

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA SCHAIBLE, as conservator for
ADRIANA ELAINE HOBBS, a minor,

Plaintiff-Appellant,

v

JACQUELYN A. ROBINSON, M.D., and VALLEY
OB-GYN CLINIC, PC,

Defendants-Appellees,

and

IVAN TRINH, M.D., JENNIFER L.
LANGSCHWAGER, R.N., CASSANDRA K.
LANGE, R.N., COVENANT MEDICAL CENTER,
INC., and COVENANT HEALTHCARE SYSTEM,

Defendants.

Before: CAVANAGH, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

In this medical negligence action, the minor plaintiff, through her conservator and mother, appeals by right the trial court’s order granting defendants Jaquelyn A. Robinson, M.D., and Valley OB-GYN Clinic¹ summary disposition under MCR 2.116(C)(8) (failure to state a claim on which relief may be granted) and (10) (no genuine issue of material fact), and the trial court’s order denying plaintiff’s second emergency motion to adjourn trial. We reverse, vacate the trial court’s June 14, 2019 order denying plaintiff’s second emergency motion to adjourn trial and the trial

¹ The other defendants were dismissed with prejudice by stipulation. “Defendants” as used in this opinion refers to Dr. Robinson and Valley OB-GYN unless otherwise indicated.

court's June 14, 2019 order granting summary disposition in favor of defendants, and remand for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff suffered a serious shoulder injury during her birth. Plaintiff's mother subsequently brought this action against the doctors and healthcare provider that assisted in the birth of plaintiff. Trial was originally scheduled for January 3, 2019. Plaintiff's counsel, however, failed to provide the required discovery and did not provide its sole medical expert witness, Dr. Michael Hall, for a deposition in a timely manner. The trial court entered an order sanctioning plaintiff's counsel, and rescheduled trial for the end of May 2019. The trial court also reopened discovery until December 31, 2018. Defendants brought a motion to dismiss in December 2018 because plaintiff had still not provided Dr. Hall for a deposition. The trial court took that motion under advisement, and the case was not dismissed. Dr. Hall's deposition was taken in January 2019.

Plaintiff claims that a few days before trial, Dr. Hall e-mailed plaintiff's attorney and told plaintiff's attorney that his employer would not allow him to testify at trial. Plaintiff filed a motion to adjourn, and then filed a second motion to adjourn. Defendants filed a motion to dismiss. A hearing was held to hear argument on both motions, and the trial court denied plaintiff's motion to adjourn and granted defendants' motion to dismiss. This appeal followed.

II. STANDARD OF REVIEW

The trial court's ruling on a motion to adjourn is reviewed for abuse of discretion. *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 27; 930 NW2d 393 (2018). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Ronnisch Constr Group, Inc v Lofts On The Nine, LLC*, 306 Mich App 203, 208; 854 NW2d 744 (2014), *aff'd* 499 Mich 544 (2016). A motion for summary disposition under MCR 2.116(C)(8) is appropriately granted when the complaint is not legally sufficient, while a motion for summary disposition under MCR 2.116(C)(10) is appropriately granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). The trial court's decision to grant a summary disposition motion is reviewed de novo. *Id.* at 118.

III. ANALYSIS

Plaintiff first argues on appeal that the trial court abused its discretion by denying her emergency motion to adjourn trial. We agree.

Adjournments based on the unavailability of a witness are governed by MCR 2.503(C), and MCR 2.503(D)(1) governs the trial court's order:

(C) Absence of Witness or Evidence.

(1) A motion to adjourn a proceeding because of the unavailability of a witness or evidence must be made as soon as possible after ascertaining the facts.

(2) An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence.

(3) If the testimony or the evidence would be admissible in the proceeding, and the adverse party stipulates in writing or on the record that it is to be considered as actually given in the proceeding, there may be no adjournment unless the court deems an adjournment necessary.

(D) Order for Adjournment; Costs and Conditions.

(1) In its discretion the court may grant an adjournment to promote the cause of justice. An adjournment may be entered by order of the court either in writing or on the record in open court, and the order must state the reason for the adjournment.

In denying plaintiff's motion to adjourn trial, the trial court articulated that up until this point, plaintiff had lacked diligence in conducting discovery and that this case had gone on long enough. Indeed, plaintiff had a history of being non-compliant with discovery in this case, and had not timely obtained Dr. Hall's testimony to begin with. Plaintiff's counsel admitted to doing poor work on this case, and plaintiff was sanctioned by the trial court. Even so, plaintiff continued to be less than diligent with respect to discovery.

However, with respect to Dr. Hall's sudden unavailability, plaintiff's motion to adjourn was filed as soon as plaintiff was made aware that Dr. Hall's employer was preventing him from testifying at trial. Dr. Hall first notified plaintiff's counsel of his unavailability on May 23, 2019 at 11:04 a.m. via e-mail. Dr. Hall's e-mail indicated that his employer's risk management team had identified a potential conflict in this case and could not approve Dr. Hall's request to serve as an expert witness. Plaintiff's counsel spoke with Dr. Hall personally around 5:00 p.m. on May 23, 2019, and Dr. Hall confirmed his unavailability. Plaintiff's counsel filed the motion to adjourn the following day – May 24, 2019 – and attached Dr. Hall's e-mail correspondence as Exhibit A.

On the basis of the foregoing, we conclude that the trial court did abuse its discretion in denying plaintiff's motion to adjourn. While the trial court's frustrations with plaintiff's prior failures to act diligently with conducting discovery in this case are understandable and warranted, Dr. Hall's sudden unavailability was of no fault of plaintiff, and to deny plaintiff's timely motion to adjourn on this basis would result in prejudice to plaintiff and falls outside the range of reasonable and principled outcomes.

For the same reasons, we conclude that the trial court erroneously granted summary disposition in favor of defendants. Admittedly, a plaintiff in a medical malpractice action must present an expert witness at trial to testify concerning the standard of care, the breach of the standard of care, and the issue of causation. *Kalaj v Khan*, 295 Mich App 420, 429; 828 NW2d 223 (2012). Additionally, Dr. Hall was plaintiff's sole medical expert witness, and without his testimony plaintiff would be unable to sustain this action. However, the trial court abused its discretion by denying plaintiff's motion to adjourn brought based on Dr. Hall's sudden unavailability, and should have granted plaintiff a reasonable, yet finite, amount of time to find a new expert witness and expeditiously dispose that witness. If plaintiff were to be unable to find a

new expert witness, or failed to conduct limited discovery in a timely manner, then the trial court could explore options such as sanctions against plaintiff, costs and attorney fee awards in favor of defendants, or a renewed motion for summary disposition. To have done so at this junction, however, was premature.

We reverse, vacate the trial court's June 14, 2019 order denying plaintiff's second emergency motion to adjourn trial and the trial court's June 14, 2019 order granting summary disposition in favor of defendants, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Douglas B. Shapiro