against defendants. Plaintiffs alleged Dr. Tarter had advised them that a surgical prostatectomy procedure would take approximately 2 1/2 hours to complete but did not mention he was inexperienced in the use of the robotic procedure to perform the prostatectomy or that he would have a proctor in attendance at the surgery. The complaint alleged Dr. Tarter, with the assistance of a proctor, positioned Michael's arms and hands for the surgery at or about 10 a.m. The duration of the anesthesia for the robotic prostectomy was from 10:15 a.m. until 5:40 p.m., and the surgical procedure lasted from 10:58 a.m. until 5:40 p.m. Following the surgical procedure, it was alleged Michael's "hands and forearms (especially the left) were swollen, black and blue, numb, and tingling and had decreased grip strength and movement on the right and no movement on the left."

¶ 7 The complaint alleged defendants committed one or more of the following negligent acts or omissions:

> "a) The Defendant improperly positioned the Plaintiff for the surgical procedure;
>
> b) the Defendant took too long to do the surgical procedure;
>
> c) the Defendant did not have sufficient experience to do

the procedure in a competent fashion;

d) the Defendant failed to ask the anesthesiologists and the [certified registered nurse anesthetists] giving anesthesia to the Plaintiff to check on the positioning of the plaintiff as the surgery progressed;

e) the Defendant failed to advise the Plaintiff that he was inexperienced at performing the procedure;

f) the Defendant failed to advise the Plaintiff that he would have a proctor monitoring his performance of the procedure."

Michael alleged that as a direct and proximate result of one or more of the negligent acts, he suffered injury to his arms and hands, including a double crush injury to his left forearm and hand. He also claimed he sustained permanent disability to his forearms and hands and has endured and will continue to endure pain and suffering from his injuries. The complaint alleged Judith lost the services and society of her husband as a result of the injuries. Plaintiffs also alleged negligence on the part of St. John's Hospital, claiming its nurses failed to appropriately monitor Michael's intravenous sites and his forearms and hands during the surgical procedure.

¶ 8 In January 2012, Dr. Tarter and SIU Physicians and Surgeons filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)), asking the trial court to enter judgment in their favor because no genuine issue as to any material fact existed that defendants did not deviate from the standard of care and plaintiffs failed to establish the necessary elements of proximate cause. In February 2012, plaintiffs filed a cross-motion for summary judgment, claiming Dr. Tarter admitted he was

responsible for Michael's injury and this judicial admission had the effect of admitting liability for negligence and proximate cause.

¶ 9 The motions for summary judgment included several discovery depositions, and we will summarize the testimony necessary for the disposition of this appeal. On October 18, 2005, Dr. Tarter met with plaintiffs to discuss options for Michael's treatment. One of the options was a radical prostatectomy, which involves the surgical removal of the prostate gland, seminal vesicles, and lymph nodes. Dr. Tarter advised Michael that the procedure would take approximately three hours to complete. Michael stated he never discussed robotic surgery with Dr. Tarter. The surgery was scheduled for December 5, 2005.

¶ 10 After his consultation with Michael, Dr. Tarter received training in the da Vinci robotic procedures. He took an online computer course offered by the manufacturer in late October 2005. He then attended a two-day course in Indianapolis to watch three surgeries followed by performing robotic surgery on a pig. St. John's Hospital required him to have a proctor present for his first few cases.

¶ 11 Dr. Tarter instructed his nurse, Annie Muller, to contact those patients who would qualify for a robotic prostatectomy and offer the procedure to them. Muller sent Michael a video of the robotic da Vinci system, and he agreed to the procedure after watching it. Michael stated he asked Muller whether Dr. Tarter had performed this type of robotic surgery in the past, and she said he had. This made a difference to Michael because he did not want someone who did not know what he was doing. Dr. Tarter did not feel it was material to call Michael to tell him it would be Tarter's first laporascopic procedure as attending surgeon.

¶ 12 Michael was the first patient on whom Dr. Tarter performed a robotic prostatec-

tomy. The procedure is performed by video, with two video monitors in the room and the surgeon and an assistant present. The doctor is located 12 to 20 feet away at a console, while the assistant is at the patient table to pass sutures, to suction, and to retract.

¶ 13 Dr. Tarter believed the average operating time for an experienced operator doing a robotic prostatectomy was "anywhere from two to four hours." He was in charge of positioning Michael for the surgery and, unlike an open prostatectomy, it was performed in a Trendelenburg positioning, where the body is positioned at a 30- to 45-degree angle. The patient is infused with carbon dioxide (CO_2) during this period, and the legs and arms can become swollen from the gas and the head, face, and shoulders can become swollen from the intravenous fluid. Dr. Tarter positioned Michael in this position by placing his legs in padded stirrups, wrapping his arms in egg-crate foam and securing them to his body, and then securing him to the operating table with additional egg-crate foam and tape. Dr. Tarter had utilized this position for other procedures besides the laporascopic robotic-assisted prostatectomy.

¶ 14 The procedure started at 10:58 a.m. and ended at 5:40 p.m. Dr. Tarter stated there are various phases in the pre- and post-surgical procedure, and the actual robotic time "was probably in the range of five to five and a half hours." Dr. Tarter removed the prostrate gland and the lymph nodes. He reported no complications.

¶ 15 Michael awoke from the surgery and realized he could not feel his arms. The next day, he noticed his arms and hands were bruised and "swollen terribly." Dr. Tarter thought Michael might have a nerve injury and was concerned that his positioning during the surgery might have caused the problem. In the deposition of Dr. Tarter, the following exchange occurred:

"Q. Did you tell Mr. Balding that you were responsible for his injury?

A. Yes. I told him, as the legal documents show, I made the statement that I am the captain of the ship. I feel that the surgeon is the captain of the ship in the operating room. I've ordered all sorts of things in the operating room. I've ordered cardiac enzymes in a patient who had abnormal [electrocardio-gram]. I've ordered people out of the operating room if I thought they were disruptive.

Yes, I think the surgeon is the captain of that ship. You have limits to your authority. I mean, I don't deliver anesthesia. There are some things that I don't do in the operating room. I don't count instruments and I don't count sponges, which are a legal requirement of the hospital, so I can't be the captain of every aspect of the operating room because there are limits to my authority on that.

But I didn't want Mr. Balding to blame a nurse or nurses or somebody else. We all work as a team and I am the captain of that team and that is what I meant by that. I also meant in that that I will also coordinate your further care and we will get this thing taken of."

¶ 16 Dr. Christian Pavlovich, an associate professor in the urology department at Johns

Hopkins Medical Institution, authored a report attached to the complaint and testified as plaintiffs' expert. As opposed to an open prostatectomy, he stated the robotic procedure results in "decreased blood loss, a better vesicourethral anastomosis, and decreased pain and earlier resumption of normal activities." He stated the standard length of time for the robotic surgery by an experienced surgeon would be between two and three hours. He agreed literature from Johns Hopkins indicated a robotic-assisted prostatectomy can vary between three and five hours. The removal of lymph nodes would also increase the time for completion.

¶ 17 Based on his review of medical records, Dr. Pavlovich agreed Michael had a good urologic outcome as a result of the prostatectomy. However, Michael did complain about neurologic difficulties with both of his upper extremities, with the left upper extremity being the focus of the lawsuit. When asked his opinion on the cause of the injury to Michael's left upper extremity, Dr. Pavlovich stated, in part, as follows:

> "I believe that a variety of factors contributed to the injury. There was most likely a predisposition or a subclinical asymptomatic condition that the patient suffered already, involving his left upper extremity. I believe compounded on top of that was a very long, by any standard, surgical case in a upside down or head-down position with an arm secured and fastened in such a way that it really couldn't be examined very much during that time, and may or may not have had some pressure in a—in that median nerve distribution or near it, that over time caused some palsy or problem at the level of the nerve.

***

> But relevant to my expertise which is urologic cancer surgery, we have a long case, fluid distributed intravenously over that period of time, CO_2 distributed during that time, and an arm may or may not have been secured properly either initially or during the case. And even if it was secured well, it was secured when it was not edematous and swollen, causing perhaps increased pressure in the distribution of the median nerve or its branches."

¶ 18 Dr. Pavlovich stated his review of Michael's chart indicated his arms were positioned adequately for the robotic prostatectomy and the use of egg-crate foam is an appropriate method of protecting the arms and within the standard of care. Dr. Tarter also placed a sheet over the egg-crate foam and tape over the sheet to secure Michael to the table. He agreed Dr. Tarter complied with the steps that a reasonably careful surgeon would take to prevent injury. However, according to Dr. Pavlovich, "[i]t doesn't mean he did them well." Dr. Pavlovich opined it would not have been reasonably foreseeable to Dr. Tarter that Michael would sustain the injury to his arm based on the padding and precautions taken at the time of positioning. When asked if there was anything that Dr. Tarter did that caused Michael's median nerve injury, Dr. Pavlovich stated as follows:

> "What I could say that Dr. Tarter did that contributed to it was that his operation and the whole surgical procedure took an extended period of time, took two to three times longer than had he, for example, done an open radical prostatectomy, and took two

to threefold longer than it takes, even perhaps more, than it takes accomplished surgeons using the robot to do the prostatectomy."

He also stated "the length of time under anesthesia in Trendelenburg increases the risk of pressure related complications." He opined the amount of time it took Dr. Tarter to perform Michael's surgery was within the acceptable time limits for a first case.

¶ 19 Dr. Pavlovich indicated Michael had predisposing factors regarding a median nerve injury that were unknown to Dr. Tarter and the standard of care did not require Dr. Tarter to attempt to diagnose or identify the anatomic abnormalities Michael had prior to surgery. He agreed a median nerve injury as a result of a robot-assisted radical prostatectomy would be an extraordinarily rare complication.

¶ 20 Dr. Pavlovich opined that a physician was not obligated to volunteer to a patient that it was his first robotic procedure. The following exchange also took place:

"Q. Just taking a look at this deposition of Michael Balding, if we assume that Annie Muller told Michael Balding that Dr. Tarter had done robotic procedures before on patients, that statement would be inaccurate; correct?

A. From the testimony I've read, that would be inaccurate.

Q. Would you agree that a surgeon's nurse has the responsibility to convey accurate information if asked about the doctor's level of experience?

A. Yes.

Q. Would you agree that it is the responsibility of the

physician to make sure that his nurse knows what is the doctor's level of experience so that she can answer that question truthfully?

A. Yes."

¶ 21 Dr. Michael Neumeister, a plastic surgeon with an emphasis in hand surgery at SIU School of Medicine, testified he examined Michael following his prostate surgery. Michael told him about the numbness in his fingers, inability to use the upper extremity, and a burning sensation radiating down into his left hand. Dr. Neumeister concluded "the symptoms that he was describing are very similar to what one might see with a nerve that's compressed, the numbness and tingling, burning sensation *** [which] may have indicated that the nerve was irritated after the procedure."

¶ 22 From the shoulder, the median nerve runs down the midline of the forearm to the wrist and through the carpel tunnel to the hand. The nerve "provides sensation to the thumb, index, long finger and half of the ring finger." Dr. Neumeister performed surgery to relieve the pressure on Michael's nerve. He stated Michael had an aberrant head in his pronator muscle that was compressing the median nerve, a "ligament of Struthers," which is extremely rare, attached to his humerus, and carpel tunnel syndrome. He agreed a surgeon performing a prostatectomy would not perform a test to determine whether a patient has a ligament of Struthers.

¶ 23 In October 2012, the trial court issued its written ruling. The court noted St. John's Hospital had made an oral motion for summary judgment adopting the arguments by Dr. Tarter and SIU Physicians and Surgeons. The court found defendants affirmatively disproved plaintiffs' case by introducing uncontroverted evidence that defendants complied with the standard of care. Further, defendants affirmatively disproved plaintiffs' case on the issue of

proximate cause by introducing uncontroverted evidence that Michael's injuries were not reasonably foreseeable. The court allowed defendants' motion for summary judgment and denied plaintiffs' cross-motion for summary judgment. Noting its findings were dispositive of the allegations in plaintiffs' proposed amended complaint, the court denied plaintiffs' motion for leave to amend. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Summary Judgment

¶ 26 Plaintiffs argue the trial court erred in granting summary judgment in favor of defendants. We disagree.

¶ 27 1. *Standard of Review*

¶ 28 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co., Inc.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). We construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opposing party. *Illinois State Bar Ass'n Mutual Insurance Co. v. Mondo*, 392 Ill. App. 3d 1032, 1036, 911 N.E.2d 1144, 1148 (2009). Where, as here, cross-motions for summary judgment were filed, the parties "agree only a question of law is involved, and the court should decide the issue based on the record." *Farmers Automobile Insurance Ass'n v. Danner*, 2012 IL App (4th) 110461, ¶ 30, 967 N.E.2d 836.

" 'The burden of proof and the initial burden of production

> in a motion for summary judgment lie with the movant.' [Citation.] A defendant who moves for summary judgment may meet its initial burden of production by either (1) affirmatively disproving the plaintiff's case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (the traditional test), or (2) by establishing that the nonmovant lacks sufficient evidence to prove an essential element of the cause of action (the *Celotex* test). [Citation.] A defendant does not meet its burden of production by merely asserting that the plaintiff lacks evidence. Rather, the defendant must show that the plaintiff cannot acquire sufficient evidence to make its case." *Kleiss v. Bozdech*, 349 Ill. App. 3d 336, 349-50, 811 N.E.2d 330, 340 (2004).

On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007).

¶ 29 2. *Medical Malpractice*

¶ 30 In a medical-malpractice case, the plaintiff must show: "(1) the standard of care in the medical community by which the physician's treatment was measured; (2) that the physician deviated from the standard of care; and (3) that a resulting injury was proximately caused by the deviation from the standard of care." *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 843, 931 N.E.2d 835, 847 (2010). "Unless the physician's negligence is so grossly apparent or the treatment so common as to be within the everyday knowledge of a

layperson, expert medical testimony is required to establish the standard of care and the defendant physician's deviation from that standard." *Purtill v. Hess*, 111 Ill. 2d 229, 242, 489 N.E.2d 867, 872 (1986).

¶ 31 In their complaint, plaintiffs alleged Dr. Tarter acted negligently by (1) improperly positioning Michael for the surgical procedure, (2) taking too long to do the procedure, (3) not having sufficient experience to do the procedure in a competent fashion, (4) failing to ask the anesthesiologists and the assistants to check on plaintiff's positioning as the surgery progressed, (5) not advising plaintiff that he was inexperienced at performing the procedure, and (6) failing to advise plaintiff that a proctor would be monitoring Tarter's performance.

¶ 32 a. Admission of Responsibility

¶ 33 Now on appeal, plaintiffs allege Dr. Tarter's admission of responsibility for Michael's injury prevents the award of summary judgment in favor of defendants because he admitted both negligence and causation.

¶ 34 "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406, 692 N.E.2d 1150, 1156 (1998). "Testimony at a discovery deposition may constitute a judicial admission." *Rennick*, 181 Ill. 2d at 407, 692 N.E.2d at 1156. "In order to constitute a judicial admission, a statement must not be a matter of opinion, estimate, appearance, inference, or uncertain summary." *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468, 914 N.E.2d 1258, 1267 (2009). "A party is not bound by admissions regarding conclusions of law because the courts determine the legal effect of the facts adduced." *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475, 939 N.E.2d 487, 499 (2010).

> "What constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found. [Citation.] It must also be considered in relation to the other testimony and evidence presented. [Citation.] '[T]he doctrine of judicial admissions requires thoughtful study for its application so that justice not be done on the strength of a chance statement made by a nervous party.' [Citation.]" *Smith*, 394 Ill. App. 3d at 468, 914 N.E.2d at 1268.

¶ 35 In the case *sub judice*, Dr. Tarter's statement did not amount to a judicial admission. Dr. Tarter allegedly made the statement to Michael within two or three weeks after the surgery, a point in time when he did not know the cause of Michael's injury. Thus, any statement of responsibility would be pure speculation. Moreover, the statement did not admit negligence and causation, and Dr. Tarter did not make any statements regarding a deviation from the standard of care. The statement of responsibility was in the form of concern for his patient's well-being and in his role as leader of the surgery team. It did not amount to a "deliberate, clear, and unequivocal" statement admitting liability to qualify as a judicial admission.

¶ 36 b. Standard of Care and Proximate Cause

¶ 37 Plaintiffs argue defendants deviated from the standard of care and the resulting injury to Michael was caused by the deviation from that standard of care. We find plaintiffs failed to set forth facts to establish Dr. Tarter's conduct was the proximate cause of Michael's

injuries.

¶ 38 "Although the issue of proximate cause is generally a question of fact, at the summary judgment stage the plaintiff must present some affirmative evidence that it is 'more probably true than not true' that the defendant's negligence was a proximate cause of the plaintiff's injuries." *Johnson*, 402 Ill. App. 3d at 843, 931 N.E.2d at 847; see also *Raleigh v. Alcon Laboratories, Inc.*, 403 Ill. App. 3d 863, 871, 934 N.E.2d 530, 537 (2010) (stating "summary judgment is proper as a matter of law when the plaintiff fails to present affirmative evidence that the defendant's negligence was arguably a proximate cause of the plaintiff's injuries").

¶ 39 Proximate cause consists of both "cause in fact" and "legal cause." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455, 605 N.E.2d 493, 502 (1992).

> "Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the injury or damage. [Citation.] A defendant's conduct is a cause in fact of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. [Citation.] A defendant's conduct is a material element and a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred. [Citation.] 'Legal cause,' by contrast, is essentially a question of foreseeability. [Citation.] The relevant inquiry here is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct." *First Springfield Bank & Trust v.*

Galman, 188 Ill. 2d 252, 258, 720 N.E.2d 1068, 1072 (1999).

¶ 40 In deciding whether defendants' conduct was a material and substantial element in bringing about Michael's injury, "we ask whether, absent the defendant's conduct, that injury still would have occurred." *Galman*, 188 Ill. 2d at 260, 720 N.E.2d at 1073. Dr. Pavlovich could not say that had Michael undergone an open procedure, as opposed to the robotic procedure, he would not have sustained a median nerve injury. Moreover, to the extent a longer surgery may increase the risk of this complication, Dr. Pavlovich stated it was "hard to say how much increase" there would be if the operation had only lasted 90 minutes. Dr. Neumeister stated compression injuries to the median nerve can occur at any point in time after two hours, and if Michael's surgery had taken two hours, "he could have" had the same result. This testimony indicates the injury could have occurred absent defendants' allegedly negligent conduct. Thus, plaintiffs failed to set forth sufficient facts that would establish defendants' conduct was the cause in fact of Michael's injury.

¶ 41 We also find defendants' conduct was not the legal cause of Michael's injury. "The relevant inquiry here is whether the injury is of a type that a reasonable person would see *as a likely result* of his or her conduct." (Emphasis in original.) *Galman*, 188 Ill. 2d at 260, 720 N.E.2d at 1073. "[A]n injury will be found not to be within the scope of the defendant's duty if it appears 'highly extraordinary' that the breach of the duty should have caused the particular injury. Restatement (Second) of Torts §435(2), at 449 (1965)." *Lee*, 152 Ill. 2d at 456, 605 N.E.2d at 503.

¶ 42 Dr. Pavlovich testified it was not reasonably foreseeable at the time Dr. Tarter initiated the surgery that Michael would have a median nerve injury. He agreed that Dr. Tarter

would not be expected to know, prior to surgery, that Michael had abnormalities of his left arm that could make him susceptible to a median nerve injury. Moreover, Dr. Pavlovich stated pressure injuries to the nerves in a procedure of similar length are "exquisitely rare." Dr. Neumeister testified it was not reasonably foreseeable that Michael's median nerve injury would be a result of Dr. Tarter's surgery. He also testified it would be speculation to say the length of the surgery was the cause of the injury.

¶ 43 A plaintiff fails to establish an injury proximately resulted from the alleged negligence "where the causal connection is ' "contingent, speculative or merely possible." ' " *Mengelson v. Ingalls Health Ventures*, 323 Ill. App. 3d 69, 75, 751 N.E.2d 91, 96 (2001). Here, the evidence indicates a reasonable person would not have seen Michael's injury as a likely result of the surgery. Thus, plaintiffs did not show defendants were the legal cause of Michael's injury, and summary judgment in favor of Dr. Tarter and SIU Physicians and Surgeons was appropriate.

¶ 44 3. *Summary Judgment (St. John's Hospital*)

¶ 45 Plaintiffs argue the trial court erred in *sua sponte* granting summary judgment in favor of St. John's Hospital, claiming they had no advance notice. In this case, the parties were before the court on Dr. Tarter's and SIU Physicians and Surgeons' motion for summary judgment and plaintiffs' cross-motion for summary judgment. At the hearing, St. John's Hospital made an oral motion for summary judgment and adopted the arguments asserted by Dr. Tarter and SIU Physicians and Surgeons. The court found defendants were entitled to summary judgment.

¶ 46 We find the court did not *sua sponte* grant summary judgment in favor of St. John's Hospital. St. John's Hospital made an oral motion for summary judgment and joined in the motion of codefendants. It did not make further argument or add any additional facts or law

that would surprise plaintiffs or deprive them of notice. We find no error.

¶ 47 B. Leave To Amend

¶ 48 Plaintiffs argue the trial court erred in denying their motion for leave to amend their complaint. We disagree.

¶ 49 A plaintiff has no absolute right to amend a complaint. *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1054, 918 N.E.2d 586, 597 (2009).

> "Whether to allow the amendment of a pleading is a matter for the trial court's discretion in light of the following factors: (1) whether the proposed amendment would cure the defective pleading; (2) whether the proposed amendment would cause prejudice or surprise to other parties; (3) whether the proposed amendment was timely; and (4) whether previous opportunities to amend the pleading could be identified." *Rusch v. Leonard*, 399 Ill. App. 3d 1026, 1036-37, 927 N.E.2d 316, 326 (2010).

As the decision to grant a motion to amend a complaint rests within the discretion of the trial court, a reviewing court will not overturn that decision absent an abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69, 955 N.E.2d 1110.

¶ 50 Here, we have found plaintiffs failed to set forth sufficient allegations to establish defendants' conduct was the proximate cause of Michael's injury. As they presented nothing in the proposed amended complaint to satisfy the requirement of establishing proximate cause, the trial court did not abuse its discretion in denying their motion for leave to amend their complaint.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we affirm the trial court's judgment.

¶ 53 Affirmed.