STATE OF MICHIGAN

COURT OF APPEALS

ALANNA FREY, as Next Friend and Attorney-in-Fact for DAVID FREY,

Plaintiff-Appellant,

v

TRINITY HEALTH-MICHIGAN, doing business as SAINT JOSEPH MERCY HEALTH SYSTEM, and ST. JOSEPH MERCY ANN ARBOR,

Defendant-Appellee.

UNPUBLISHED
December 10, 2021

No. 359446
Washtenaw Circuit Court
LC No. 21-001286-CZ

Before: SERVITTO, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

In this expedited appeal,[1] plaintiff appeals as of right the trial court's order denying her motion for emergency order to show cause why a preliminary injunction should not issue directing defendants to administer ivermectin to David Frey, a patient at defendant hospital who, at the time of her motion, was suffering from COVID-19, and dismissing her complaint. We affirm.

I. FACTS AND PROCEDURAL HISTORY

David Frey ("Frey"), a sixty-eight-year-old man, tested positive for COVID-19 on November 2, 2021, and was admitted to St. Joseph Mercy Hospital in Ann Arbor (the hospital) on November 6, 2021. Frey was transferred to the Intensive Care Unit, and was placed on a ventilator on November 17, 2021. It is undisputed that and his health declined and continues to decline. The hospital followed its protocols, including the administering of remdesivir, steroids, and antibiotics

[1] *Frey v Trinity Health Mich*, unpublished order of the Court of Appeals, issued December 6, 2021 (Docket No. 359446).

to treat Frey. Plaintiff, Frey's daughter, is his patient advocate and, in her search for additional possible treatments for him, she learned about ivermectin. Plaintiff then contacted a physician, Dr. Joel Kahn, M.D., and he prescribed ivermectin for Frey.[2] The hospital, however, has declined to administer ivermectin to Frey because that would be contrary to its policy and against the medical judgment of Frey's treating physicians.

Ivermectin is an anti-parasite medication commonly used to treat parasitic diseases in humans and animals[3] and some skin conditions such as rosacea.[4] Although a number of physicians across the country have prescribed ivermectin to treat COVID-19, the Food and Drug Administration (FDA) has not approved ivermectin for use in treating COVID-19,[5] the Centers for Disease Control (CDC) recommends against its use to treat COVID-19,[6] and defendants' internal policy does not permit the use of ivermectin to treat COVID-19.

On November 18, 2021, plaintiff filed a complaint for emergency medical declaratory and injunctive relief. Plaintiff asserted that Frey was intubated, in critical condition at the hospital, and suffering from COVID-19. According to plaintiff, the hospital has administered all medications and treatment called for by the hospital protocol for treating COVID-19, but Frey's condition was still declining. Plaintiff further asserted that despite the prescription for ivermectin from Dr. Kahn, the hospital refuses to administer or allow the administration of ivermectin to Frey for treatment of COVID-19. Plaintiff thus sought a declaration concerning the rights of the parties and further sought an order directing the hospital to comply with the medical orders of and prescriptions written by Dr. Kahn. With her complaint, plaintiff filed a motion for an emergency order to show cause why a preliminary injunction should not issue, requesting the entry of an order requiring defendants to comply with Dr. Kahn's order and prescription for ivermectin. After conducting an emergency hearing, the trial court issued an order denying plaintiff's motion for a preliminary injunction and dismissing plaintiff's complaint. This appeal followed.

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[2] Although Dr. Kahn has not met with Frey, plaintiff reports that prior to prescribing ivermectin to Frey, Dr. Kahn reviewed Frey's medical records. We note that Dr. Kahn is not associated with defendants and does not have admitting privileges at the hospital.

[3] See <https://medlineplus.gov/druginfo/meds/a607069.html> (accessed December 8, 2021).

[4] Cardwell, Leah, *New developments in the treatment of rosacea–role of once-daily ivermectin cream*, Clinical, Cosmetic and Investigational Dermatology, March 18, 2016 <https://www.dovepress.com/new-developments-in-the-treatment-of-rosacea-ndash-role-of-once-daily--peer-reviewed-fulltext-article-CCID> (accessed December 8, 2021).

[5] *Why You Should Not Use Ivermectin to Treat or Prevent COVID-19*, September 3, 2021, <https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-covid-19> (accessed December 8, 2021).

[6] *Rapid Increase in Ivermectin Prescriptions and Reports of Severe Illness Associated with Use of Products Containing Ivermectin to Prevent or Treat COVID-19*, CDC Health Advisory, August 26, 2021 <https://emergency.cdc.gov/han/2021/pdf/CDC_HAN_449.pdf> (accessed December 8, 2021).

II. STANDARDS OF REVIEW

This Court applies a de novo review to a trial court's dispositional ruling on an equitable matter. *Bayberry Group Inc v Crystal Beach Condo Ass'n*, 334 Mich App 385, 392; 964 NW2d 846 (2020). A trial court's grant of summary disposition under MCR 2.116(I) is reviewed de novo. *AK Steel Holding Corp v Dep't of Treasury*, 314 Mich App 453, 462; 887 NW2d 209 (2016). This Court also reviews de novo, as a question of law, whether a party has been afforded due process, *Cassidy v Cassidy*, 318 Mich App 463, 500; 899 NW2d 65 (2017), and the interpretation and application of a statute. *City of Grand Rapids v Brookstone Capital LLC*, 334 Mich App 452, 457; 965 NW2d 232 (2020). The same standard pertains to the interpretation and application of court rules. *Schaumann-Beltran v Gemmete*, 335 Mich App 41, 46; ___ NW2d ___ (2020).

This Court reviews for an abuse of discretion a trial court's decision regarding injunctive relief. *Moore v Genesee Co*, __ Mich App __; __ NW2d __ (Docket No. 355291), slip op at 4. The abuse of discretion standard also is applied to the trial court's grant or denial of declaratory relief. *The Reserve at Heritage Village Ass'n v Warren Fin Acquisition LLC*, 305 Mich App 92, 104; 850 NW2d 649 (2014) (citation omitted). A trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes. *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 33-34; 896 NW2d 39 (2016).

III. ANALYSIS

At the outset, we observe that plaintiff's position deserves much sympathy; we recognize she simply wishes that every attempt be made to preserve her father's health. Nevertheless, the law requires plaintiff to show that she is entitled to the injunctive relief that she seeks. Therefore, our review is confined to the narrow legal question of whether plaintiff has demonstrated the factors required for issuance of an injunction. Under the circumstances, plaintiff has not met her burden.

1. PRELIMINARY INJUNCTION

MCR 3.310 sets forth the procedure for a preliminary injunction and it provides, in relevant part, as follows:

> (A) Preliminary Injunctions.
>
> (1) Except as otherwise provided by statute or these rules, an injunction may not be granted before a hearing on a motion for a preliminary injunction or on an order to show cause why a preliminary injunction should not be issued.
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> (4) At the hearing on an order to show cause why a preliminary injunction should not issue, the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued, whether or not a temporary restraining order has been issued.

The test whether injunctive relief is merited requires the trial court to consider the following factors:

> (1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued. [*Slis v State*, 332 Mich App 312, 337; 956 NW2d 569 (2020) (citations omitted).]

All four of these criterion must be established before a court may grant a preliminary injunction. *Pharmaceutical Research & Mfrs of America v Dep't of Community Health*, 254 Mich App 397, 403; 657 NW2d 162 (2002). And the party seeking the injunction (plaintiff in this case) has the burden of proving by a preponderance of the evidence that the above four elements favor the issuance of an injunction. MCR 3.310(A)(4); *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648; 825 NW2d 616 (2012); *Dutch Cookie Machine Co v Vande Vrede*, 289 Mich 272, 280; 286 NW 612 (1939).

Injunctive relief is "an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Davis v City of Detroit Fin Review Team*, 296 Mich App 568, 614; 821 NW2d 896 (2012) (citations and quotation marks omitted). Plaintiff thus has the burden to show by a preponderance of the evidence that she is entitled to the extraordinary remedy of a preliminary injunction.

In this matter, the trial court did not specifically articulate its findings with respect to all four of factors set forth above in *Slis*. Generally, the absence of the trial court's reasoning would hamper this Court's consideration of an appeal from a preliminary injunction determination. However, given the time-sensitive nature of this matter, we find that we may rely on the existing record to resolve the legal issues presented.

As to the first factor, plaintiff has not has shown irreparable harm will occur absent issuance of an injunction. *Detroit Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). It is undisputed that Frey is critically ill and the parties dispute whether ivermectin is appropriate for the treatment of COVID-19. Plaintiff has provided information concerning the use of ivermectin for the treatment of COVID-19. Defendants, on the other hand, have provided information advising against the use of ivermectin. Defendants also provided the affidavit of Dr. David M. Vandenberg, Chief Medical Officer of the hospital regarding Frey's current condition. According to Dr. Vandenberg, Frey is not currently battling an active COVID-19 infection, but is suffering from other serious conditions related to the infection. Thus, Dr. Vandenberg opined that in his professional judgment, and that of Frey's treating doctors, "ivermectin is not medically indicated or appropriate for Mr. Frey. There is no evidence that the medication would provide any benefit to him. There is also a risk that providing ivermectin to Mr. Frey in his current, substantially compromised condition could cause harm and even contribute to his death."

Plaintiff has not quarreled with Dr. Vandenberg's contention that Frey currently suffers from after-effects of the illness, rather than active COVID-19, nor has she produced any evidence

that, in the absence of a current COVID-19 infection, ivermectin would have any impact on Frey's condition. Moreover, plaintiff has failed to provide any affirmation of the use of ivermectin from any doctor who actually has examined and treated Frey, nor has she shown that Frey's condition will worsen absent the administering of ivermectin. The absence of such evidence is fatal to her request for a preliminary injunction in this case.

With regard to the second factor, we determine that plaintiff has not shown a likelihood of success on the merits. Plaintiff argues that she has met that burden because an off-label use of an FDA-approved drug is not illegal and can be employed if the prescribing physician believes such a use will benefit a patient. But plaintiff has not framed the relevant issue upon which she needs to show a likelihood of success. The issue is not whether ivermectin is an approved drug for humans, or even whether ivermectin has been shown to be effective in treating COVID-19. Further, the issue does not involve the mere administration of medicine prescribed by a physician who does not have privileges to practice at a hospital. Rather, the prevailing issue is whether the judiciary has the legal authority to compel a hospital to administer a drug, on an off-label use, that the hospital considers may harm its patient, and where that use is not sanctioned by the FDA and other health authorities. In other words, plaintiff must show that she has a likelihood of success of proving that the law permits a court to order a hospital to give treatment that the patient's treating physicians have not prescribed and do not recommend, and that is contrary to the hospital's protocols for the patient's illness. Even accepting that plaintiff has shown that some doctors credit ivermectin as an effective treatment for COVID-19, she still must provide a legal basis for her request for a court order directing the hospital to dispense it to Frey.

We reject plaintiff's argument that the hospital should have recognized her authority as Frey's patient advocate. Plaintiff ignores the fact that the hospital's policy against ivermectin would apply even if Frey himself, rather than his patient advocate, requested ivermectin to treat COVID-19. Therefore, this case is not simply a matter of Frey not being able to direct his own medical care, as characterized by plaintiff. Rather, plaintiff is asking this Court to allow her to override the medical opinion of Frey's treating physicians and direct the hospital act contrary to its own policies. We decline that invitation.

Plaintiff offers that the trial court's own power of equitable relief when she has no adequate remedy at law serves as the authority to grant her request and direct the hospital to allow the ivermectin. This argument does not succeed, where plaintiff has not shown that she is entitled to relief under the law. She admits that no Michigan caselaw or statute specifically authorizes the relief she requests. Instead, plaintiff has attached three orders from New York trial courts directing hospitals to administer, or at least allow, ivermectin to COVID-19 patients.[7] None of those orders, however, cite legal authority, or even the court's reasoning, for directing the hospitals to administer ivermectin to COVID-19 patients. We thus do not find them persuasive.

[7] *Kulbacki v Kaleida Health*, order of the New York Supreme Court (Docket No. 21-800259, issued January 8, 2021), *Dickinson v Rochester Gen Hosp*, order of the New York Supreme Court (Docket No. 21-47013, issued January 21, 2021), and *Swanson v United Mem Med Ctr*, order of the New York Supreme Court (Docket No. 21-E69026, issued April 2, 2021).

Instead, we find persuasive a decision from the Court of Appeals in Texas,[8] where the patient's wife filed suit to force a hospital to give ivermectin to her husband, who was facing death from COVID-19. In *Texas Health Huguley Inc v Jones*, __ Tex App __; __ SW3d__ (Docket No. 02-21-00364-CV), the trial court granted the plaintiff's request for an injunction to grant a physician-otolaryngologist temporary hospital ICU privileges to administer the drug. In reversing the grant of injunctive relief, the Texas court recognized that its role was limited:

> But judges are not doctors. We are not empowered to decide whether a particular medication should be administered, or whether a particular doctor should be granted ICU privileges. Our role is to interpret and apply the law as written. Although we may empathize with a wife's desire to try anything and everything to save her husband, we are bound by the law, and the law in this case does not allow judicial intervention. Just as we cannot legislate from the bench, we cannot practice medicine from the bench. Therefore, we vacate the trial court's temporary injunction. [*Id.*, slip op at 1 (footnotes omitted).]

A Delaware Court was similarly charged with deciding whether to issue an injunction to compel a healthcare provider to treat with ivermectin a patient hospitalized with COVID-19. When denying the injunction, the court reiterated certain fundamental precepts:

> Patients, even gravely ill ones, do not have a right to a particular treatment, and medical providers' duty to treat is coterminous with their standard of care. This court will wield its equitable powers only to enforce a right or duty; in their absence, relief is not available. The patient has this Court's sincerest sympathies and best wishes, but not an injunction. [*DeMarco v Christiana Care Health Servs Inc*, __ A3d __ (Dwel Ch, Docket No. CV 2021-0804-MTZ), slip op at 1.]

We, too, acknowledge the judiciary's limited role in equity involving medical issues. Plaintiff has not shown a duty by the hospital, or a legal right held by Frey, regarding the administration of ivermectin to treat COVID-19.

Addressing the third element necessary for the issuance of a preliminary injunction, this Court is satisfied that plaintiff has not met her burden of showing that the harm to Frey absent an injunction outweighs the harm it would cause to defendants. Plaintiff argues that any harm to defendants if the injunction was granted would be negated by the fact that she has offered to sign a release of liability. But the potential harm to defendants is broader than this one case, because a court directive in this matter could open the door for a flood of similar suits from other patients with COVID-19, not to mention other conditions, suing to obtain care that is contrary to hospital policies.

Concerning the public interest, the fourth factor in our analysis, plaintiff argues that hospitals should acknowledge the authority granted to patient advocates to make medical decisions

[8] Decisions from other states or the federal courts are not binding, but we may find them persuasive. *Barshaw v Allegheny Performance Plastics LLC*, 334 Mich App 741, 756 n 7; 965 NW2d 729 (2020).

on behalf of incapacitated individuals. As noted earlier, the hospital has not failed to recognize plaintiff's role as patient advocate. More accurately, it is plaintiff who fails to recognize that her decisions regarding Frey's medical care are not boundless. Although she found a physician to prescribe ivermectin, he has not treated Frey, Frey's treating doctors have not prescribed it, and the hospital's policy does not support it. Therefore, she is asking the Court to expand her authority as patient advocate to act in a manner contrary to the current medical practices in the hospital, and in conflict with Frey's treating physicians, yet she has shown no legal authority for such an expansion of a patient advocate's role. As noted by the court in *DeMarco*, the issuance of an injunction compelling a hospital to treat a patient with ivermectin would adversely impact:

> the safe and effective development of medications and medical practices. . . . a hospital's standard of care decisions, mandating doctors and nurses to provide care they believe unnecessary, ethical concerns of all doctors involved, patient autonomy, fiduciary duty, accreditation standards for patient protections, obligating one doctor to carry out the treatment regimen/plan of another doctor, . . . and whether a court should medicate or legislate from the bench.
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> . . . Compelling Defendant to provide a treatment outside the standard of care—on the prescription of a doctor who did not see the patient, has never treated the patient, and does not have privileges at that hospital—risks substantial harm to Defendant and the health care system at large. Requiring a healthcare provider to administer such a treatment harms the stability of hospital administration and admitting privileges. [*DeMarco*, ___ A 3d at ___ (quotation marks and citation omitted).]

We find these policy considerations also weigh against injunctive relief in this case.

Contrary to plaintiff's position, the mere fact that a doctor—who is not the treating physician and who does not have hospital privileges—prescribes a medication does not mean that a court should direct that it be administered to a patient. The role of the courts is not to overrule the medical judgment of the treating physicians and the policies of the treating hospital. Consequently, the public interest is best served by permitting physicians and hospitals to follow established procedures and use their professional judgment to determine appropriate medical treatment.

2. NEW ARGUMENTS

Relying on *Peninsula Sanitation Inc v City of Manistique*, 208 Mich App 34, 43; 526 NW2d 607 (1994), which ruled that one of the prerequisites to injunctive relief is that justice requires such relief, plaintiff has included arguments that she did not raise in the trial court. Michigan courts follow a "raise or waive" rule of appellate review. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). In a civil action, a "failure to timely raise an issue waives review of that issue on appeal." *Id*. (quotation marks and citation omitted). Nevertheless, "this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice," *id*., so, in this case, given the urgent nature of the proceedings, we consider plaintiff's unraised arguments.

Plaintiff first argues that defendants breached Frey's rights granted by MCL 333.20201, which sets forth the rights and responsibilities of patients. Plaintiff correctly admits that the statute does not afford a private cause of action. See MCL 333.20203(1), expressly indicating that "[a]n individual shall not be civilly or criminally liable for failure to comply with those sections."

Nevertheless, plaintiff cites to MCL 333.20201(2)(a), which provides in relevant part that a patient "shall not be denied appropriate care on the basis of . . . disability . . . ." The fact that Frey may be disabled, however, is not germane to the hospital's policy against administering ivermectin to COVID-19 patients. The prohibition pertains to the drug's off-label use for COVID-19; the status of the patient's possible disability is not in question. Even assuming that Frey is disabled, plaintiff has not overcome the reality that whether ivermectin can be considered "appropriate care" for patients with COVID-19 is disputed. Defendants' policy, established in light of the FDA recommendation, is that it is not appropriate care.

Plaintiff also relies on MCL 333.20201(2)(k), which provides in pertinent part that a patient's civil liberties, "including the right to independent personal decisions and the right to knowledge of available choices, shall not be infringed and the health facility or agency shall encourage and assist in the fullest possible exercise of these rights." In doing so, she directs this Court to *Alar v Mercy Memorial Hosp*, 208 Mich App 518; 529 NW2d 318 (1995). In *Alar*, this Court observed that MCL 333.20201 required the defendant hospital to adopt a patients' rights policy, which included the right to confidential treatment of personal and medical records. The Court merely observed that the hospital had a preexisting duty under the statute to establish such a policy, but rejected that policy as a basis to support the plaintiff's breach of contract claim. *Id.* at 525. Plaintiff states that the hospital should adopt a patient rights policy, and that the policy should encompass the off-label use of an FDA-approved medicine. Plaintiff cites materials promoting ivermectin as a treatment for COVID-19, but she has failed to provide a legal basis for this Court to dictate a specific policy to defendant hospital regarding its patients. The judiciary is charged with interpreting and implementing the law; it does not decide which policies hospitals should adopt regarding the off-label use of medicine, or which medical treatments are appropriate for a patient.

We also decline to recognize a civil right to treatment of COVID-19 with ivermectin, as claimed by plaintiff. Again, we observe that plaintiff has cited no legal authority for her proposition that the off-label use of a drug, against the recommendation of the FDA, the CDC, the hospital, and the treating physicians, is a civil right. Notably, defendants cite caselaw holding that patients do not have the right to take non FDA-approved drugs. See, e.g., *Abigail Alliance for Better Access to Developmental Drugs v von Eschenbach*, 495 F3d 695 (DC Cir 2007) (ruling that terminally ill patients did not have a fundamental right to access experimental drugs). Although plaintiff maintains that ivermectin is not an experimental drug, its use to treat COVID-19 is not wholly accepted and can be considered experimental.

Next, plaintiff argues that the hospital is prohibiting her from acting in Frey's best interests, as she is obliged to do under MCL 700.5509. That statute provides, in relevant part:

> (1) An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

> (a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.
>
> (b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.
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> * * *
>
> (e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death. [MCL 770.5509(1).]

While plaintiff has the statutory authority to act as an advocate for Frey, nothing in the plain language of the statute bestows upon plaintiff the power to force a hospital to administer medication that it believes would be contrary to a patient's care.

Plaintiff next raises MCL 700.5511(3), which provides:

> (3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

Plaintiff argues that ivermectin is sound medical practice such that the hospital is bound to provide it. While we are aware of the fact that plaintiff desires to exhaust all possible remedies to treat Frey, we also must keep in mind that the FDA has advised that treatment with ivermectin for COVID-19 is not sound medical practice, and the hospital policy and plaintiff's treating physicians also advise against it. This Court cannot conclude, therefore, that MCL 700.5511(3) serves as authority for injunctive relief here.

For the foregoing reasons, we determine that plaintiff has not met her burden to show the four prerequisite elements to merit a preliminary injunction. Plaintiff has not provided legal authority to support her contention that courts should intrude upon a hospital's medical policies and direct it, contrary to those policies, to administer a drug for an off-label use that the FDA specifically cautions against. Where plaintiff has failed to show the necessary elements for injunctive relief, the trial court did not abuse its discretion in denying her motion.

3. DUE PROCESS

Plaintiff next contends that the trial court erred by dismissing her complaint sua sponte, with no notice and no opportunity to respond. Admittedly, the court could have directed the parties to file competing motions for summary disposition, and delayed the resolution of the case to hear those motions. The court also could have paused to take evidence. Both procedures would have

aided in appellate review. This Court recognizes, however, that time is of the essence in this matter. In the interests of judicial economy, this Court can review de novo the trial court's rulings in view of the arguments made by plaintiff on appeal. See *AK Steel Holding*, 314 Mich App at 462.

Plaintiff protests that she did not receive due process in the trial court; however, the record reflects otherwise. This matter was brought to the circuit court as an emergency, and plaintiff sought immediate action given Frey's critical condition. The trial court conducted the hearing before defendants even had the opportunity to file a written response. Indeed, the trial court's register of actions reflects that the hearing occurred the very day of filing. The transcript reflects that both attorneys were given ample time to make their arguments during the hearing, which was nearly an hour in length. Although plaintiff's co-counsel attempted to make additional arguments after the trial court had made its decision, the fact that those arguments were disallowed did not deprive plaintiff of due process.

Plaintiff next argues that the court improperly sua sponte dismissed the matter without a motion before it, contending that the trial court's order amounted to the grant of summary disposition, despite the absence of a written motion from defendants. Notwithstanding, the court rules give courts the authority to render judgment immediately, without regard to the timelines applicable to written motions. MCR 2.605(D) applies to plaintiff's declaratory action and it provides that the court "may order a speedy hearing of an action for declaratory relief and may advance it on the calendar." Additionally, MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." Summary relief is specifically provided absent a formal motion being filed by a defendant under MCR 2.116(I)(1). See *Home-Owners Ins Co v Perkins*, 328 Mich App 570, 584 n 7; 939 NW2d 705 (2019).

Plaintiff has not shown error in the dismissal procedure. Plaintiff sought a declaration determining the rights of the parties. The trial court determined that plaintiff was not entitled to injunctive relief. On appeal, plaintiff does not illustrate what was left for the trial court to decide. Although the court did not expressly reference MCR 2.116(I)(1), its comments that plaintiff had shown no legal authority supporting her position reflect the court's conclusion that defendants were entitled to judgment as a matter of law. Further, plaintiff argues on appeal that she should be given the opportunity to amend her complaint to make arguments under the patient bill of rights and patient advocate law. But we already have determined that those statutes do not support the relief that plaintiff is seeking here, so any amendment would be futile. See *Bennett v Russell*, 322 Mich App 638, 647; 913 NW2d 364 (2018) (stating that motions for leave to amend may be denied if they would be futile).

We therefore are unable to conclude that plaintiff was not afforded due process. Under the exigent circumstances of this case, the trial court acted promptly and properly in resolving this matter.

Affirmed. We do not retain jurisdiction. A matter of public interest being involved, no taxable costs are awarded. MCR 7.219(A). This opinion has immediate effect.

/s/ Deborah A. Servitto
/s/ David H. Sawyer