

STATE OF MICHIGAN
COURT OF APPEALS

ANA TOMSON, Next Friend of GT, Minor,

Plaintiff-Appellant,

v

SPECTRUM HEALTH BUTTERWORTH
HOSPITAL, THERESE YARROCH, M.D., KELLI
BOURDRO, R.N., LAURA GRUTTER, R.N.,
JOHN/JANE DOE ATTENDING OBSTETRICIAN
AT BUTTERWORTH HOSPITAL THE EVENING
OF DECEMBER 15-16, 2014, GRAND RAPIDS
WOMEN’S HEALTH, PC, RUTH BRANDT, M.D.,
and BROOKE E. BOLLIN-RICHARDS, M.D.,

Defendants-Appellees.

UNPUBLISHED

April 25, 2024

No. 362832

Kent Circuit Court

LC No. 20-007995-NH

Before: SWARTZLE, P.J., and SERVITTO and GARRETT, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals by delayed leave granted¹ the trial court’s orders denying her motion for leave to file a first amended complaint and motion for reconsideration. We reverse and remand.

I. FACTS

This case stems from the alleged medical malpractice and negligence of defendants in treating plaintiff and her then-unborn child, GT, on December 15 and 16, 2014, which plaintiff asserts resulted in severe, long-term repercussions for GT. In October 2020, plaintiff filed her original complaint, which alleged corporate negligence against Spectrum Health Butterworth

¹ *GT v Spectrum Health Butterworth Hosp*, unpublished order of the Court of Appeals, entered March 21, 2023 (Docket No. 362832).

Hospital (Spectrum), vicarious liability against Grand Rapids Women's Health, P.C. (GRWH), and medical malpractice against Dr. Ruth Brandt, Dr. Brooke Bollin-Richards, Dr. Therese Yarroch, John/Jane Doe Attending Obstetrician, RN Kelli Bourdro,² and RN Laura Grutter. The complaint set forth the following facts leading to such claims.

On December 15, 2014, plaintiff was 33 weeks pregnant with GT when she phoned her obstetrician's office, reporting that she felt less fetal movement than on the previous day. Plaintiff was advised to go to her obstetrician's office for an evaluation. Between 2:00 and 3:00 p.m., plaintiff underwent a nonstress test (NST), which was ordered by Dr. Brandt. The result of the NST prompted Dr. Brandt to order a biophysical profile (BPP). The BPP was scheduled for 6:30 p.m., and the first test was unsuccessful because of the inexperience of the ultrasound technician. A second BPP was completed, which rendered a result of 2 out of 10, with scores of 0 for fetal movement, breathing, and heart tone. The results of the test were reported to Dr. Brandt at 8:30 p.m., and plaintiff was relocated to Spectrum's Labor and Delivery Unit at 8:53 p.m. Despite this, documentation showed that plaintiff was not assessed by an obstetrician until 11:28 p.m. Within a few minutes, Dr. Brandt and Dr. Bollin-Richards called for a C-section, which was performed at 12:23 a.m. on December 16, 2014.

At birth, GT was severely and acutely anemic, which was secondary to a maternal fetal hemorrhage diagnosed by a positive Kleihauer-Betke test. GT suffered from metabolic acidosis, elevated liver enzymes, and acute kidney injury and brain injury. GT was a patient in the Neonatal Intensive Care Unit immediately following birth until February 13, 2015. GT's diagnoses included diffuse ischemic insult encephalomalacia, nephrolithiasis, anemia secondary to acute fetal maternal hemorrhage, metabolic acidosis, thrombocytopenia, lactic acidosis, and acute kidney injury. The complaint alleged that GT continued to suffer from a long list of severe neurological deficits and was entirely dependent on others for his care, which would remain the case for the remainder of his life. The complaint alleged liability on behalf of defendants generally on the basis of the delay between plaintiff's NST and BPP and between plaintiff's presentation in the Labor and Delivery Unit and plaintiff's C-section. The complaint alleged that these delays were a direct and proximate cause of GT's neurological deficits and that, but for the breaches of the standards of care by all defendants, GT would not have been deprived of treatment that likely would have prevented or ameliorated his catastrophic injuries.

As discovery progressed, plaintiff moved for leave to file a first amended complaint under MCR 2.118(A)(2), (C)(1), and (D). Plaintiff's motion stated that additional evidence was uncovered during discovery that necessitated amending the complaint to include additional claims of liability, including claims of ordinary negligence against Spectrum and John/Jane Doe Ultrasound Technician (John/Jane Doe), a new defendant. Plaintiff's motion alleged new facts that were pertinent to her claims, including that Dr. Brandt ordered the BPP on a STAT basis at 4:12 p.m. on December 15, 2014, but the test was not conducted until 7:30 p.m.; that the ultrasound technician did not report the BPP interpretation to the radiologist on call until 8:15 p.m.;

² The documents used to initiate this appeal identify the surname for this party as "Bourdro." But this surname is also repeatedly noted as "Boudro" in the record. For consistency, we will refer to this party in this opinion using the spelling "Bourdro."

that the radiologist's review of the BPP was completed at approximately 8:30 p.m.; and that plaintiff's initial fetal heart monitoring commenced at 8:53 p.m., which evidenced persistent minimal variability and indicia of nonreassurance and fetal nonwell-being.

Defendants opposed this motion, noting that plaintiff failed to set forth what additional evidence was unearthed during discovery that necessitated the filing of an amended complaint. Defendants also argued that plaintiff's proposed additional claim against John/Jane Doe was labeled as ordinary negligence, but sounded in medical malpractice, which required the filing of an amended notice of intent (NOI). Defendants further argued that plaintiff's additional theories of liability would not allow sufficient time to complete required discovery.

The trial court denied plaintiff's motion for leave to file a first amended complaint, stating "I think it would prejudice the defense." Notably, the trial court only mentioned that discovery would be closing in two months, but made no specific articulation of how granting plaintiff's motion would prejudice defendants.

Plaintiff moved for reconsideration, arguing that MCR 2.118(A)(2) stated that such motions should be freely granted when justice so requires and that the additional claims addressed specific elements of the delay in plaintiff's care that came to light only during the course of discovery. Plaintiff also noted that the trial court, at the hearing on plaintiff's motion to amend and other motions, had already extended discovery for an additional 90 days and that, therefore, no prejudice would come to defendants. The trial court denied plaintiff's motion, reasoning that plaintiff failed to demonstrate "a palpable error by which the court and the parties have been misled."

This appeal followed.

II. ANALYSIS

Plaintiff argues that the trial court abused its discretion by denying her motion for leave to file a first amended complaint and her motion for reconsideration. We agree.

We review a trial court's decision regarding both a plaintiff's motion to amend the pleadings and motion for reconsideration for an abuse of discretion. *Sanders v Perfecting Church*, 303 Mich App 1, 8-9; 840 NW2d 401 (2013). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Woodman v Dep't of Corrections*, 511 Mich 427, 439; 999 NW2d 463 (2023).

Although the decision to grant or deny leave to amend a complaint is within the trial court's discretion, that discretion "is not boundless." *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 658; 213 NW2d 134 (1973). Pursuant to MCR 2.118(A)(2), "[a] trial court should freely grant leave to amend a complaint when justice so requires." *Sanders*, 303 Mich App at 9. Indeed, "[t]he rules pertaining to the amendment of pleadings are designed to facilitate amendment," and, therefore, "amendment is generally a matter of right rather than grace." *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006). Accordingly, a motion should only be denied for particularized reasons, including: "(1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance

of the amendment, or (5) futility of the amendment.” *Wolfenbarger v Wright*, 336 Mich App 1, 19; 969 NW2d 518 (2021) (quotation marks and citation omitted).

Our Supreme Court has explained that prejudice “in this context does not mean that the allowance of the proffered amendment may cause the opposing party to ultimately lose on the merits.” *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997). Rather, there is prejudice “if the amendment would prevent the opposing party from receiving a fair trial,” such as, “for example, the opposing party would not be able to properly contest the matter raised in the amendment because important witnesses have died or necessary evidence has been destroyed or lost.” *Id.* Further, “[a]bsent bad faith or actual prejudice to the opposing party, delay, alone, does not warrant denial of a motion to amend.” *Lane v KinderCare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

“The trial court must specify its reasons for denying leave to amend, and the failure to do so requires reversal unless the amendment would be futile.” *PT Today, Inc*, 270 Mich App at 143. “An amendment would be futile (1) if ignoring the substantive merits of the claim, it is legally insufficient on its face; (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction.” *Id.* (citations omitted).

In this case, the trial court denied plaintiff’s motion for leave to file a first amended complaint because it believed that granting such a motion “would prejudice the defense.” However, the trial court did not specify how plaintiff’s amendment to her complaint would prejudice the defense. This is problematic because defendants argued that prejudice would exist for three separate reasons: (1) plaintiff’s additional claim against John/Jane Doe was improperly labeled as an ordinary negligence claim when it actually sounded in medical malpractice, thereby requiring a new NOI and additional expert testimony; (2) plaintiff’s additional theories of liability would not allow sufficient time to complete required discovery; and (3) plaintiff was in possession of her medical records before initiating the lawsuit, meaning she had the opportunity to uncover the claim against John/Jane Doe and should have included the claim in her original complaint. All three reasons proposed by defendants required further explanation by the court rather than a blanket statement that prejudice would occur if amendment of plaintiff’s pleadings was allowed.

For example, as to defendants’ first argument for prejudice, it must be ascertained whether plaintiff’s new claim against John/Jane Doe sounds in ordinary negligence or medical malpractice. The trial court made no such finding. As further example, concerning defendant’s second argument, the record reflects that no trial date had been set in the case and the trial court extended discovery by an additional 90 days to ensure that plaintiff received all requested discovery from defendants. The trial court made no statement concerning the effect of the extension of discovery on a finding of prejudice. Where the trial court failed to thoroughly articulate on the record its reasoning for denying plaintiff’s motion for leave to file a first amended complaint, this Court is unable to determine whether the trial court abused its discretion by denying plaintiff’s motion and, in turn, by denying her motion for reconsideration. We thus reverse the trial court’s orders and remand this issue to the trial court. On remand, the trial court should either grant plaintiff’s motion for leave to file a first amended complaint or articulate on the record the particularized reasons it

is denying such motion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brock A. Swartzle

/s/ Deborah A. Servitto

/s/ Kristina Robinson Garrett