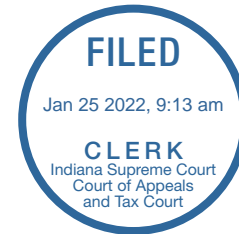


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT *PRO SE*

Roland Hamilton
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ATTORNEY FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Roland Hamilton, as Personal
Representative of the Estate of
Helen Hamilton

Appellant–Plaintiff,

v.

Anonymous M.D. 1,
Anonymous NP, Anonymous
M.D. 2, Anonymous Hospital,
and Anonymous Practice Group

Appellees–Defendants.

January 25, 2022

Court of Appeals Case No.
21A-MI-869

Appeal from the Marion Superior
Court

The Honorable Patrick J. Dietrick,
Judge

Trial Court Cause No.
49D12-1612-MI-42969

Bradford, Chief Judge.

Case Summary

- [1] On November 12, 2015, Roland Hamilton, as the personal representative of the Estate of Helen Hamilton (“Mrs. Hamilton”), filed a proposed complaint against Anonymous M.D. 1, Anonymous M.D. 2, Anonymous NP, Anonymous Hospital (“Hospital”), and Anonymous Practice Group (collectively “the Defendants”), with the Indiana Department of Insurance (“IDOI”) as required by the Indiana Medical Malpractice Act. Following a unanimous opinion by the Medical Review Panel that there had been no breach of the standard of care of Mrs. Hamilton, Hamilton filed a complaint for damages in the trial court. Anonymous Hospital (“Hospital”) moved for summary judgment. Hamilton filed a response on October 30, 2019, designating affidavits of Nizar Suleman, M.D., and Pamela Noel, M.D., who opined that the Defendants had breached the standard of care. On September 18, 2020, after failing to remedy numerous discovery violations, Hamilton was barred from using this expert testimony until he complied with court orders.
- [2] On November 3, 2020, Anonymous M.D. 2 moved for summary judgment arguing that, because Hamilton had failed to remedy the discovery violations or disclose a new expert, the uncontroverted evidence showed no breach of the standard of care. Hamilton failed to respond and, after he was granted two continuances in order to respond to the motion for summary judgment and failed to appear at a hearing on the matter, the trial court granted summary judgment in favor of the Defendants. Hamilton appeals, *pro se*, arguing that the

trial court erred in granting summary judgment, had no subject matter jurisdiction, and imposed overbroad sanctions. We affirm.

Facts and Procedural History

- [3] On November 12, 2015, pursuant to the Indiana Medical Malpractice Act, Hamilton filed a proposed complaint with the IDOI, alleging that the Defendants failed to comply with applicable standard of care for infection control, sepsis, severe sepsis, septic shock, respiratory failure, klebsiella pneumonia, pleural effusion, and empyema. Hamilton’s case was reviewed by a medical review panel, which issued a unanimous opinion that all healthcare providers had complied with the applicable standard of care. Hamilton filed suit on December 7, 2016. On October 2, 2019, the Hospital moved for summary judgment. Hamilton filed a response on October 30, 2019, designating affidavits from Nizar Suleman, M.D., and Pamela Noel, M.D., who opined that Defendants had breached the standard of care.
- [4] During the course of discovery, Hamilton failed to produce his communications with the designated experts despite multiple requests from the Defendants that he do so. The Hospital subsequently filed a motion to compel discovery on March 6, 2020. On March 25, 2020, the trial court ordered Hamilton to provide “full and complete responses to Defendants’ Request for Production of Documents to Plaintiff, including but not limited to all communications and documents exchanged between Mr. Hamilton and Dr. Noel or Dr. Suleman[,]” with responses being due fifteen days from the date of the order. Appellant’s

App. Vol. II p. 39–40. On July 14, 2020, The Hospital moved to dismiss and for sanctions. Anonymous M.D. 2 joined in the motion.

[5] Following a hearing on the matter, the trial court denied the motion to dismiss, but ordered sanctions against Hamilton. Specifically, the trial court struck Hamilton’s experts and imposed monetary sanctions, giving Hamilton thirty days from the order’s date, September 18, 2020, to pay the sanction before he could disclose a new expert to counter the pending motion for summary judgment.

[6] Hamilton filed a motion to correct error, appealing the trial court’s sanctions on October 19, 2020. On October 29, 2020, the trial court partially granted Hamilton’s motion vacating the order for monetary sanctions but reaffirming the order striking Hamilton’s experts.

[7] On November 3, 2020, Anonymous M.D. 2 moved for summary judgment arguing that, because Hamilton had failed to remedy the discovery violations or disclose a new expert, the uncontroverted evidence showed no breach of the standard of care. On November 30, 2020, Hamilton moved for certification of interlocutory appeal and to stay proceedings pending appeal, contesting the trial court’s striking of experts. On December 1, 2020, Hamilton asked for, and received, an enlargement of time to respond to the motion for summary judgment. On December 13, 2020, the trial court granted Hamilton’s November 30, 2020, motion for certification of interlocutory appeal, which Hamilton did not pursue.

[8] Hamilton requested a second and third enlargement of time in which to respond to the pending motions for summary judgment on January 4, 2021, and February 3, 2021, which were, respectively, granted and denied. On February 19, 2021, Anonymous M.D. 2 renewed his motion for summary judgment. The trial court scheduled a status conference hearing for March 15, 2021. Hamilton failed to appear at the hearing or file a response to the motion for summary judgment. At the conclusion of the hearing, the trial court granted Anonymous M.D. 2's motion for summary judgment. On April 10, 2021, Hamilton filed a motion to correct error, which was denied.

Discussion and Decision

[9] “Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Robbins v. Trustees of Ind. Univ.*, 45 N.E.3d 1, 6 (Ind. Ct. App. 2015) (citing Ind. Tr. R. 56(C)). “In reviewing a trial court’s ruling on summary judgment, this court stands in the shoes of the trial court and applies the same standard in determining whether to affirm or reverse the grant of summary judgment.” *Id.* (citing *Doe v. Lafayette Sch. Corp.*, 846 N.E.2d 691, 695 (Ind. Ct. App. 2006), *reh’g denied, abrogated on other grounds*). “On appeal, a trial court’s grant of summary judgment is ‘clothed with a presumption of validity.’” *Rosi v. Business Furniture Corp.*, 615 N.E.2d 431, 435 (Ind. 1993) (citing *Ind. Dept. Revenue v. Caylor-Nickel Clinic*, 587 N.E.2d 1311, 1312–13 (Ind. 1992)). “The burden is on the moving party to prove the non–existence of a genuine issue of material fact”. *Mullin v.*

Municipal City of South Bend, 639 N.E.2d 278, 281 (Ind. 1994). “[T]he burden then shifts to the nonmovant to set forth specifically designated facts showing that there is a genuine issue for trial.” *Robbins*, 45 N.E.3d at 6.

[10] “It is well settled that in the medical negligence claim, the plaintiff must prove by expert testimony not only that the defendant was negligent, but also that the defendant’s negligence proximately caused the plaintiff’s injury.” *Schaffer v. Roberts*, 650 N.E.2d 341, 342 (Ind. Ct. App. 1995). “Moreover, where there is a unanimous medical review panel determination favoring the defendant and no countervailing expert opinion, the defendant is entitled to judgment as a matter of law.” *Bunch v. Tiwari*, 711 N.E.2d 844, 850 n. 4 (Ind. Ct. App. 1999).

[11] Hamilton argues that the trial court erred in entering summary judgment.¹ Specifically, Hamilton argues that the trial court entered summary judgment before the expiration of the thirty-day window provided by Indiana Tr. R. 56(C) and that the trial court entered “summary judgment order on a complaint without an opinion from the medical review panel.” Appellant’s Br. p. 8. As for the timing issue, Hamilton never filed a response to the motion for summary judgment filed November 3, 2020, despite being given two extensions of time over the course of three months in which he could have responded. By the time the trial court granted summary judgment for the Defendants on March 15,

¹ While Hamilton also argues that the trial court abused its discretion in imposing a sanction striking his expert witnesses, he has waived that argument on appeal by failing to pursue his interlocutory appeal. *Hanson v. State*, 695 N.E.2d 1042, 1044 (Ind. Ct. App. 1998) (“Failure to timely perfect an interlocutory appeal results in forfeiture of the opportunity to pursue the appeal.”).

2021, far more than thirty days had gone by since the initial November 3, 2020, motion and Hamilton had filed and been granted two additional enlargements of time. Hamilton's failure to comply with the trial court's discovery order resulted in the trial court striking his expert's testimony. Hamilton never complied with the trial court's discovery order so that he might introduce new expert testimony. Because the medical review panel unanimously determined that the Defendants had not breached the standard of care, and Hamilton failed to supply expert testimony supporting an argument to the contrary, the trial court did not err in granting the motion for summary judgment.

[12] Hamilton's arguments that the trial court erred, and did not have subject matter jurisdiction, when entering summary judgment on a claim where the medical review panel did not consider his claim for sepsis do not alter the dispositive effect of his failure to respond to the motion for summary judgment. Indiana Code section 34-18-10-22 states that "the panel has the sole duty to express the panel's expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care as charged in the complaint." The medical review panel received Mrs. Hamilton's entire medical chart as well as the Parties' submissions of evidence, which contained arguments on a wide range of medical issues and allegations, including whether Mrs. Hamilton had sepsis during her hospitalization. The fact that the medical review panel opinion did not address its consideration of Mrs. Hamilton's sepsis does not mean that the medical review panel did not consider the issue. *See McKee v. State*, 61 N.E.3d

1251, 1257 (Ind. Ct. App. 2016) (stating “The Act does not call for, or permit, the disclosure of the specific reasons underlying the [Medical Review Panel’s] opinions), *see also* Ind. Code § 34-18-10-22(b). Hamilton’s arguments that the trial court did not have subject matter jurisdiction due to the medical review panel’s failure to address sepsis are therefore unfounded.

[13] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.