

FILED

AUGUST 14, 2012

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

SANDRA TAYLOR,)	No. 29911-2-III
)	
Appellant,)	
)	
v.)	
)	
DR. BRENT MAUGHAN and)	UNPUBLISHED OPINION
DEACONESS HOSPITAL,)	
)	
Respondents.)	
)	

Kulik, J. — Sandra Taylor suffered a sustained illness after Dr. Brent Maughan delivered Ms. Taylor’s child in February 2008. In August 2010, Ms. Taylor sued Dr. Maughan and Deaconess Hospital for medical negligence. The trial court granted summary judgment in favor of Dr. Maughan and Deaconess, finding that Ms. Taylor failed to present expert testimony to support her prima facie case. Ms. Taylor appeals. Because Ms. Taylor failed to meet her burden to defeat summary judgment, we affirm the decision of the trial court.

FACTS

On February 27, 2008, Dr. Brent Maughan delivered Ms. Taylor's child by cesarean section at Deaconess Hospital. Ms. Taylor was discharged in good condition with no complications.

For five months after the delivery, Ms. Taylor suffered from an undiagnosed and untreated uterine infection. She contends that she repeatedly called Dr. Maughan's office for assistance and that Dr. Maughan and his staff dismissed her. Dr. Maughan and Ms. Taylor ended their doctor-patient relationship on August 18.

Ms. Taylor obtained counsel by September 23 and contacted Dr. Maughan and Deaconess. She alleged that Dr. Maughan breached his standard of care under RCW 7.70.030 (burden of proof in actions for damages resulting from health care) and that Deaconess negligently supervised Dr. Maughan. Upon Deaconess's request, Ms. Taylor provided Deaconess with the facts surrounding the negligent supervision claim. On October 29, 2008, Deaconess asked for a certificate of merit from a qualified expert to substantiate the claim.¹ There is no evidence that Ms. Taylor produced the certificate

¹ From June 2006 until September 17, 2009, former RCW 7.70.150 required a plaintiff to obtain a certificate of merit by a competent expert as a prerequisite to filing a medical negligence case. The Washington Supreme Court struck down the certificate of merit requirement in 2009. *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 216

of

merit or corresponded with either party after that date.

PROCEDURAL HISTORY

Almost two years later, on August 13, 2010, Ms. Taylor filed suit against Dr. Maughan and Deaconess. In her complaint, Ms. Taylor alleged that Dr. Maughan committed medical negligence by failing to exhibit the standard of care required of a reasonably prudent medical provider under RCW 7.70.030(1) and RCW 7.70.040. She also alleged that Deaconess committed corporate negligence by failing to supervise Dr. Maughan. Because Dr. Maughan and Deaconess pursued their cases individually, the procedural history relating to Dr. Maughan and Deaconess differs. Thus, the procedural history of each will be addressed separately.

Dr. Maughan. Ms. Taylor served Dr. Maughan on November 18. On December 16, Ms. Taylor contacted an expert. The expert reviewed Dr. Maughan's records in January. The expert shifted his belief from an insufficient standard of care to a failure of Dr. Maughan's staff to inform Dr. Maughan of the infection.

Dr. Maughan filed for summary judgment on January 28, 2011, and scheduled a hearing for March 11. On February 23, Ms. Taylor responded to the summary judgment

P.3d 374 (2009).

motion with her own declaration and declarations from her ex-husband and sister as evidence that Dr. Maughan's treatment fell below the standard of care. She contended that expert testimony was not necessary to defeat summary judgment under the facts of her case. In the alternative, Ms. Taylor requested a continuance of the summary judgment hearing under CR 56(f) to review the extensive medical records. Ms. Taylor contended that Dr. Maughan's request for summary judgment was prematurely rushing her through the discovery process.

A few days before the hearing, Ms. Taylor supplemented her request for a continuance. She noted that an expert was currently reviewing the file to determine if Dr. Maughan's treatment fell below the applicable standard of care. Ms. Taylor also filed the declaration of nursing liability expert Natalie Mohammed RN and the declaration of corporate liability expert Brian Heller PhD.

The trial court heard Ms. Taylor's motion for a continuance and Dr. Maughan's motion for summary judgment on March 11. Ms. Taylor stated that she was still in the process of exploring expert opinion regarding Dr. Maughan's treatment. However, Ms. Taylor also acknowledged that she was unsure she would be able to find a physician who was willing and able to render the necessary testimony to support a prima facie claim. Both the trial court and Ms. Taylor agreed that the declaration of the nurse and the

corporate liability expert addressed the liability of Deaconess, and that the nurse was not competent to critique the standard of care of a doctor.

The trial court denied Ms. Taylor's motion for a continuance. The court found that Ms. Taylor did not identify a good reason for the delay in obtaining an expert witness evaluation of Dr. Maughan's standard of care and that Ms. Taylor did not establish that further discovery would produce the specific evidence needed to raise a genuine issue of material fact.

The trial court also granted summary judgment in favor of Dr. Maughan. The trial court found that Ms. Taylor failed to present expert testimony of a competent doctor of obstetrics/gynecology to define the applicable standard of care relative to Dr. Maughan.

Ms. Taylor filed a motion for reconsideration of both decisions. She admitted that dismissal on the negligent standard of care claim was appropriate, but also contended that the expert opinion of Ms. Mohammed and Mr. Heller raised a genuine issue of material fact that Dr. Maughan failed to supervise his staff. She requested that the court clarify the order granting summary judgment to acknowledge that her case could proceed against Dr. Maughan for failing to supervise his staff and to allow time for investigation. Even though her complaint against Dr. Maughan did not allege failure to supervise, she contended that the claim should be allowed under the liberal pleading rules or,

alternatively, the court should allow her to amend her complaint until the court-imposed cutoff date of May 23.

The trial court denied the motion for reconsideration, without oral argument, on April 14. The court determined that there was insufficient cause shown in the briefing to alter the court's decision.

Deaconess. On November 29, over three months after Ms. Taylor filed her lawsuit, Deaconess requested summary judgment. Deaconess contended that Ms. Taylor did not establish a prima facie case of medical or corporate negligence. In response, on January 3, 2011, Ms. Taylor requested additional time under CR 56(f) in order to procure expert declarations. Ms. Taylor did not serve a discovery request on Deaconess until January 4. She served two more requests around January 14 and January 18.

At the summary judgment hearing on January 21, the trial court was troubled by Ms. Taylor's failure to prioritize discovery in light of the potentially fatal summary judgment request by Deaconess. The trial court was concerned that Ms. Taylor waited five months to request the identity of individuals with information and that Ms. Taylor failed to give a good reason for her delayed response to the summary judgment motion. The trial court stated that if it was to review the motion on the merits, the motion would likely be granted. However, due to problems that arose with the sequencing of the

hearing, the trial court continued the summary judgment hearing for one month to give each party the opportunity to address the motion on the merits. The trial court set the next hearing for February 25 and stated it would be making a decision on the merits of the motion. The trial court also ordered Deaconess to provide answers to the interrogatories by February 17 and stated that it would address discovery issues at the February 25 hearing, if needed.

Ms. Taylor filed a motion for reconsideration, asserting that the trial court's order was inconsistent with its oral ruling. The trial court denied the motion for reconsideration.

Deaconess served its answers on February 17. Two days prior to the February 25 hearing, Ms. Taylor requested another CR 56(f) continuance because her expert had not provided a declaration and because Deaconess offered insufficient answers to the interrogatories.

On February 25, the trial court rejected Ms. Taylor's motion for a continuance because she failed to provide evidence that she contacted an expert, despite having knowledge that the declaration would be needed by the date of the hearing. Additionally, the trial court declined to continue the summary judgment hearing for potential discovery violations because Ms. Taylor failed to file a motion to compel discovery of the

interrogatories. Ultimately, the trial court granted summary judgment in favor of Deaconess.

As previously mentioned, Ms. Taylor filed the declarations of Ms. Mohammed and Mr. Heller on March 7. Both experts concluded that Deaconess failed to meet the standard of care required of a hospital.

On March 15, Ms. Taylor moved for reconsideration of the order granting summary judgment in favor of Deaconess. She asked the court to reconsider its decision on the presentment order. On April 14, the trial court denied Ms. Taylor's motion for reconsideration, without oral argument.

Motion to Amend the Complaint Against Both Parties. On April 29, Ms. Taylor filed a motion to amend her complaint. The amended complaint asserted a corporate negligence claim against Dr. Maughan for failure to supervise. She also restated her claim against Deaconess. Ms. Taylor contended that Dr. Maughan and Deaconess had notice of the factual basis of the claims and that she should be able to amend her complaint to conform to the evidence given by the experts.

The trial court denied Ms. Taylor's motion, finding (1) that the order denying Ms. Taylor's motion for reconsideration on April 14 dismissed the causes of action against Dr. Maughan and Deaconess, (2) that the requested amendments to the complaint were

addressed through the order on reconsideration, and (3) that no basis could be established through a court rule that would allow Ms. Taylor to amend her complaint or revise the court's decision.

Ms. Taylor appeals the trial court's decision granting summary judgment in favor of Dr. Maughan and Deaconess and the related orders.

ANALYSIS

I. CONTINUANCES

Standard of Review. A trial court's decision on a motion for a continuance will not be disturbed on appeal absent an abuse of discretion. *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). An abuse of discretion results when the trial court's decision is manifestly unreasonable or based on untenable grounds or for untenable reasons. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010) (quoting *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)).

A trial court's denial of a motion for reconsideration is also reviewed for an abuse of discretion. *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 497, 183 P.3d 283 (2008) (quoting *Kleyer v. Harborview Med. Ctr. of Univ. of Wash.*, 76 Wn. App. 542, 545, 887 P.2d 468 (1995)).

CR 56(f) allows for a continuance when a party knows the existence of a material

witness and shows why they cannot obtain the witness affidavits in time for the summary judgment proceeding. *Turner*, 54 Wn. App. at 693. If the party who requests the continuance can make such a showing, the trial court's duty is to allow the party a reasonable opportunity to complete the record before deciding on the summary judgment motion. *Id.* "The trial court may, however, deny a motion for continuance where: (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact." *Id.*

A party seeking a continuance under CR 56(f) must submit an affidavit or affidavits setting forth the evidence the party seeks and how it will preclude summary judgment. *Durand v. HIMC Corp.*, 151 Wn. App. 818, 828, 214 P.3d 189 (2009). The affidavit must also state why additional time is necessary. *Briggs v. Nova Servs.*, 135 Wn. App. 955, 961, 147 P.3d 616 (2006), *aff'd*, 166 Wn.2d 794, 213 P.3d 910 (2009). Justice is the primary concern of the trial court in a motion for a continuance. *Butler v. Joy*, 116 Wn. App. 291, 299, 65 P.3d 671 (2003) (quoting *Coggle v. Snow*, 56 Wn. App. 499, 508, 784 P.2d 554 (1990)).

Motions for reconsideration may be granted by the trial court for (1) irregularities

in the proceedings by which a party was prevented from having a fair trial, (2) accident or surprise that ordinary prudence could not have guarded against, or (3) newly discovered evidence that could not have been discovered before the court ruled. CR 59(a). In the context of summary judgment, a court may consider additional facts in deciding a motion for reconsideration. *Chen v. State*, 86 Wn. App. 183, 192, 937 P.2d 612 (1997).

In general, an issue may be raised in a motion for reconsideration when the issue is closely related to an issue previously raised and no new evidence is required. *August v. U.S. Bancorp*, 146 Wn. App. 328, 347, 190 P.3d 86 (2008). Nonetheless, in a motion for reconsideration, a plaintiff cannot propose new case theories that could have been raised before entry of an adverse decision. *Wilcox v. Lexington Eye Inst.*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005).

On different occasions, Ms. Taylor requested continuances in her action against Dr. Maughan and Deaconess. We address each request for a continuance separately.

Dr. Maughan. The trial court did not abuse its discretion by denying Ms. Taylor's motion to continue in her action against Dr. Maughan. The trial court determined that Ms. Taylor had not exercised diligence in retaining an expert. The trial court was also concerned with the difficulty that Ms. Taylor was having in finding an expert, especially since she should have consulted an expert in August 2008 when she first notified

Deaconess of the potential lawsuit to support her reasonable belief that her lawsuit was justified. The trial court did not have assurances by Ms. Taylor that an expert could be found to support her prima facie case. Because Ms. Taylor did not offer a good reason for the delay in obtaining an expert opinion and because she did not know of the existence of an expert whose testimony would raise a material issue of fact as to the standard of care, the trial court did not abuse its discretion by denying Ms. Taylor's motion for a continuance.

Ms. Taylor's contention that the evolving nature of the case justified the need for a continuance is also unpersuasive. Ms. Taylor maintains that the failure to supervise claim against Dr. Maughan could not have been discovered earlier in the case. However, over two months before summary judgment was granted, Ms. Taylor discovered the failure to supervise claim through her expert. Yet, Ms. Taylor failed to act on this new information. The failure to supervise issue did not justify a continuance because Ms. Taylor had sufficient opportunity to further explore this potential claim before summary judgment.

Deaconess. The trial court did not abuse its discretion by signing the order prepared by Deaconess that continued the summary judgment hearing to February 25. The written order did not deviate from the court's oral ruling on January 21. The trial

court said that it wanted to make a decision on the merits at the next hearing, but would consider discovery issues if presented. The written order correctly reflected the trial court's intent to continue the hearing.

While the written order did not contain the February 17 deadline for Deaconess to respond to the discovery requests, such information was not needed. Under court rules, Deaconess had an obligation to answer the interrogatories within 30 days of being served, resulting in a February 17 deadline. The obligation was still present regardless of whether it was included in the order. Furthermore, even if the written order did not address a continuance for potential discovery violations, the trial court corrected any error by discussing at the February hearing whether discovery was completed on time and whether Ms. Taylor should be allowed extra time to gather testimony from an expert witness.

The trial court did not abuse its discretion by signing the order that continued Deaconess's summary judgment hearing or by denying Ms. Taylor's motion for reconsideration.

Certificate of Merit Contention. We are not persuaded by Ms. Taylor's contention that the denial of her motion to continue early in the proceedings is identical to requiring her to obtain a certificate of merit. "The certificate of merit requirement essentially

requires plaintiffs to submit evidence supporting their claims before they even have an opportunity to conduct discovery and obtain such evidence.” *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 983, 216 P.3d 374 (2009). In *Putman*, the Washington Supreme Court struck down the certificate of merit requirement in former RCW 7.70.150 because the requirement unconstitutionally limited a person’s access to the courts and violated the separation of powers. *Putman*, 166 Wn.2d at 985.

Putman did not change the general rule that an expert declaration is needed to defeat summary judgment. Ms. Taylor sued both parties and then conducted discovery. She had notice that she would be required to present expert testimony to create a material issue of fact. Over six months passed between the filing of the lawsuit and the first summary judgment order. Because Ms. Taylor failed to produce the necessary expert opinion, dismissal at this stage in the proceeding was appropriate.

II. SUMMARY JUDGMENT

Standard of Review. An appellate court reviews an order of summary judgment de novo. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is appropriate when 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.” CR 56(c). “A material fact is of such a nature that it affects the outcome of the litigation.” *Ruff v.*

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County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). Factual issues may be decided as a matter of law when reasonable minds could reach but one conclusion or when the factual dispute is so remote it is not material. *Ruffer v. St. Frances Cabrini Hosp. of Seattle*, 56 Wn. App. 625, 628, 784 P.2d 1288 (1990) (quoting *Trane Co. v. Brown-Johnston, Inc.*, 48 Wn. App. 511, 513, 739 P.2d 737 (1987)).

The reviewing court considers the facts and inferences from the facts in the light most favorable to the nonmoving party. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). The facts set forth must be specific and detailed. *Sanders v. Woods*, 121 Wn. App. 593, 600, 89 P.3d 312 (2004). The nonmoving party may not rely on mere speculation or unsupported assertions, facts not contained in the record, or inadmissible hearsay. *Higgins v. Stafford*, 123 Wn.2d 160, 169, 866 P.2d 31 (1994) (quoting *Peterick v. State*, 22 Wn. App. 163, 181, 589 P.2d 250 (1977), *overruled on other grounds by Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 709 P.2d 793 (1985)).

“In a medical negligence case, the defendant may move for summary judgment based on absence of competent medical evidence to establish a prima facie case.” *Colwell v. Holy Family Hosp.*, 104 Wn. App. 606, 611, 15 P.3d 210 (2001). The burden then shifts to the plaintiff to produce expert testimony to establish the standard of care

and causation. *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 25, 851 P.2d 689 (1993).

If the plaintiff fails to produce competent expert testimony, the defendant is entitled to summary judgment. *Colwell*, 104 Wn. App. at 611. The standard of care must be established by experts who practice in the same field. *Seybold v. Neu*, 105 Wn. App. 666, 679, 19 P.3d 1068 (2001) (quoting *McKee v. Am. Home Prods. Corp.*, 113 Wn.2d 701, 706, 782 P.2d 1045 (1989)). A witness is competent to testify as an expert if he or she possesses the knowledge, skill, experience, training, or education to assist the trier of fact. ER 702.

RCW 7.70.030(1) requires a plaintiff to establish that his or her injury resulted from the failure of a health care provider to follow the accepted standard of care. “To prevail on a claim of medical negligence, the plaintiff must prove that the defendant health care provider ‘failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances’ and ‘[s]uch failure was a proximate cause of the injury complained of.’” *Davies*, 144 Wn. App. at 492 (quoting former RCW 7.70.040 (1983)).

A corporate liability claim is distinct from the claim of malpractice by the doctor. *Douglas v. Freeman*, 117 Wn.2d 242, 252, 814 P.2d 1160 (1991). Under the doctrine of

corporate negligence in a medical case, a hospital owes a duty to its patients to select employees with reasonable care and to supervise all persons who practice medicine within its walls. *Id.* at 248. Hospitals can be liable for the negligent performance of a physician who is given privileges at that hospital. *Pedroza v. Bryant*, 101 Wn.2d 226, 230-31, 677 P.2d 166 (1984).

In *Vant Leven v. Kretzler*, 56 Wn. App. 349, 783 P.2d 611 (1989), Dr. Kretzler set forth a detailed statement describing his treatment of Ms. Vant Leven and moved for summary judgment three weeks after Ms. Vant Leven served interrogatories. *Id.* at 350-51. The case had been pending for 21 months before the interrogatories were served. *Id.* at 353. Ms. Vant Leven maintained that summary judgment was not appropriate because discovery was still incomplete and Dr. Kretzler's answers to the interrogatories were needed before an expert would give an opinion. *Id.* at 351. Ms. Vant Leven's expert submitted an affidavit stating that he was willing to render an opinion as to whether Dr. Kretzler violated the standard of care, but that the expert first needed additional records and to review depositions. *Id.* The trial court granted summary judgment in favor of Dr. Kretzler, concluding that Ms. Vant Leven failed to produce expert testimony to rebut summary judgment. *Id.* The Court of Appeals affirmed, noting that Ms. Vant Leven did not offer a good reason for the delay or state what evidence she would establish through

further discovery. *Id.* at 354.

In *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 491, 933 P.2d 1036 (1997), the trial court excluded testimony on a negligent credentialing claim because it determined that the Burnets did not properly plead the claim. Before being heard by the Supreme Court, the Court of Appeals determined that the Burnets properly pleaded the claim, but that the trial court appropriately barred the claim as a sanction to the Burnets' noncompliance with a scheduling order. *Id.* at 491-93. The Supreme Court disagreed with the sanction, concluding that limiting discovery and precluding testimony on the claim was not a justifiable response to the discovery violation. *Id.* at 497.

In this case, the trial court granted summary judgment in favor of Dr. Maughan and Deaconess at separate hearings. We address each order of the trial court individually.

Dr. Maughan. The trial court properly granted summary judgment in favor of Dr. Maughan. Ms. Taylor did not offer declarations of expert opinion needed to establish her prima facie case. The declarations of Ms. Taylor, Ms. Taylor's family, and the nurse were insufficient because these persons did not possess the knowledge or skill of a practicing physician. The declaration of the corporate liability expert was also insufficient because it did not address Dr. Maughan's standard of care. The trial court did not err in granting summary judgment.

The trial court also did not abuse its discretion when it denied Ms. Taylor's motion for reconsideration of the summary judgment order. She did not present new evidence about her standard of care claim that would justify reconsideration. Instead, in her motion for reconsideration, Ms. Taylor attempted to raise a new issue of failure to supervise. Ms. Taylor knew of the failure to supervise issue and had the opportunity to raise the new issue before the summary judgment decision. Therefore, it was not abuse of discretion for the trial court to deny the motion for reconsideration.

Even if the trial court had concluded that the failure to supervise claim was closely related to the standard of care claim, Ms. Taylor did not present evidence to support a failure to supervise claim that would justify granting the motion for reconsideration. The expert opinions of Ms. Mohammed and Mr. Heller were not adequate to address Dr. Maughan's failure to supervise his staff.

Deaconess. The trial court properly granted summary judgment in favor of Deaconess. Ms. Taylor failed to present expert opinion that would establish the standard of care for a hospital. The declarations of the nurse and the corporate liability expert had no bearing on the summary judgment proceeding because the declarations were not in existence when the trial court heard Deaconess's summary judgment motion. Therefore, based on the evidence available to the trial court at the time of the hearing, the trial court

appropriately granted summary judgment in favor of Deaconess.

The trial court did not abuse its discretion by denying Ms. Taylor's motion for reconsideration of the summary judgment order in favor of Deaconess. Ms. Taylor presented expert opinions of the nurse and the corporate liability expert as evidence to overcome summary judgment in her motion for reconsideration. However, Ms. Taylor had the opportunity to discover this evidence before the trial court granted summary judgment in favor of Deaconess. Also, the trial court's denial of Ms. Taylor's second motion to continue did not create an irregularity justifying reconsideration.

We note that Ms. Taylor's lawsuit against Dr. Maughan and Deaconess is distinguishable from *Burnet*. Here, the trial court did not sanction Ms. Taylor by excluding testimony. There was no testimony. Ms. Taylor failed to produce the expert testimony necessary to defeat summary judgment. The trial court did not bar the testimony but, instead, requested the testimony from Ms. Taylor.

Instead, Ms. Taylor's case against Deaconess resembles *Vant Leven*. Ms. Taylor had two years to obtain an expert opinion after she first informed Dr. Maughan and Deaconess of potential liability. And, after she filed the complaint, Ms. Taylor had over six months to find an expert to substantiate her claim. Ms. Taylor failed to present an expert to defeat summary judgment. She also failed to offer a good reason for the delay

in finding an expert or state what evidence she would establish through further discovery in order to qualify for a continuance.

The trial court appropriately granted summary judgment in favor of Dr. Maughan and Deaconess. Additionally, the trial court did not abuse its discretion by denying Ms. Taylor's motions for reconsideration.

III. MOTION TO AMEND COMPLAINT

A trial court's denial of a motion to amend pleadings is reviewed for an abuse of discretion. *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 278, 191 P.3d 900 (2008).

CR 15(a) allows a party to amend a pleading by leave of the court, which should be freely given when justice so requires. "When a motion to amend is made after the adverse granting of summary judgment, the normal course of proceedings is disrupted and the trial court should consider whether the motion could have been timely made earlier in the litigation." *Doyle v. Planned Parenthood of Seattle-King County, Inc.*, 31 Wn. App. 126, 130-31, 639 P.2d 240 (1982). A trial court appropriately denies a motion to amend if the amended claim is duplicative or futile. *Nakata*, 146 Wn. App. at 278.

The trial court did not abuse its discretion by denying Ms. Taylor's motion to amend her complaint because the complaint against Dr. Maughan and Deaconess had

been dismissed on April 14.² Even if the cause of action still existed, the trial court appropriately denied Ms. Taylor's motion to amend her claim against Deaconess because Ms. Taylor simply restated her original claim of corporate negligence.

As for Dr. Maughan, Ms. Taylor had the opportunity and the factual basis earlier in the litigation to amend her claim against him. The first expert opinion obtained by Ms. Taylor in January stated that Dr. Maughan negligently failed to supervise his staff. Ms. Taylor admitted that this was a possible cause of action. Still, Ms. Taylor failed to amend her complaint at that time. As a result, the trial court did not abuse its discretion by denying Ms. Taylor's motion to amend her complaint.

We affirm summary judgment in favor of Dr. Maughan and Deaconess.

A majority of the panel has determined this opinion will not be printed in the

² While the trial court's order denying reconsideration does not identify Ms. Taylor's motion against Deaconess, the trial court specifically mentions that it reviewed Deaconess's response to Ms. Taylor's motion for reconsideration and Ms. Taylor's reply to Deaconess. In the subsequent order on the motion to amend the complaint, the trial court stated that the order denying reconsideration applied to the motions against Dr. Maughan and Deaconess.

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Washington Appellate Reports, but it will be filed for public record pursuant to
RCW 2.06.040.

Kulik, J.

WE CONCUR:

Sweeney, J.

Siddoway, A.C.J.