SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3208-21

JENNY ARIAS,

Plaintiff-Appellant,

v.

ANGELITO ARAGO, M.D.,
and JOSEPH SCALIA, M.D.,

Defendants,

and

HUDSON REGIONAL
HOSPITAL, and MHA, LLC d/b/a
MEADOWLANDS HOSPITAL
MEDICAL CENTER,

Defendants-Respondents.

———————————————————

Submitted September 28, 2023 – Decided October 19, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5045-19.

Blume Forte Fried Zerres & Molinari, attorneys for appellant (Michael B. Zerres, of counsel and on the briefs; Richard T. Madurski, on the briefs).

Porzio Bromberg & Newman PC, attorneys for respondent MHA, LLC, d/b/a Meadowlands Hospital Medical Center (Michael L. Rich and Benjamin Leo Lindeman, Jr., on the brief).

PER CURIAM

In this medical malpractice action, plaintiff Jenny Arias appeals from the August 27, 2021 order granting summary judgment to defendant MHA LLC, formerly d/b/a Meadowlands Hospital Medical Center (MHA).[1] She also challenges the October 8, 2021 order denying her motion to reconsider the August 27 order. We affirm both orders, substantially for the reasons stated by Judge Robert C. Wilson in his cogent oral and written opinions.

I.

In July 2017, plaintiff visited MHA, complaining of abdominal pain, nausea, and diarrhea. Based on her lab tests and imaging studies, plaintiff was told she needed a laparoscopic cholecystectomy, colloquially known as a "gallbladder removal." On July 15, 2017, Drs. Angelito Arago and Joseph Scalia

[1] MHA previously owned Meadowlands Hospital Medical Center, but the facility is now owned by NJMHMC, LLC, d/b/a Hudson Regional Hospital (NJMHMC).

performed the recommended surgery at MHA. Following the procedure, further testing revealed plaintiff's bile duct was completely obstructed. Accordingly, in September 2020, she underwent additional surgery at a different hospital to reconstruct her common bile duct.

On July 8, 2019, plaintiff filed a complaint against Drs. Arago and Scalia, alleging they negligently performed the gallbladder removal and failed to properly treat her after the procedure, causing her to sustain "permanent and disabling injuries."[2]

In January 2020, the trial court dismissed plaintiff's complaint for lack of prosecution; it reinstated her complaint the following month. Three months later, the trial court judge entered default against Dr. Arago. In April 2020, plaintiff named MHA as an additional defendant, alleging it was "vicariously liable for the negligent acts and/or omissions of [Drs. Arago and Scalia] under the doctrines of respondeat superior and/or apparent authority." That same month, the parties received notice that on June 5, 2020, Judge Wilson would conduct a case management conference, pursuant to Ferreira v. Rancocas

[2] Plaintiff also named NJMHMC as a party defendant but voluntarily agreed to dismiss NJMHMC from the case with prejudice under a May 2020 stipulation of dismissal.

Orthopedic Assocs., 178 N.J. 144 (2003).[3] Thereafter, counsel for the remaining parties entered into a consent order, agreeing to waive and cancel the Ferreira conference. Judge Wilson signed the consent order on June 5, 2020.

In December 2020, after default against Dr. Arago was vacated, he answered the complaint. Four months later, the trial court issued reminder notices to all parties confirming the discovery period would end on June 24, 2021.

By the time the June 24 discovery end date (DED) passed, plaintiff failed to: (1) identify an expert witness she would call to testify at trial; (2) serve an expert report to support the claims set forth in her amended complaint; (3) request a case management conference after the entry of the June 5, 2020 consent order; or (4) formally move for an extension of the DED.

---

[3] A Ferreira conference is "an accelerated case management conference [to] be held within ninety days of the service of an answer" in all professional negligence cases to "ensure that discovery related issues, such as compliance with the Affidavit of Merit [AOM] statute, [N.J.S.A. 2A:53A-26 to -29,] do not become sideshows to the primary purpose of the civil justice system—to shepherd legitimate claims expeditiously to trial." Id. at 154. Although Ferreira conferences "should be held as a matter of course, they may be omitted 'when the [AOM] has been provided by plaintiff and all defendants have waived any objections to its adequacy.'" Paragon Contractors, Inc. v. Peachtree Condo. Ass'n, 202 N.J. 415, 424 (2010) (quoting Waiver of Affidavit of Merit Conf., 176 N.J.L.J. 1006 (2004)).

One day after the DED passed, Dr. Scalia moved for summary judgment. The following month, MHA moved for summary judgment. During argument on the motions on August 27, 2021, Judge Wilson found "plaintiff was well aware of [her AOM] obligations, provided an [AOM, a]nd . . . waive[d] . . . the [Ferreira] case management conference . . . and no further request was ever made for a case management conference." The judge also told plaintiff's counsel, "[t]he discovery end date ran on you. And even in the papers that I have, I still don't have an expert report. And . . . your discovery ended in June. . . . You didn't make a motion to extend or reopen discovery."

As argument continued, Judge Wilson asked when plaintiff planned on securing an expert report. Plaintiff's counsel responded, "as quickly as we . . . possibly can. . . . [T]hat's certainly still our objective." The judge replied, "even today, you don't have any . . . proposed case management order as to what you're going to do . . . [to] get[] an expert report . . . even though the [DED] ran in June[,] this motion was filed in July[,] and today is the return date." He also found plaintiff did not "cross-move to reopen discovery" or demonstrate that "exceptional circumstances" existed to "reopen the discovery." Thus, the judge stated he was "constrained to dismiss the plaintiff's cause of action against . . . defendants." He entered a conforming order the same day.

Plaintiff moved for reconsideration of the August 27, 2021 order. Judge Wilson denied the motion on October 8. In a thoughtful written opinion accompanying his order, the judge stated:

> Reconsideration is denied. The only question presented in the motions for summary judgment was whether [p]laintiff set forth a prima facie case against [d]efendants. As was established in the record, and confirmed at oral argument . . . [on August 27, 2021], the discovery period in this case ended on June 24, 2021, and [p]laintiff did not serve the report of any qualified expert who could testify that Dr. Scalia deviated from the applicable standard of care, or that such deviations were a proximate cause of [p]laintiff's claimed injuries. Given the motion before the[c]ourt on August 27, 2021, and the record before the [c]ourt on the same date, an order granting summary judgment was proper.
>
> Nothing has changed. The [DED] is still June 24, 2021. Plaintiff has still not served the report of any expert witnesses. Plaintiff has still not filed a motion to reopen and extend discovery. Plaintiff has provided no basis for the [c]ourt to reconsider its decision.
>
> If [p]laintiff[] is, by this motion, seeking to reopen and extend discovery, then that relief would also be denied. . . . It was undisputed at oral argument that [p]laintiff never moved to reopen or extend discovery. Plaintiff cannot ask the [c]ourt to reconsider a request that was never made.
>
> The additional information provided regarding Dr. Arago's delayed appearance in the case is unavailing because this information was known to [p]laintiff and her attorneys at the time of the

> underlying motions. A motion for reconsider[ation] is properly denied when it is based on previously unraised facts that were known to the movant, or additional facts of little significance. . . . Plaintiff did not raise these issues at the time of the underlying motions. Plaintiff knew, or should have known, that the [DED] was approaching. Yet [she] failed to take any available measures to request an extension of the discovery period.
>
> . . . [T]he only question raised was whether [p]laintiff could set forth a prima facie case against [d]efendants . . . . Therefore, because [p]laintiff has not set forth a valid basis for reconsideration of the underlying decision, and because [she] cannot set forth a prima facie case against [d]efendants, [p]laintiff's motion for reconsideration is DENIED.

Plaintiff moved for leave to appeal the August 27 and October 8 orders, which we denied on November 29, 2021. Thereafter, plaintiff settled her claim against Dr. Arago and they filed a stipulation of dismissal with prejudice on May 16, 2022.

II.

On appeal, plaintiff does not challenge the dismissal of her claim against Dr. Scalia. Instead, she contends Judge Wilson erred in "prematurely granting summary judgment in favor of MHA prior to the deposition of . . . Dr. Scalia . . . and the service of plaintiff's expert report[,] without allowing a reasonable extension of discovery when no case management conference or

order was issued in accordance with Rule 4:5B-4(a)."[4] Further, plaintiff argues the judge mistakenly granted MHA summary judgment because "MHA could have been found liable under the theories of respond[e]at superior, apparent authority, or both." Additionally, she contends the judge should have extended the discovery deadlines, considering "Dr. Scalia's dilatory tactics" during the litigation, and Dr. Arago's "failure to timely respond to the complaint." These arguments lack merit. R. 2:11-3(e)(1)(E). We add the following brief comments.

"We review a grant of summary judgment de novo, applying the same standard as the trial court." Norman Int'l, Inc. v. Admiral Ins. Co., 251 N.J. 538, 549 (2022) (quoting Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 511 (2019)). Thus, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in

[4] Rule 4:5B-4(a) provides, in part:

> Within ninety . . . days of the filing of the first answer in all professional malpractice cases, the court shall conduct a case management conference to address discovery related issues, including the sufficiency of an [AOM] provided pursuant to N.J.S.A. 2A:53A-27 and the qualifications of the affiant or other designated medical expert pursuant to the Patients First Act, N.J.S.A. 2A:53A-41.

consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)).

"Summary judgment should be granted . . . 'after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

We review a trial judge's rulings regarding reconsideration, discovery, and evidentiary issues, including decisions regarding expert witnesses, under the abuse-of-discretion standard. State v. Garcia, 245 N.J. 412, 430 (2021) (evidentiary); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (reconsideration); State v. Brown, 236 N.J. 497, 521 (2019) (discovery); and Townsend v. Pierre, 221 N.J. 36, 52 (2015) (expert). We do not substitute our judgment for the trial judge's judgment unless the trial judge's "ruling is 'so wide of the mark' that it constitutes 'a clear error in judgment[,]'" or is based on a "misapplication of the law." (first quoting Garcia, 245 N.J. at 430; and then quoting Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 80 (2017)).

Beyond these standards of review, we are guided by this cornerstone principle of medical-negligence law: "[t]o prove medical malpractice . . . 'a plaintiff [typically] must present expert testimony establishing (1) the applicable standard of care; (2) a deviation from that standard of care; and (3) that the deviation proximately caused the injury.'" Haviland v. Lourdes Med. Ctr. of Burlington Cnty., Inc., 250 N.J. 368, 384 (2022) (quoting Nicholas v. Mynster, 213 N.J. 463, 478 (2013)).

> It is generally recognized that in the ordinary medical malpractice case, "the standard of practice to

> which [the defendant-practitioner] failed to adhere must be established by expert testimony," [because] a jury generally lacks the "requisite special knowledge, technical training and background to be able to determine the applicable standard of care without the assistance of an expert."
>
> [Rosenberg v. Cahill, 99 N.J. 318, 325 (1985) (alteration in original) (quoting Sanzari v. Rosenfeld, 34 N.J. 128, 134–35 (1961)).]

We also recognize that "under the doctrine of respondeat superior[,] an employer will be held vicariously liable 'for the negligence of an employee causing injuries to third parties, if, at the time of the occurrence, the employee was acting within the scope of [their] employment.'" Haviland, 250 N.J. at 378 (quoting Carter v. Reynolds, 175 N.J. 402, 408-09 (2003)). Additionally, "[i]f a principal cloaks an independent contractor with apparent authority or agency, the principal can be held liable as if the contractor were its own employee if it held out the contractor to the plaintiff as its own servant or agent." Basil v. Wolf, 193 N.J. 38, 63 (2007).

Therefore, "liability for a doctor's negligence should be imputed to a hospital when apparent authority . . . is established." Est. of Cordero by Cordero v. Christ Hosp., 403 N.J. Super. 306, 313 (App. Div. 2008). "[A]pparent authority is demonstrated when the 'hospital, by its actions, has held out a particular physician as its agent and/or employee and . . . a patient has accepted

treatment from that physician in the reasonable belief that it is being rendered [o]n behalf of the hospital.'" Ibid. (quoting Basil, 193 N.J. at 67). In the context of medical treatment, there exists a "strong inference" that a patient who accepts care does so under a "reasonable belief" that "the service is rendered [o]n behalf of the hospital." Id. at 318.

As already noted, "we apply an abuse of discretion standard to decisions made by our trial courts relating to matters of discovery." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011). "As it relates to extensions of time for discovery, appellate courts . . . have . . . generally applied a deferential standard in reviewing the decisions of trial courts." Ibid. Thus, our review "is limited to a determination of whether the trial court mistakenly exercised its discretion in denying plaintiff's motion for an extension of the discovery period under Rule 4:24-1(c)." Huszar v. Greate Bay Hotel & Casino, Inc., 375 N.J. Super. 463, 471-72 (App. Div. 2005). Here, plaintiff never moved to extend the DED, so we need not address this issue further.

Next, we observe a motion for "[r]econsideration cannot be used to expand the record and reargue a motion." Cap. Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). Indeed, a reconsideration motion "is designed to seek review of an order based upon the evidence before

the court on the initial motion, . . . not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Ibid.; see also Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (finding that a motion for reconsideration "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion").

Applying these standards and having reviewed the summary judgment record, we are satisfied plaintiff's proofs fell far short of the requirements for a prima facie case of negligence. In fact, she failed to provide an expert report or expert testimony to establish, in the first instance, that either Dr. Arago or Dr. Scalia were negligent. Therefore, MHA could not be found vicariously liable for either doctor's negligence through the application of the doctrines of respondeat superior or apparent authority. Accordingly, we have no basis to disturb either the August 27, 2021 order granting summary judgment to MHA or the October 8, 2021 order denying plaintiff's reconsideration motion.

Affirmed.