

STATE OF MICHIGAN  
COURT OF APPEALS

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DR. NDIDI OKEKE,

Plaintiff-Appellant,

v

DETROIT MEDICAL CENTER and WAYNE  
STATE UNIVERSITY,

Defendants-Appellees.

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UNPUBLISHED

January 11, 2011

No. 294573

Wayne Circuit Court

LC No. 08-121658-CD

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order denying her motion to amend her complaint. We affirm.

The decision to grant or deny leave to amend a complaint is reviewed for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). The motion need not be granted where amendment would be futile. *Lane v Kindercare Learning Centers, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998). "An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim." *Id.* "[A] motion to amend should ordinarily be denied only for particularized reasons, including undue delay, bad faith or a dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or futility." *PT Today, Inc v Comm'r of Financial & Ins Serv*, 270 Mich App 110, 143; 715 NW2d 398 (2006). A trial court may conclude that the opposing party will be prejudiced when the moving party's new claim or theory of recovery is premised on the same set of facts after discovery has closed and just before trial. *Franchino v Franchino*, 263 Mich App 172, 192; 687 NW2d 620 (2004).

Plaintiff contends that the trial court abused its discretion in denying the motion to amend where the court rules require the opportunity to amend, the request would not result in undue delay, and the amendment was not futile. We conclude that the trial court did not abuse its discretion in denying the motion to amend. *Weymers*, 454 Mich at 654.

After the close of discovery, the trial court granted defendants' motion for summary disposition. Nearly three weeks after the case had been closed, plaintiff requested the opportunity to amend. Although MCR 2.116(I)(5) permits amendment, the trial court need not allow amendment where the evidence indicates that it is not justified. In light of the evidence

presented during the summary disposition motion, the trial court did not err in denying amendment where the evidence failed to justify the filing. Furthermore, we cannot conclude that the trial court abused its discretion in holding that amendment would result in undue delay and was futile. Plaintiff was aware of the facts and evidence in support of the pregnancy and disability claims when the underlying discrimination claims were at issue.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Christopher M. Murray  
/s/ Deborah A. Servitto