

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Mmoja Ajabu
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES -
CORRECT CARE SOLUTIONS,
LLC AND GABRA GACHAW,
M.D.

Carol A. Dillon
Christopher Andrew Farrington
Bleeke Dillon Crandall, P.C.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE -
MARION COUNTY SHERIFF

Anthony W. Overholt
Maggie L. Smith
Frost Brown Todd LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Mmoja Ajabu,
Appellant-Plaintiff,

v.

Correct Care Solutions, LLC,
Gabra Gachaw, and Marion
County Sheriff,

December 20, 2022

Court of Appeals Case No.
21A-CT-2540

Appeal from the Marion Superior
Court

The Honorable Heather A. Welch,
Judge

Tavitas, Judge.

Case Summary

[1] Mmoja Ajabu appeals from the trial court’s order granting summary judgment in favor of Correct Care Solutions, LLC (“Correct Care”), Dr. Gabra Gachaw (collectively, “the Medical Defendants”), and the Marion County Sheriff (“the Sheriff”) (collectively, “the Defendants”). On appeal, Ajabu raises ten issues, which challenge the trial court’s order in various ways. We conclude that none of Ajabu’s arguments have merit. Accordingly, we affirm.

Issues

[2] Ajabu presents ten issues, which we restate as:

- I. Whether the trial court erred by striking Ajabu’s complaint against Dr. Gachaw.
- II. Whether the trial court erred by striking the affidavits of Ajabu’s experts.
- III. Whether Ajabu was required to present the testimony of an expert witness.
- IV. Whether the trial court properly granted summary judgment to the Medical Defendants.
- V. Whether the trial court should have granted summary judgment while discovery was still active.

- VI. Whether Ajabu substantially complied with the requirements of the Indiana Tort Claims Act.
- VII. Whether Ajabu's tort claims notice raised a cause of action against the Sheriff.
- VIII. Whether the trial court erred in dismissing Ajabu's claims against Dr. Gachaw after the medical review panel had issued its opinion.
- IX. Whether the trial court erred by granting summary judgment in favor of the Medical Defendants because non-medical malpractice claims were still pending.
- X. Whether the trial court erred by not allowing Ajabu to amend his complaint to add non-medical malpractice claims.

Facts

[3] At the time relevant to this appeal, the Sheriff contracted with Correct Care to provide healthcare to inmates at the Marion County Jail ("the Jail"). From June 16 through June 22, 2016, Ajabu was incarcerated in the Jail due to his failure to comply with court orders requiring him to allow the City of Indianapolis to install sewer lines on his property. Ajabu refused his dinner on the evening of June 16. On June 17, Ajabu submitted a healthcare request form stating that he suffered from hypertension and needed beet juice and apple cider vinegar "with the mother"¹ to lower his blood pressure. Appellees' App. Vol.

¹ This is an apparent reference to "mother of vinegar," which is "a slimy membrane composed of yeast and bacterial cells that develops on the surface of alcoholic liquids undergoing acetous fermentation and is added to wine or cider to produce vinegar." Merriam-Webster, "mother of vinegar," <https://www.merriam-webster.com/dictionary/mother%20of%20vinegar>.

III p. 30. A nurse examined him on the next day and noted a blood pressure of 136/96. Correct Care determined that Ajabu's blood pressure should be checked on a daily basis. Also on June 17, Ajabu again refused his meals and informed jail staff that he was on a hunger strike.

[4] On June 18, a corrections officer determined that Ajabu was a suicide risk due to the hunger strike and placed Ajabu in a segregation unit for suicide watch. Ajabu claims that, when he was removed from the general population, the jail officers handcuffed him so tightly that it cut his wrists and caused him to cry. He also claims that officers simulated the action of stomping and kicking him as he lay on the ground. Ajabu further claims that he was physically threatened when he requested medical attention. Ajabu claims that he was stripped naked while on suicide watch and forced to walk through water from the toilet. He claims that his cell had water standing on the floor, had mold in the toilet and sink, and was infested with roaches.

[5] Nurse Cynthia Purcell performed a health assessment to determine if Ajabu was physically able to be placed in the segregation unit. During the assessment, Ajabu told Nurse Purcell that his hunger strike was a political statement; Nurse Purcell encouraged Ajabu to drink fluids, to which Ajabu agreed. Ajabu drank a sports drink provided by the nursing staff, and the nursing staff indicated they would provide Ajabu with sports drinks for three days. Still, Ajabu refused to eat or shower. Later that day, however, Ajabu told the medical staff at the Jail that, if he was provided a "Ramadan" diet, he would go back to his non-segregation jail cell. Appellant's App. Vol. III p. 23. Ajabu claims he did so

because he was told that eating was the only way he would be released from suicide watch. Ajabu also submitted another healthcare request form requesting “authorization for high blood pressure medicine.” Medical Appellee’s App. Vol. III p. 23.

[6] On June 19, Ajabu ate breakfast and spoke with a mental health professional, Denise Davis. Ajabu told Davis that he would continue to eat so long as he was provided with a Ramadan diet. Ajabu had no suicidal ideations. Davis consulted with Dr. Gachaw, a psychiatrist employed by Correct Care at the Jail. Dr. Gachaw determined that Ajabu should be taken off suicide watch and returned to the general population.

[7] On June 20, Ajabu went to the jail clinic for his hypertension, where he was seen by Nurse Tracy Roberts. Ajabu indicated that he was allergic to the common medications used to treat hypertension and used the alternative treatments of beet juice and apple cider vinegar. Nurse Roberts informed Ajabu that she was not authorized to provide him with such alternatives but stated that this information would be “communicated as per his request.” Appellees’ App. Vol. III p. 30. On June 21, Ajabu was seen by Nurse LaQuetta Hubbard, who discussed with Ajabu how to control his blood pressure with medication, but Ajabu insisted on treating his condition with alternative medicine. Ajabu again reported no suicidal ideations and was released from the Jail on June 22. The protracted procedural history of this case then began.

Procedural History

- [8] On August 26, 2016, Ajabu filed with the Indiana Department of Insurance (“IDOI”) a proposed medical malpractice complaint against Correct Care. In his proposed complaint, Ajabu alleged that Correct Care “was careless and negligent in their care and treatment of [] Ajabu,” and that “[a]s a direct and proximate result of [Correct Care]’s carelessness and negligence [] Ajabu was harmed.” Appellees’ App. Vol. II p. 219. On January 9, 2017, Ajabu filed a complaint against Correct Care in Cause No. 49D01-1701-CT-001242 (“Cause No. CT-1242”) and alleged that his jail cell was in deplorable conditions, which caused medical and psychological issues. Ajabu alleged negligent infliction of emotional distress, negligence, and gross negligence on the part of Correct Care. On July 6, 2017, the trial court granted Ajabu leave to amend his complaint to add the Sheriff as a defendant. The substance of Ajabu’s complaint remained the same.
- [9] On October 31, 2017, the Medical Review Panel issued an opinion regarding Ajabu’s proposed complaint in which it determined that “[t]he evidence does not support the conclusion that [Correct Care] failed to meet the applicable standard of care as charged in the complaint[,] and the conduct complained of was not a factor in the resultant damages.” Appellees’ App. Vol. II p. 21.
- [10] On November 27, 2017, Ajabu filed a motion for leave to amend his complaint in Cause No. CT-1242. In this motion, Ajabu noted that the Medical Review Panel had issued its opinion and that it was, therefore, appropriate to include his medical malpractice claims in a new complaint. The trial court held a

hearing on this issue, among other issues, on December 8, 2017. The court noted that Ajabu’s first complaint “was one of general negligence and [Ajabu] agreed he wants to sue [Correct Care] for medical malpractice.” Appellant’s App. Vol. II p. 14. The trial court granted Ajabu’s motion to amend his complaint.

[11] Ajabu filed an amended complaint on December 18, 2017, in which he not only added claims of medical malpractice against Correct Care but also added two new defendants—Dr. Gachaw and Registered Nurse Eunice Austin. Ajabu claimed that Dr. Gachaw’s medical treatment was “negligent and below the appropriate standard of care,” and that “as a proximate result of the negligence of [Dr.] Gachaw, [Ajabu] has suffered harm.” Appellee’s App. Vol. II p. 35. The Medical Defendants then filed a motion to strike Ajabu’s amended complaint due to Ajabu adding new defendants without leave of the court. The trial court granted the motion to strike on January 7, 2017,² and ordered the claims against Dr. Gachaw and Nurse Austin stricken from Ajabu’s complaint.

[12] On January 10, 2018, Correct Care filed a motion for summary judgment based on the opinion of the medical review panel. On January 16, 2018, Ajabu filed a motion to add Dr. Gachaw and Nurse Austin as defendants “due to the fact that the allegations against these two defendants involve medical malpractice

² The trial court entered an order on January 2, 2018, denying the motion to strike, which the Defendants claim was entered in error. Regardless, the trial court entered an order on January 7, 2018, granting the motion to strike. It is well settled that “[a] trial court may reconsider an order or ruling if the action remains *in fieri*, or pending resolution.” *In re Estate of Lewis*, 123 N.E.3d 670, 673 (Ind. 2019) (quoting *Pond v. Pond*, 700 N.E.2d 1130, 1135 (Ind. 1998)). An action is *in fieri* until the court enters judgment. *Id.*

and the medical review panel has not made a ruling until recently.” *Id.* at 44. The Defendants then moved the court to set a deadline for Ajabu to seek leave of the court to amend his pleadings, which the trial court granted on January 17, 2018. In its order, the trial court set a “dead-line of **February 15, 2018** for the plaintiff to seek leave of the Court to amend his pleadings and/or add any parties thereto” and stated that “[t]he plaintiff is **prohibited** from amending his pleadings or adding any parties after such date.” *Id.* at 46 (bold emphasis in original).

[13] On January 31, 2018, Ajabu filed a motion asking the trial court to rule on his January 16 motion to add parties. Correct Care filed a response on February 2, 2018, in which it requested that the trial court deny the motion to add parties due to Ajabu’s failure to justify his belated attempt to amend his complaint. That same day, the trial court granted Correct Care’s motion, thereby denying Ajabu’s motion to add parties.

[14] On February 16, 2018, one day after the February 15 deadline set by the trial court, Ajabu filed another motion to add Dr. Gachaw and Nurse Austin as defendants. The trial court held a hearing on this motion on March 6, 2018, during which Ajabu withdrew his request to add Nurse Austin as a defendant. Ajabu, however, sought additional time to determine whether to add Dr. Gachaw as a defendant. The trial court agreed that Ajabu would have until March 14, 2018, “to determine whether [Ajabu] still wishes to [a]dd Dr. [] Gachaw as a Defendant[.]” Appellant’s App. Vol. II p. 23.

[15] On March 13, 2018, Ajabu filed a proposed complaint with the IDOI alleging that Dr. Gachaw provided Ajabu with care that fell below the applicable standard and that Ajabu was injured as a result. On that same day, Ajabu filed another request to add Dr. Gachaw as a defendant and noted that he had filed a proposed complaint against Dr. Gachaw with the IDOI. The following day, the trial court granted Ajabu leave to add Dr. Gachaw as a defendant and instructed Ajabu to comply with the requirements of the Medical Malpractice Act (“MMA”) when doing so.

[16] On March 15, 2018, Ajabu filed an amended complaint adding Dr. Gachaw as a defendant. Instead of listing Dr. Gachaw anonymously—as required by the MMA—Ajabu named Dr. Gachaw personally.³ *See* Ind. Code § 34-18-8-7(a)(1) (providing that, prior to the issuance of the medical review panel’s opinion, a “complaint filed in court may not contain any information that would allow a third party to identify the defendant.”). On March 16, 2018, Ajabu filed a response to Correct Care’s motion for summary judgment along with affidavits from Dr. Carrie Dixon and Dr. Benetta Johnson. Dr. Gachaw filed a motion to strike Ajabu’s amended complaint based on the violation of Section 34-18-8-7(a)(1). The trial court granted Dr. Gachaw’s motion to strike on March 26, 2018, and again instructed Ajabu to comply with the MMA.

³ Despite listing negligent infliction of emotional distress in the heading of this complaint, all of Ajabu’s claims stemmed from the care provided to him during his incarceration.

[17] On April 13, 2018, the Defendants filed a motion to stay the proceedings pending the decision of the medical review panel in Ajabu's proposed IDOI complaint against Dr. Gachaw, which the trial court granted on April 20, 2018. In granting this motion, the trial court noted that it had no authority to further act in the case until the Medical Review Panel issued its opinion regarding Dr. Gachaw. *See* I.C. § 34-18-8-7(a)(3) (providing that, with certain exceptions not applicable here, a trial court is prohibited from taking any action except setting a date for trial until the medical review panel has issued its opinion).

[18] On March 20, 2018, Ajabu filed yet another amended complaint, naming Dr. Gachaw anonymously as required. This complaint, however, also added claims of false imprisonment, intentional misrepresentation, negligent infliction of emotional distress, and intentional infliction of emotional distress against Dr. Gachaw, as well as fraud allegations against all Defendants. Again, all of these claims stemmed from the treatment Ajabu received, or did not receive, while incarcerated in the Jail. Because the trial court had not granted Ajabu leave to add additional claims to his complaint, the Defendants filed a motion to strike Ajabu's most recent complaint. The trial court granted this motion on June 6, 2018, on grounds that Ajabu's amended complaint "does not comply with the Court's order granting the Motion to Amend." Appellee's App. Vol. II p. 92.

[19] Undeterred, Ajabu filed a new complaint on June 12, 2018, in Cause No. 49D12-1806-CT-022955 ("Cause No. CT-22955), in which he asserted substantially the same claims against Dr. Gachaw that the trial court had stricken in Ajabu's amended complaint in Cause No. CT-1242. On July 29,

2018, the Defendants filed motions in both causes seeking to consolidate the cases, and these motions were granted on July 16 and July 18, 2018. This had the effect of bringing Ajabu's June 12, 2018, complaint against Dr. Gachaw in Cause No. CT-22955 into Cause No. CT-1242, despite a nearly identical complaint having been stricken in the latter cause. Accordingly, on July 23, 2018, the Defendants filed a motion to strike all but the malpractice claims filed against Dr. Gachaw, which the trial court granted on August 1, 2018.

[20] On October 28, 2020, the medical review panel issued its opinion in Ajabu's proposed IDOI complaint against Dr. Gachaw; the medical review panel determined that "[t]he evidence does not support the conclusion that [Dr. Gachaw] failed to meet the applicable standard of care." *Id.* at 22. On November 12, 2020, the trial court lifted the stay due to the medical review panel having issued its decision. Correct Care then withdrew its motion for summary judgment in order to file a combined motion for summary judgment with Dr. Gachaw on all claims against them.

[21] On March 31, 2021, Ajabu filed his own motion for summary judgment, and on May 27, 2021, the Medical Defendants also filed a combined motion for summary judgment. That same day, the Medical Defendants filed a motion to strike the affidavits of Dr. Dixon and Dr. Johnson, which Ajabu had designated in opposition to Correct Care's earlier motion for summary judgment.

[22] On June 1, 2021, the Sheriff filed his motion for summary judgment, to which Ajabu responded on August 2, 2021. The trial court denied Ajabu's motion for

summary judgment on May 28, 2021, and granted the Medical Defendants' motion to strike the affidavits of Dr. Dixon and Dr. Johnson on June 14, 2021. Ajabu responded to the Medical Defendants' motion for summary judgment on July 26, 2021.

[23] On August 5, 2021, Ajabu filed a motion asking the trial court to set aside its earlier order granting the motion to strike his experts' affidavits. The trial court denied this request on August 17, 2021. On September 13, 2021, Ajabu filed a motion for "clarification," in which he again attempted to add additional claims against the Medical Defendants. Appellant's App. Vol. II p. 29. The trial court denied this motion on September 16, 2021. The trial court held hearings on the remaining motions for summary judgment on September 20, 2021, and on October 18, 2021, the trial court granted summary judgment in favor of all the Defendants. Ajabu now appeals.⁴

⁴ We note that Ajabu is proceeding pro se. It is well settled that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). "This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)). Although we prefer to decide cases on their merits, arguments may be waived where an appellant's noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors claimed. *Id.* We have endeavored to address all of Ajabu's complaints on the merits when possible.

Discussion and Decision

I. Striking Ajabu's Complaint Against Dr. Gachaw

[24] Ajabu first argues that the trial court improperly struck his complaints⁵ against Dr. Gachaw on grounds that Ajabu failed to comply with the requirements of the MMA. It is important to note, however, that the trial court did not strike all of Ajabu's claims against Dr. Gachaw; instead, it struck only those claims that Ajabu added without leave of the court. The trial court ultimately permitted the claims of medical malpractice against Dr. Gachaw to proceed.

[25] Ajabu contends that his claims against Dr. Gachaw do not sound in medical malpractice and that he, therefore, did not have to comply with the requirements of the MMA. The trial court, however, never granted Ajabu leave to amend his complaint to add non-medical malpractice claims against Dr. Gachaw. It only permitted him to amend his complaint to add claims of medical malpractice against Dr. Gachaw, as Ajabu had requested. Thus, the question is not whether the trial court improperly struck all of Ajabu's claims against Dr. Gachaw but whether Ajabu's other claims against Dr. Gachaw were proper amendments. The trial court concluded that they were not and dismissed them accordingly.⁶

⁵ The trial court struck several of Ajabu's complaints naming Dr. Gachaw as a defendant: on March 26, 2018, for failing to list Dr. Gachaw anonymously; on June 6, 2018, for adding non-medical malpractice claims contrary to the court's order permitting the amended complaint; and on August 1, 2018, after Ajabu's complaint in Cause No. CT-22955 was consolidated with his claims in the present case.

⁶ Ajabu presents the question of whether the trial court erred by not allowing him to add additional claims against Dr. Gachaw as his tenth claim of error. We address this issue *infra*.

II. Striking Affidavits of Ajabu's Medical Experts

[26] Ajabu further argues that the trial court erred by striking the affidavits of the experts he submitted in opposition to Correct Care's original motion for summary judgment. A trial court has broad discretion in ruling on the admissibility of evidence. *Morris v. Crain*, 71 N.E.3d 871, 877 (Ind. Ct. App. 2017). "This discretion extends to rulings on motions to strike affidavits on the grounds that they fail to comply with the summary judgment rules." *Id.* (quoting *Price v. Freeland*, 832 N.E.2d 1036, 1040 (Ind. Ct. App. 2005)). Indiana Trial Rule 56(E) provides in relevant part that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it. *Morris*, 71 N.E.3d at 877.

[27] The Medical Defendants argue that Ajabu waived his claim that the trial court erroneously struck the affidavits of his experts by failing to respond to their motion to strike. We agree. Pursuant to Marion County Local Civil Rule 203(B), Ajabu was required to respond to the motion to strike within fifteen days. The Medical Defendants filed their motion to strike the affidavits of Ajabu's expert witnesses on May 27, 2021. Thus, Ajabu had until June 11, 2021, in which to respond to the motion. With no response from Ajabu, the trial court granted the motion to strike on June 14, 2021. Ajabu waited until August 5, 2021, to lodge any objection to the striking of his expert affidavits.

At that time, he filed a motion to set aside the trial court’s order striking his expert affidavits. By failing to timely respond to the Medical Defendants’ motion to strike, Ajabu waived any claim that the trial court erred by granting the motion. *See Bah v. Mac’s Convenience Stores, LLC*, 37 N.E.3d 539, 546 (Ind. Ct. App. 2015) (holding that plaintiff waived argument that trial court improperly struck portions of her designated evidence, including affidavits, because the plaintiff failed to respond to the defendant’s motion to strike at the trial court level).

III. Common Knowledge Exception

[28] Ajabu also contends that he did not need to submit expert medical testimony to rebut the opinions of the medical review panels because his claims fall within the “common knowledge exception” to the requirement for expert medical testimony. The “‘common knowledge exception is applicable’ where ‘the complained-of conduct is so obviously substandard that one need not possess medical expertise in order to recognize the breach.’” *Chaffins v. Kauffman*, 995 N.E.2d 707, 713 (Ind. Ct. App. 2013) (quoting *Malooley v. McIntyre*, 597 N.E.2d 314, 319 (Ind. Ct. App. 1992), *disapproved of on other grounds by Siner v. Kindred Hosp. Ltd. P’ship*, 51 N.E.3d 1184, 1190 n.5 (Ind. 2016)), *trans. denied*. The common knowledge exception does not apply “when the question involves the delicate inter-relationship between a particular medical procedure and the causative effect of that procedure upon a given patient’s structure, endurance, biological makeup, and pathology.” *Id.* (quoting *Malooley*, 597 N.E.2d at 713). “The sophisticated subtleties of the latter question are not susceptible to

resolution by resort to mere common knowledge.” *Id.* (quoting *Malooley*, 597 N.E.2d at 713).

[29] Again, we conclude that Ajabu waived this argument by failing to raise any claim that the common-knowledge exception applied. By failing to present this argument to the trial court in the first instance, Ajabu cannot now present it to us for the first time on appeal. *See Lockerbie Glove Co. Town Home Owner’s Ass’n, Inc. v. Indianapolis Historic Pres. Comm’n*, 194 N.E.3d 1175, 1184 n.7 (Ind. Ct. App. 2022) (noting well-settled rule that an appellant may not present an argument for the first time on appeal and that an argument so presented is waived).

IV. Summary Judgment for Medical Defendants

[30] Ajabu next claims that the trial court erred in granting summary judgment to the Medical Defendants because, he claims, the designated evidence revealed genuine issues of material fact.⁷ Upon review of a grant or denial of a motion for summary judgment, “we ‘stand in the shoes of the trial court.’” *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020) (quoting *Murray v. Indianapolis Pub. Schs.*, 128 N.E.3d 450, 452 (Ind. 2019)). Summary judgment is appropriate “‘if the designated evidentiary matter shows 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.’” *Murray*, 128 N.E.3d at 452 (quoting T.R. 56(C)). The party moving for

⁷ Ajabu also argues that the trial court erred by granting summary judgment to the Sheriff. As to Ajabu’s claims against the Sheriff, we conclude *infra* that these claims are barred by Ajabu’s failure to comply with the Indiana Tort Claims Act.

summary judgment bears the burden of making a prima facie showing that there is no issue of material fact and that it is entitled to judgment as a matter of law. *Burton*, 140 N.E.3d at 851. The burden then shifts to the non-moving party to show the existence of a genuine issue. *Id.*

[31] On appeal, we resolve “[a]ny doubt as to any facts or inferences to be drawn therefrom . . . in favor of the non-moving party.” *Id.* (brackets in original). We review the trial court’s ruling on a motion for summary judgment de novo, and we take “care to ensure that no party is denied his day in court.” *Schoettmer v. Wright*, 992 N.E.2d 702, 706 (Ind. 2013). “We limit our review to the materials designated at the trial level.” *Gunderson v. State, Ind. Dep’t of Nat. Res.*, 90 N.E.3d 1171, 1175 (Ind. 2018).

[32] Here, the Medical Defendants designated the opinions of the medical review panels, both of which concluded that the Medical Defendants’ treatment of Ajabu did not fall below the applicable standard of care. The burden then shifted to Ajabu to designate medical expert testimony to overcome summary judgment. *See Overshiner v. Hendricks Regional Health*, 119 N.E.3d 1124, 1132 (Ind. Ct. App. 2019). As discussed above, the trial court struck the affidavits of Ajabu’s experts, and Ajabu waived any claim that this was improper. Accordingly, the trial court properly granted summary judgment in favor of the Medical Defendants on Ajabu’s claims of medical malpractice.

V. Summary Judgment During Active Discovery

[33] Ajabu next argues that the trial court erred by granting summary judgment in favor of the Defendants while discovery was still ongoing. The premise of Ajabu’s argument is false. As noted by the Defendants, there was no discovery pending when the trial court ruled on the summary judgment motions. Instead, discovery had closed on May 1, 2021. *See* Appellant’s App. Vol. II p. 39 (chronological case summary entry stating, “Discovery cut-off[,] which includes expert disclosures[,] May 1, 2021[.]”). Although Ajabu filed a notice of deposition, he did so on July 26, 2021, well after the trial court’s discovery deadline. The trial court accordingly granted a motion to quash Ajabu’s belated notice of deposition. *See id.* at 44; Appellees’ App. Vol. IV p. 246. Ajabu’s argument fails.

VI. Substantial Compliance with Indiana Tort Claims Act

[34] Ajabu next claims that the trial court erred by granting summary judgment in favor of the Sheriff due to Ajabu’s failure to comply with the Indiana Tort Claims Act (“ITCA”), Indiana Code Title 34, Article 13. The relevant section of the ITCA provides:

Except as provided in section 9 of this chapter,^[8] a claim against a political subdivision is barred unless notice is filed with:

(1) the governing body of that political subdivision; and

⁸ Section 9 concerns incapacitated persons and is inapplicable here.

(2) the Indiana political subdivision risk management commission created under IC 27-1-29;

within one hundred eighty (180) days after the loss occurs.

Ind. Code § 34-13-3-8(a). The notice contemplated by Section 8 must:

describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

Ind. Code § 34-13-3-10.

[35] In the present case, Ajabu sent a notice of tort claim on December 2, 2016, to the Office of Corporation Counsel of Marion County/Indianapolis. In his notice, however, Ajabu only mentioned claims against Correct Care and not against the Sheriff regarding the conditions of the Jail.⁹ At that point, Ajabu had yet to add the Sheriff to his complaint. Ajabu amended his complaint on June 30, 2017, to include the Sheriff, but he never filed a notice of tort claim listing any claims against the Sheriff. After the Sheriff asserted the affirmative

⁹ Ajabu's notice provided in relevant part:

1. On and between June 16th and June 22nd, 2016[,] Mmoja Ajabu was subjected to medical negligence by personnel employed by Correct Care Solutions, LLC and contracted by the Marion County Sheriff which failed to meet the standards of conduct relating to their profession.
2. There was no justifiable reason for Correct Care Solution to be negligent in the healthcare they provided to Mmoja Ajabu.

Appellant's App. Vol. IV p. 158.

defense of failure to comply with the ITCA, Ajabu filed, on July 28, 2021, what he titled an amended notice of tort claim, that contained twenty-six paragraphs detailing the alleged negligence of the Sheriff. This notice, however, was filed almost five years after the 180-day deadline. The trial court, accordingly, granted summary judgment in favor of the Sheriff due to Ajabu's failure to timely file a notice of tort claim. Ajabu clearly did not comply with the strict requirements of the ITCA regarding his claims against the Sheriff.

[36] Ajabu argues that he substantially complied with the notice requirement of the ITCA. Substantial compliance with the notice requirements of the ITCA is sufficient “when the purpose of the notice requirement is satisfied.” *Murphy v. Ind. State Univ.*, 153 N.E.3d 311, 318 (Ind. Ct. App. 2020) (quoting *Schoettmer v. Wright*, 992 N.E.2d 702, 707 (Ind. 2013)). “The purpose of the [ITCA]’s notice requirements is ‘to provide the political subdivision the opportunity to investigate the facts surrounding an accident so that it may determine its liability and prepare a defense.’” *Id.* (quoting *Town of Knightstown v. Wainscott*, 70 N.E.3d 450, 456 (Ind. Ct. App. 2017), *trans. denied*). Thus, “[i]n general, a notice that: (1) is filed within the 180-day period, (2) informs the governmental entity of the claimant’s intent to make a claim, and (3) contains sufficient information which reasonably affords the governmental entity an opportunity to promptly investigate the claim, satisfies the purpose of the statute and will be held to substantially comply with the [ITCA].” *Id.* (citing *Knightstown*, 70 N.E.3d at 456). If a plaintiff fails to file within the 180-day period “any notice of an intent to make a claim, actual knowledge of the occurrence on the part of

the [governmental entity], even when coupled with an investigation of the occurrence, will not suffice to prove substantial compliance.’” *Id.* (quoting *Knightstown*, 70 N.E.3d at 456) (brackets in original). Although what constitutes substantial compliance is a question of law, it is a fact-sensitive determination. *Id.* (citing *Schoettmer*, 992 N.E.2d at 707.

[37] Ajabu’s notice of tort claim that he sent to the Office of Corporation Counsel on December 2, 2016, contains no information that would have reasonably afforded the Sheriff the opportunity to promptly investigate the claims Ajabu now attempts to assert against the Sheriff. To the contrary, the notice of tort claim refers only to the treatment Ajabu received from Correct Care. And his “amended” tort claim notice was filed several years past the 180-day deadline.

[38] Ajabu also claims that we should consider his filing of an internal affairs complaint with the Sheriff’s Office as substantial compliance with the notice requirement of the ITCA. Ajabu filed an internal affairs complaint on July 1, 2016, to which he attached a complaint he had filed on June 30, 2016, seeking injunctive relief from “inhumane treatment” at the Jail. Appellant’s App. Vol. III p. 27.¹⁰ Yet when Ajabu filed his notice of tort claim, he mentioned only the treatment he received from Correct Care. As noted by the Sheriff on appeal, this did the opposite of putting the Sheriff on notice; it made it appear as if Ajabu had abandoned any claims against the Sheriff regarding the conditions of

¹⁰ The Sheriff’s Office issued a report on July 18, 2016, finding no merit in Ajabu’s internal affairs complaint.

the Jail. Under these circumstances, we agree with the trial court that Ajabu did not substantially comply with the notice requirement of the ITCA.

VII. Tort Claims Notice

[39] In a brief, related argument, Ajabu claims that the notice of tort claim he filed alleging medical malpractice against Correct Care should have put the Sheriff on notice of his claim because Correct Care was the agent of the Sheriff, and the Sheriff should be held responsible for the actions of his agent. But the notice of tort claim Ajabu filed referred only to medical malpractice claims against Correct Care and made no mention of the claims Ajabu now seeks to assert against the Sheriff. This notice of tort claim in no way put the Sheriff on notice that Ajabu also sought to assert numerous tort claims against the Sheriff based on the conditions of the Jail. Ajabu's argument is without merit.

VIII. Dismissal of Non-Medical Malpractice Claims

[40] Next, Ajabu argues that the trial court erred by refusing to allow Ajabu to bring non-medical malpractice claims against Dr. Gachaw after Ajabu's complaint in Cause No. CT-22955 was consolidated with his earlier complaint in Cause No. CT-1242. Ajabu claims that, following the consolidation, the Defendants moved to dismiss the consolidated complaint on grounds that the medical

review panel had not yet issued its opinion in Ajabu’s proposed complaint against Dr. Gachaw.¹¹

[41] Ajabu argues that the trial court should have allowed him to pursue his non-medical malpractice claims against Dr. Gachaw after the medical review panel issued its opinion in favor of Dr. Gachaw in Ajabu’s proposed IDOI complaint. Ajabu, however, had already attempted to assert these same claims in Cause No. CT-1242, and Ajabu’s filing of the new complaint was merely an improper attempt to avoid the trial court’s adverse rulings in Cause No. CT-1242. Ajabu cites no authority for the proposition that he can bypass the trial court’s adverse ruling on his motion to again amend his complaint simply by filing a new action. To the contrary, the case law disfavors such tactics. *See Hilliard v. Jacobs*, 927 N.E.2d 393, 400 (Ind. Ct. App. 2010) (affirming trial court’s denial of belated motion to amend complaint where plaintiff attempted to file a new complaint alleging many of the same claims she had presented in previously proposed amended complaint), *trans. denied*.

IX. Summary Judgment on Non-Medical Malpractice Claims

[42] Ajabu also argues that the trial court erred by granting summary judgment because his non-medical malpractice claims were still pending against the

¹¹ A plaintiff may “commence an action in court for malpractice at the same time the claimant’s proposed complaint is being considered by a medical review panel.” Ind. Code § 34-18-8-7(a). Prior to the medical review panel’s decision, however, the “claimant is prohibited from pursuing the action,” and the trial court is prohibited from taking any action in the case other than setting a date for trial, acting on a motion to dismiss due to inactivity, or making certain preliminary determinations of law regarding “affirmative defenses or issues of law or fact or compelling discovery upon motion by a party or the [IDOI] Commissioner.” *Schriber v. Anonymous*, 848 N.E.2d 1061, 1065 n.3 (Ind. 2006) (citing I.C. § 34-18-8-7(a)(3)).

Defendants. That is, Ajabu claims that the trial court granted summary judgment only as to his medical malpractice claims. We have already determined, however, that the trial court properly determined that Ajabu's claims could not proceed against the Sheriff due to Ajabu's failure to comply with the ITCA.

[43] With regard to the Medical Defendants, Ajabu claims that the trial court only granted summary judgment on his medical malpractice claims. He is incorrect. The trial court's summary judgment order granted summary judgment on Ajabu's non-medical malpractice claims and specifically states that "the Medical Defendants have no duty to maintain the Marion County Jail and are thus also entitled to summary judgment on this claim," i.e., the non-medical malpractice claims. Appellant's App. Vol. III p. 6.¹² Ajabu's argument, hence, fails.

X. Amendment of Complaint

[44] Lastly, Ajabu claims that the trial court erred by disallowing his repeated attempts to amend his complaint to add the non-medical malpractice claims against the Medical Defendants. Amendment of pleadings is controlled by Indiana Trial Rule 15(A) which provides in relevant part:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading

¹² Moreover, the trial court also dismissed the non-medical malpractice claims against Dr. Gachaw individually on August 1, 2018, because they were brought as improper amendments to Ajabu's complaint filed without leave of the court.

is one to which no responsive pleading is permitted, and the action has not been placed upon the trial calendar, he may so amend it at any time within thirty [30] days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires.

[45] Although amendments to pleadings are to be liberally allowed, trial courts retain broad discretion in granting or denying amendments to pleadings. *Hilliard*, 927 N.E.2d at 398 (citing *MAPCO Coal Inc. v. Godwin*, 786 N.E.2d 769, 777 (Ind. Ct. App. 2003)). On appeal, we will reverse the trial court’s decision only upon a showing of an abuse of that discretion. *Id.* (citing *MAPCO*, 786 N.E.2d at 777). “An abuse of discretion may occur if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law.” *Id.* (citing *Fleming v. Int’l Pizza Supply Corp.*, 707 N.E.2d 1033, 1036 (Ind. Ct. App. 1999)). When reviewing a trial court’s ruling on a motion to amend a pleading, we consider “a number of factors, including ‘undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment.’” *Id.* (quoting *Palacios v. Kline*, 566 N.E.2d 573, 575 (Ind. Ct. App. 1991)).

[46] Ajabu argues only that the Defendants “never made a showing that they will be harmed if Ajabu was permitted to amend his complaint.” Appellant’s Br. p. 46-47. Ajabu, however, wholly fails to address the remaining factors in his

Appellant's Brief. We would be well within our discretion to consider Ajabu's argument waived for this reason. *See* Ind. Appellate Rule 46(A)(8); *Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding that the failure to present a cogent argument waives the issue for appellate review), *trans. denied*. Wavier notwithstanding, Ajabu would not prevail.

[47] The trial court twice permitted Ajabu to add new defendants: the Sheriff and Dr. Gachaw. Only when Ajabu attempted to assert new claims over a year after his initial complaint did the trial court deny Ajabu's attempts and strike his belated claims. Under these circumstances, we cannot say that the trial court abused its discretion by denying Ajabu's repeated attempts to assert belated claims against the Defendants. *See Hilliard*, 927 N.E.2d at 399 (affirming the trial court's denial of plaintiff's motion to amend complaint where new claims could have been raised in original complaint and motion was filed over three years after initial complaint and it was apparent that her initial claims would fail); *Stone v. Wright*, 133 N.E.3d 210, 220 (Ind. Ct. App. 2019) (affirming trial court's denial of plaintiff's motion to file third amended complaint more than one year after her initial complaint, after federal court had dismissed her federal complaint, and when plaintiff failed to allege that police officer's acts fell outside the scope of his employment).

Conclusion

[48] The trial court did not err by striking Ajabu's complaint for failure to comply with the requirements of the MMA. The trial court did not err by striking the

affidavits of Ajabu's proposed expert witnesses, and the common-knowledge exception to the requirement of expert medical testimony to overcome the adverse opinion of the medical review panel did not apply. The trial court properly granted summary judgment in favor of the Medical Defendants and did not improperly grant summary judgment while discovery was still active. Ajabu did not substantially comply with the requirements of the ITCA. The trial court properly dismissed Ajabu's non-medical malpractice claims against Dr. Gachaw. The trial court did not err by granting summary judgment on the non-medical malpractice claims against the Medical Defendants. And the trial court did not abuse its discretion by denying Ajabu's belated attempt to amend his complaint to add non-medical malpractice claims against the Defendants. Accordingly, we affirm the judgment of the trial court.

[49] Affirmed.

Brown, J., and Altice, J., concur.