SECOND DIVISION
MARCH 31, 2011

1-09-3455
1-10-0210

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMIE BRENNAN, as Special Administrator of the Estate of DONNA SPURLOCK, Deceased, Plaintiff-Appellant, v. RIVER PARK MOTEL & SUITES, INC., an Illinois Corporation, d/b/a TIP TOP MOTEL, and IQBAL AHMAD, Individually and as Agent and/or Employee of RIVER PARK MOTEL & SUITES, INC., d/b/a TIP TOP MOTEL, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 07 L 8543 Honorable Kathy M. Flanagan, Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: The plaintiff, as administrator for the decedent who slipped and fell on the defendant motel's premises, brought this action for damages under the Wrongful Death Act. We affirm the trial court's grant of the defendants' motion for summary judgment because the plaintiff did not allege sufficient facts to establish a cause of action that the defendants: (1) breached their duty of care to the decedent; (2) negligently performed a voluntary undertaking of care of the decedent; or (3) caused an unnatural accumulation of snow or ice which resulted in the decedent's injury and ultimate death. Further, the trial court did not abuse its discretion in denying the plaintiff's request to amend her pleadings.

On August 14, 2007, the plaintiff, Jamie Brennan, as Special Administrator of the Estate of Donna Spurlock, deceased, (the decedent), filed a complaint against River Park Motel and Suites, d/b/a Tip Top Motel (the motel) and an unidentified employee of the motel. The plaintiff brought the action, as the administrator of the decedent's estate, to recover damages pursuant to the Wrongful Death Act (740 ILCS 180/2 (West 2006)) and the Survival Act (755 ILCS 5/27-6 (West 2006)). On November 13, 2007, the plaintiff filed a first amended complaint against the motel and Iqbal Ahmad (Ahmad), individually and as agent and/or employee of the motel. The plaintiff alleged that on January 28, 2007, the decedent fell on an unnatural accumulation of ice and snow caused and aggravated by the defendants' negligence. The plaintiff further alleged that defendants voluntarily undertook to provide the decedent medical services, did so negligently, and the decedent died as a result of the injuries that she received from her fall.

The trial court granted the defendants' motion for summary judgment on October 28, 2009. The plaintiff then filed a motion asking the trial court to reconsider its ruling. The motion to reconsider was denied by the trial court on January 6, 2010, and the plaintiff filed a timely notice of appeal from that ruling.

On appeal, the plaintiff argues that the trial court erred in granting the defendants' motion for summary judgment because it: (1) misapplied the law regarding the duty of care that the defendants owed the decedent; (2) incorrectly ruled on the theory of voluntary undertaking of care; (3) failed to rule that the defendants' negligent snow removal created an unnatural accumulation of ice; and (4) the plaintiff further argues that the trial court's denial of her request to amend her first amended complaint was a miscarriage of justice.

We affirm the circuit court's denial of the motion to reconsider the grant of summary judgment.

BACKGROUND

The pleadings and documents filed in this case establish the following series of events. On January 28, 2007, the decedent was a lawful guest at the defendant's motel in Chicago, Illinois. Her motel room was on the second floor and there was an overhang over the door of her room. On the motel's security videotape, the decedent is seen walking to her room at approximately 11:40 a.m. and then falling. She gets back on her feet, falls a second time and remains motionless on the ground.

Another motel patron noticed the decedent fall and went to the management office to alert Ahmad, the manager on duty at the motel at the time. Ahmad is seen on the videotape picking the decedent up off the ground and carrying her to her room. He returns to the site of the fall to retrieve a bag the decedent dropped when she fell. A maid employed by the motel, Teresa Canas, is also seen on the videotape carrying towels and entering the decedent's room. Canas uses towels to wipe the area of the balcony where the decedent fell. Ahmad intermittently returns to the decedent's room during a period of approximately 15 to 30 minutes until the decedent's boyfriend, Larry Ruff (Ruff), arrives.

Ahmad testified during his deposition that he told Canas to remain with the decedent during his absence. He stated that the decedent told him she was fine and refused his offer to call an ambulance, saying that she wanted to wait until Ruff returned. Ahmad could not recall if the decedent was bleeding when he picked her up.

Ahmad further testified that approximately one and one half hours after the decedent fell, Ruff asked Ahmad if Ruff and the decedent could move to a different room. Ahmad assigned a new room and observed the decedent walk unassisted to the new room.

At 4:15 p.m. Ruff called for an ambulance. The ambulance report stated that the unresponsive decedent had a laceration over her left eye and a subdural hemotoma. The report also stated that "per friend [the patient] slipped and fell on ice."

The police report written the day of the incident noted that Ruff said the decedent told him she fell and hit her head. Ruff further stated that before the decedent fell asleep at 2:30 p.m., she complained that her head was hurting. Ruff attempted to wake the decedent at 4:30 p.m., but she would not wake up. Ruff stated that the decedent was intoxicated.

The police field investigation report written on February 11, 2007, stated that Ruff was interviewed at the hospital to which the decedent was taken. Ruff related that he had gone to the store at approximately 11:30 a.m. on the day in question and when he returned he was told by the motel manager that the decedent had fallen. Ruff related that the decedent also told him that she had fallen on the ice outside of the room and that she did not want an ambulance called. The decedent fell asleep and would not wake up when Ruff attempted to wake her at approximately 4:00 p.m. The report indicated that the decedent's blood alcohol level upon arrival at the hospital was .402.

Detective Michael Meade of the Chicago Police Department investigated the incident on the evening of January 28, 2007. He stated during his deposition that he noticed a small patch of ice measuring approximately eight inches in diameter and several drops of what appeared to be blood

in the area where the decedent had fallen.

The decedent underwent surgery, never regained consciousness, and died on February 9, 2007. On the police incident report, the decedent's cause of death was listed as "meningitis, cerebral injuries, fall/accident."

ANALYSIS

Before turning to the issues raised by the plaintiff, appellant, we must first address the issue of whether this court has jurisdiction to hear this appeal. The trial court granted the defendants' motion for summary judgment on October 28, 2009. The plaintiff filed an appeal from this ruling on November 24, 2009, Appeal No. 09-3455. That appeal was premature because on the same day, the plaintiff filed a motion in the trial court to reconsider the ruling from which the appeal was taken. Therefore, the October 28, 2009, judgment was not a final order. A premature notice of appeal does not confer jurisdiction on the appellate court. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 469, 563 N.E.2d 459, 465 (1990).

On January 6, 2010, the trial court denied the plaintiff's motion to reconsider the grant of summary judgment in favor of the defendants. On January 19, 2010, the plaintiff filed a timely notice of appeal from this ruling, Appeal No. 10-0210. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). On January 25, 2010, the plaintiff requested that her prior appeal (filed on November 24, 2009) and the second appeal (filed on January 19, 2010) be consolidated. This court granted the motion to consolidate on February 2, 2010. We therefore have jurisdiction to consider the trial court's January 6, 2010 denial of the plaintiff's motion to reconsider.

The standard of review for summary judgments is *de novo*. *Travelers Insurance Co. v. Eljer*

Manufacturing, Inc., 197 Ill. 2d 278, 292, 757 N.E.2d 481, 491 (2001). Summary judgment is a drastic remedy, therefore, a reviewing court must construe the evidence strictly against the movant and liberally in favor of the non-movant. *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 291, 606 N.E.2d 701, 703 (1992). Summary judgment is proper when the pleadings, depositions, affidavits and other documents in the record show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *Harkins v. System Parking, Inc.*, 186 Ill. App. 3d 869, 871, 542 N.E.2d 921, 923 (1989).

The first issue that the plaintiff raises in her appeal is that the trial court erred in granting the defendants' motion for summary judgment because it misapplied the law regarding the duty of care owed by the defendants to the decedent. In count III of her second amended complaint, the plaintiff alleged that the motel and its agents "had a duty to exercise reasonable care in voluntarily undertaking to act or provide service to any motel guest who may be sick or injured." The trial court found that the defendants had undertaken no duty of care other than the duty to assist the plaintiff to her room and watch over her until Ruff returned.

The plaintiff argues on appeal that because the decedent was an invited, paying guest of the motel, the defendants owed the decedent a heightened duty of care to provide her with reasonable and appropriate medical attention as required to save her life. The plaintiff argues that this well-established heightened duty of care was breached when Ahmad did not make a call to medical professionals to attend to the decedent's life-threatening injuries. The plaintiff cites the case of *Marshall v. Burger King Corp.* which recognized that "certain special relationships may give rise to an affirmative duty to aid or protect another against unreasonable risk of physical harm," including

the relationship of the innkeeper and guest. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 438, 856 N.E.2d 1048, 1058 (2006).

In the *Marshall* case, the supreme court held that the restaurant defendant owed a reasonable duty of care to protect the public from the acts of third-parties. The court stated that the question of whether that duty was breached was one that could not be answered in the context of a motion to dismiss based on the sufficiency of the pleadings where there was a genuine issue of material fact regarding the breach. *Id*. at 444, 856 N.E.2d at 1061, citing *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114, 649 N.E.2d 1323, 1326 (1995). We note that the court in the *Marshall* case recognized that the restaurant defendant owed a *reasonable duty of care* to restaurant patrons, and not as the plaintiff argues, a *heightened duty of care*.

The defendants cite the case of *Schmid v. Fairmont Hotel Co.-Chicago* where the court noted that "[t]he innkeeper-guest relationship imposes on an innkeeper a duty to exercise 'ordinary' care in protecting its guests from injury, and does not impose a 'heightened' duty to protect guests generally from danger." *Schmid v. Fairmont Hotel Co.-Chicago*, 345 Ill. App. 3d 475, 484, 803 N.E.2d 166, 173 (2003). That case involved the duty that the hotel owed a guest who was injured by an electrical shock from a light switch caused by a short in the vanity lights in the guest's hotel bathroom. The court noted that in Illinois premises liability cases, one of the requirements for imposing a duty on the owner of the premises is that the injury was reasonably foreseeable such that the owner should have taken steps to protect the public from the hazard that caused it. *Id*. at 484, 803 N.E.2d at 173. The court concluded that under the circumstances of that case, the hotel did not owe the plaintiff the duty of care to guard against the danger that resulted in the plaintiff's injury.

Id. at 494, 803 N.E.2d at 181.

The plaintiff in the instant case, relies on a section of the Second Restatement of Torts which addresses the duty of an innkeeper or a possessor of land who invites the public to its land:

> "[A defendant] is not required to take any action beyond that which is reasonable under the circumstances. In the case of an ill or injured person, he will seldom be required to do more than give such first aid as he reasonably can, and take responsible steps to turn the sick man over to a physician, or to those who will look after him and see that medical assistance is obtained. He is not required to give any aid to one who is in the hands of apparently competent persons who have taken charge of him, or whose friends are present and apparently in a position to give him all necessary assistance." Restatement (Second) of Torts §314A, cmt. f (1965).

The plaintiff argues that this heightened duty of care based upon the innkeeper-guest relationship required Ahmad to call competent medical professionals.

The plaintiff also cites the case of *Parra v. Tarasco, Inc.*, 230 Ill. App. 3d 819, 595 N.E.2d 1186, which contains a reference to the same section of the Restatement. In that case, an administrator for the decedent restaurant patron was attempting to hold a restaurant operator liable for civil damages because the operator failed to assist in removing food from the decedent's throat while he was choking. The court found no liability imposed upon a defendant either by the Choke-Saving Methods Act or in common law in that scenario. In addition to comment (f) of section 314A

of the Second Restatement of Torts, the court referenced a well-recognized treatise on the subject which states:

> [The possessor of land] will seldom be required to do more than give such first aid as he reasonably can, and take reasonable steps to turn the sick person over to a doctor or to those who will look after him until one can be brought." *Id*. at 829, 595 N.E.2d at 1192, citing Prosser and Keaton on the Law of Torts §56, at 377 (5th ed. 1984).

The court in *Parra* recognized that a duty of care existed because of the special relationship between the restaurant and the invited guest. The court stated that the duty required the restaurant's employees to use reasonable care under the circumstances to render aid. *Id*. at 822, 595 N.E.2d at 1188. The court concluded that the plaintiff's complaint did not state a cause of action because there were no allegations that the defendant's employees had discovered the decedent choking and refused to call for medical help, or delayed calling for medical assistance, or that but for the defendant's failure to act, the decedent would have lived. *Id*. at 830, 595 N.E.2d at 1193.

In this case, the cases cited by the plaintiff in her opening brief do not lend support for her argument that the defendants owed a heightened duty of care to the decedent. See, *Fancil v. Q.S.E. Foods, Inc.*, 60 Ill. 2d 552, 328 N.E.2d 538 (1975) (where the court held that the pleadings did not establish a duty on the part of a tavern owner to provide reasonable care for the decedent police officer's safety); *Hayes v. O'Donnell*, 76 Ill. App. 3d 695, 395 N.E.2d 184 (1979) (where the court ruled that the allegations sufficiently alleged that there was a duty on the part of a tavern owner to guard against and control known violent patrons who injured the plaintiff); *Leane v. Joseph*

Entertainment Group, 267 Ill. App. 3d 1036, 642 N.E.2d 852 (1994) (where the court refused to apply Illinois law to a Wisconsin action for wrongful death claiming negligence on the part of an amphitheater for not providing adequate medical assistance to a patron); *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 665 N.E.2d 1260 (1996) (where the court found that the defendant did not owe a duty of care to a trespasser); *Salte v. YMCA of Metropolitan Chicago Foundation*, 351 Ill. App. 3d 524, 814 N.E.2d 610 (2004) (where the court did not recognize a duty on the part of a health club to have a defibrillator on its premises to assist its invitees); and *Iseberg v. Gross*, 227 Ill. 2d 78, 879 N.E.2d 278 (2007) (where the supreme court held that no special relationship existed between the principal and his agent that would impose a duty on the principal to warn the agent of unreasonable risk of harm from a third person). Applying the reasoning of these cases to the case before us, the plaintiff has not offered support for her theory that as innkeepers, the defendants had a heightened duty of care to the decedent which would have imposed a duty upon them to do more than they did under these facts and circumstances.

In her first amended complaint, the plaintiff pled that the motel owed a duty of care to the decedent as a guest on its premises. As discussed, the duty is that a person is expected to use reasonable care under the circumstances to render aid. *Parra*, 230 Ill. App. 3d at 822, 595 N.E.2d at 1188. The trial court had to determine whether, as a matter of law, the defendants breached their duty as innkeepers to the decedent.

The plaintiff relies upon the videotape which shows the decedent motionless after her second fall in concluding that the decedent must have been unconscious. The plaintiff also relies on the ambulance report which states that the decedent was unconscious at the time she was first seen by

the paramedics four and one half hours after she fell. Ahmad's deposition testimony was uncontroverted that he carried the decedent into her room where she refused medical assistance, saying she wanted to wait until Ruff returned. Ahmad assigned Canas to watch over the decedent and Ahmad also checked in on her until Ruff arrived. Ahmad handed over the decedent's care to Ruff, as the decedent requested. The police incident report also notes that Ruff said the decedent conversed with him after the accident. This is sufficient evidence to establish that the decedent was conscious after the fall and making decisions about her well being. The fact that in retrospect, she may have made a poor decision in refusing medical attention cannot now be imputed to the defendants and held to be a breach of duty.

After viewing the evidence presented by the parties in the light most favorable to the plaintiff, we hold that the trial court correctly ruled that, as a matter of law, the defendants did not breach the duty of care owed to the decedent.

The second issue which the plaintiff raises on appeal is that the trial court erred in ruling that she had not alleged a legal basis for liability based upon the theory of the defendants' voluntarily undertaking a duty of care. The plaintiff claims that the defendants are liable based on the theory that Ahmad's "misfeasance" resulted in the decedent's death from the injury she sustained in the fall. The plaintiff urges that Ahmad should have called for professional medical help and should not have placed the decedent in the motel room. The plaintiff claims that Ahmad's acts prevented others from helping the decedent.

The plaintiff cites *Wakulich v. Mraz*, 203 Ill. 2d 223, 785 N.E.2d 843 (2003) for support. In that case, the plaintiff's complaint was held to be sufficient based upon the theory of voluntary

undertaking. The complaint in that case alleged that the defendants took negligent, affirmative steps to care for the decedent and prevented others from aiding her. *Id*. at 246, 785 N.E.2d at 857. The decedent in that case was a minor girl who became unconscious after consuming alcohol in a private home. The defendants moved her to the family room of the home. Even after the defendants observed the girl vomiting violently, they left her alone and did not call her parents, nor seek any medical help for her. The defendant father ordered his sons to remove the girl from the house the following morning; they did so, and she died later that day. The supreme court noted that the plaintiff had properly pled the voluntary undertaking theory independent of the allegation of a special duty based upon the relationship of a social host and guest. *Id*. at 241-42, 785 N.E.2d at 854. The allegations in that case clearly outlined a series of negligent acts on the part of the defendants regarding their assumed care of the decedent, in contrast to the facts in the instant case.

The plaintiff in the case before us argues that there are genuine issues of material fact that should be left for a jury to determine regarding whether the defendants are liable based upon a theory of voluntary undertaking. The plaintiff claims that the decedent was unconscious after she fell the second time and that she clearly relied upon Ahmad to call for medical attention. The plaintiff has not presented any evidence such as deposition testimony or affidavits to substantiate this allegation. In fact, the only testimony or evidence regarding the actions of the decedent immediately after her fall indicate that she was not unconscious.

The trial court stated in in its memorandum opinion granting the defendants' motion for summary judgment:

"Mr. Ahmad's undertaking was limited to assisting the Decedent to

> her room and watching over her until her boyfriend arrived. He did not undertake a duty to provide any further medical assistance and did not prevent anyone from providing same. Further, there is no evidence that the Decedent relied on Ahmad to provide her with any medical assistance or that Ahmad's actions increased her risks of harm. Thus, the limited duty that Ahmad undertook was not breached and the evidence shows that he did not undertake any further duty."

The plaintiff points out that once an individual undertakes to care for an injured person, there is an obligation to exercise due care in the performance of that undertaking. *Id*. at 241, 785 N.E.2d at 854. The plaintiff argues that Ahmad was required to do more than carry the decedent to her room and wait for Ruff's arrival. However, the plaintiff has not presented evidence that Ahmad knew, or should have known, that the decedent's injury was as serious as it turned out to be, or that handing the decedent over to the care of her boyfriend was an unreasonable act. Given the facts and circumstances that plaintiff alleged, she did not present a valid legal basis on which to base a valid cause of action. Ahmad did not, as the plaintiff claims, purposely remove the decedent to a place beyond help. In fact, he gave her over to the care of the person the decedent requested. The fact that Ruff did not call for an ambulance until approximately four hours later also indicates that Ruff did not believe the decedent's injuries were serious enough to warrant medical assistance. Thus, we hold that the trial court was correct in granting the defendants' motion for summary judgment based on the court's finding that the defendants did not voluntarily undertake a duty of care.

The next issue that the plaintiff raises on appeal is that the trial court erred in granting the

defendants' motion for summary judgment by failing to rule that the motel's negligent snow removal created an unnatural accumulation of ice. In order for a property owner to be liable in a slip and fall case, it must be shown that the owner in some way caused an unnatural accumulation of ice and snow or that he aggravated a natural condition; further, the plaintiff must show that the owner had actual or constructive notice of the condition. *Ostry v. Chateau Ltd. Partnership*, 241 Ill App. 3d 436, 444, 608 N.E.2d 1351, 1357 (1993). Additionally, a property owner may be liable if he undertakes to remove snow and ice from his property, but does so negligently. *Williams v. Lincoln Tower Associates*, 207 Ill. App. 3d 913, 916, 566 N.E.2d 501, 503 (1991).

In granting the defendant's motion for summary judgment, the trial court included the following statement in its order:

> "While there may be sufficient circumstantial evidence to raise an issue of fact as to the patch of ice on the balcony being the proximate cause of the Decedent's fall, there is no evidence in the record that the ice patch on which the Decedent fell was an unnatural one. Further, there is no evidence in the record that the Defendants had actual or constructive notice of the ice patch or that the ice was a result of negligent snow removal."

On appeal, the plaintiff reiterates the fact that the trial court found that there was sufficient circumstantial evidence to raise the issue of whether a patch of ice caused the decedent to fall. The plaintiff argues that because Ahmad testified during his deposition that a motel employee typically removed ice and snow, the defendants "had actual or constructive notice of the unnatural

accumulation of ice outside of [the decedent's] motel room which caused her fall." Detective Meade stated in his deposition that there were several inches of snow in the parking lot on the night of the incident, but not on the walkway in front of the decedent's room. The plaintiff argues that because the motel undertook to remove snow and ice, it had a duty to maintain the premises free from any unnatural accumulation.

The plaintiff makes a leap from establishing that the motel routinely cleared its walkways to the conclusion that because an eight inch circle of ice was found outside of the decedent's room, the motel was negligent in its maintenance of the walkways. In the alternative, without any supporting evidence, the plaintiff advances the theory that because the walkway must have been cleared of the natural accumulation of snow and ice, the ice patch upon which the decedent fell must have been formed by an "unnatural accumulation" of ice and is therefore a question for a jury to determine. The plaintiff cites *Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990, 782 N.E.2d 906 (2002) wherein the court held that the plaintiff had alleged sufficient facts to link a snow pile that had been created by the defendant with a patch of ice that the plaintiff had slipped on. The court in *Russell* noted that it was the plaintiff's burden to present facts to show the "direct link" between the defendant's actions and the resulting unnatural accumulation of ice. *Id*. at 996, 782 N.E.2d at 911.

On the contrary, the plaintiff in this case has not presented any evidence showing a direct link between the patch of ice in front of the decedent's motel room and the motel employee's actions which may have caused an unnatural accumulation. Further, the plaintiff has not offered evidence that the motel had actual or constructive knowledge of this allegedly unnatural accumulation. Thus, we hold that the trial court correctly granted the defendants' motion for summary judgment on this

count.

The last issue which the plaintiff raises is whether the trial court's denial of her request to amend her first amended complaint was a miscarriage of justice. Section 5/2-1005(g) of the Code of Civil Procedure allows a litigant to amend pleadings upon "just and reasonable terms" before or after the entry of a summary judgment. 735 ILCS 5/2-1005(g) (West 2008). In deciding whether to grant a motion to amend pleadings, the trial court should consider the following four factors: (1) whether the amended complaint would cure the defective pleading; (2) whether other parties would be surprised or incur prejudice; (3) whether the request to amend the pleading is timely; and (4) whether previous opportunities to amend the pleadings can be identified. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 1215-16 (1982). Unless there has been a manifest abuse of discretion by the trial court in denying the motion to amend the pleadings, the reviewing court will not find the denial to be prejudicial error. *Id*. at 273-74, 586 N.E.2d at 1216.

In this case, the plaintiff maintains that she alleged sufficient facts in her complaint to establish a cause of action regarding the defendants' heightened duty of care as an innkeeper. However, the alleged facts were contained in the section of her complaint under a heading of "undertaking to act." The plaintiff sought permission to properly plead facts as part of the duty of care which the defendants owed the decedent. The plaintiff alleges that she should have been allowed to "technically include language reflecting Defendant-Appellee's breach of duty based upon the special relationship of innkeeper-guest." She claims that her first amended complaint already gave the defendants notice of the allegations against them based upon the special relationship of innkeeper-guest, and therefore they would not be prejudiced by the proposed amendment to her

complaint. The plaintiff further argues that she is not seeking additional discovery depositions because "all the discovery deposition testimony taken in this matter was taken pursuant to a duty of care based upon this special relationship and the breach of that duty."

After a review of the record, we cannot agree that the trial court abused its discretion in not allowing the plaintiff to amend her pleadings yet again. Her proposed amendment would not be a correction in a legal theory as she argues. The duty which the plaintiff claims the defendants owed the decedent was properly pled in her first amended complaint. It was the duty of care which the trial court considered. Further, the plaintiff has alleged no new facts to support the duty of care theory contained in her earlier complaint. Accordingly, the trial court properly denied the plaintiff's request to amend her pleadings.

For the reasons stated above, we affirm the ruling of the circuit court of Cook County.

Affirmed.