THE SUPREME COURT OF WASHINGTON

GEORGE CANTU, Petitioner, v. PROVIDENCE HOSPITAL and SANJEEV VADERAH, MD, Respondents.	No. 99167-7 **ORDER** (Filed Mar. 3, 2021) Court of Appeals No. 80229-1-I

Department I of the Court, composed of Chief Justice Gonzalez and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its March 2, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

The Clerk's motion to strike the Petitioner's reply to the answer to the petition for review is granted. The petition for review is denied.

DATED at Olympia, Washington, this 3rd day of March, 2021.

For the Court

/s/ González, C.J.
CHIEF JUSTICE

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

GEORGE CANTU, Appellant, v. PROVIDENCE HOSPITAL and SANJEEV VADERAH, MD, Respondents.	No. 80229-1-I DIVISION ONE UNPUBLISHED OPINION (Filed Aug. 10, 2020)

MANN, C.J.—George Cantu appeals the summary judgment dismissal of his medical malpractice action. We affirm, holding that summary judgment was appropriate because Cantu failed to produce the requisite expert testimony to support his claims.

I.

On March 3, 2015, after complaining of chest pain. Cantu underwent a cardiac catheterization with Skagit Valley Hospital cardiologist Dr. Sanjeev Vaderah. Following the procedure, Dr. Vaderah recommended that Cantu immediately transfer to Providence Hospital for additional medical treatment. Cantu transferred the next day.

On March 6, Cantu underwent a coronary artery bypass graft surgery with cardiothoracic surgeon Dr. James Brevig at Providence. Dr. Brevig's chart notes indicated that Cantu suffered a "respiratory arrest in [the] preoperative holding area" before the surgery,

and was "initially unresponsive, but recover[ed]." The incident was "likely related to medication administration." Dr. Brevig performed the surgery without any further complications and Cantu was discharged from Providence days later.

In March 2018, Cantu filed a pro se medical malpractice complaint against Providence and Dr. Vaderah. The complaint alleged he received the wrong medication at Providence that caused him to experience "oxygen deprivation, resulting in "some dementia," "difficulties with thought processes," "poor memory," and "changes in personality and behavior."

Dr. Vaderah moved for summary judgment, arguing that the complaint should be dismissed because Cantu failed to identify any expert support for his claims and that the doctrine of res ipsa loquitur was inapplicable. Providence joined the motion. The trial court granted summary judgment and later denied Cantu's motion for reconsideration.

Cantu, still pro se, appeals.[1]

II.

Preliminarily, to the extent Cantu argues that the trial court should have applied a more lenient

[1] Cantu's opening brief states that he "is not appealing the dismissal of defendant Dr. Vaderah from the case. He has also filed a document in this appeal entitled "Appellant's Motion to Voluntarily Dismiss Doctor Vaderah from this Appeal and Declaration of Service." Because our holding resolves all issues in this appeal, we deny the motion as moot.

standard toward him as a pro se litigant, his argument fails. In Washington, courts "hold pro se parties to the same standards to which it holds attorneys." Edwards v. Le Duc, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010); In re Marriage of Wherley, 34 Wn. App. 344, 349, 661 P.2d 155 (1983) ("[T]he law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws.").

III.

Cantu "seeks to overturn the [trial court's] erroneous summary judgment dismissal." We conclude there was no error.

We review summary judgments de novo, engaging in the same inquiry as the trial court, and viewing the facts and the inferences in favor of the nonmoving party. Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "Summary judgment in favor of the defendant is proper if the plaintiff fails to make a prima facie case concerning an essential element of his or her claim." Seybold v. Neu, 105 Wn. App. 666, 676, 19 P.3d 1068 (2001). If the defendant shows an absence of evidence to establish the plaintiff's case, "the burden shifts to the plaintiff to produce evidence sufficient to support a reasonable inference that the defendant was negligent." Seybold, 105 Wn. App. at 676.

A cause of action for medical malpractice requires the plaintiff to show that (1) the healthcare provider

failed to exercise the requisite standard of care and (2) such failure was a proximate cause of the plaintiff's injuries. RCW 7.70.040. But only experts are allowed to testify regarding the standard of care and whether the healthcare provider met that standard. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 228-29, 770 P.2d 182 (1989). Moreover, "the expert testimony must be based on facts in the case, not speculation or conjecture." Seybold, 105 Wn. App. at 677. The expert's "testimony must be sufficient to establish that the injury-producing situation 'probably' or 'more likely than not' caused the subsequent condition, rather than that the accident or injury 'might have,' 'could have,' or 'possibly did' cause the subsequent condition." Merriman v. Toothaker, 9 Wn. App. 810, 814, 515 P.2d 509 (1973) (citing Ugolini v. States Marine Lines, 71 Wn.2d 404, 407, 429 P.2d 213 (1967)). Such testimony must also be based on a reasonable degree of medical certainty. McLaughlin v. Cooke, 112 Wn.2d 829, 836, 774 P.2d 1171 (1989). If the plaintiff fails to produce competent expert testimony, the defendant is entitled to summary judgment. Morinaga v. Vue, 85 Wn. App. 822, 832, 935 P.2d 637 (1997).

Here, even when viewing the facts in a light most favorable to him, the record shows that Cantu did not identify a competent expert who would testify in support of his claim that the treatment he received at Providence or from Dr. Vaderah fell below the applicable standard of care. Nor did Cantu disclose an expert to testify that such treatment caused his injuries.

Summary judgment in favor of the defendants was proper on this basis.[2]

IV.

Cantu advances several additional arguments in his brief. They lack merit.

A.

Cantu contends that the trial court erred in denying his motion for a fourth continuance of the summary judgment hearing.

Trial courts may continue a summary judgment motion to give the nonmoving party additional time to conduct discovery. CR 56(f). A court may deny a motion for continuance when: "(1) the requesting party does not offer a good reason for the delay in obtaining the

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[2] Citing Burnet v. Spokane Ambulance, 131 Wn.2d 484, 933 P.2d 1036 (1997), Cantu argues that the trial court should have given him more time to conduct discovery, not dismiss his case. In Burnet, our Supreme Court held that when imposing sanctions for discovery violations under CR 37(b)(2), the trial court must indicate on the record whether the sufficiency of a lesser sanction was explicitly considered, whether the conduct that led to the sanction was willful, and whether the violation substantially prejudiced the opponent's ability to prepare for trial. Burnet, 131 Wn.2d at 493-94. Because the trial court did not impose any discovery sanctions below, Burnet is inapplicable to this case.

Additionally, Cantu does not assign error to or present any argument regarding application of the res ipsa loquitur doctrine. Thus, we do not address the issue. Holder v. City of Vancouver, 136 Wn. App. 104, 107, 147 P.3d 641 (2006) (a party abandons an issue on appeal by failing to brief the issue).

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." Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). We review denial of a summary judgment continuance for an abuse of discretion.[3] Mannington Carpets, Inc. v. Hazelrigg, 94 Wn. App. 899, 902, 973 P.2d 1103 (1999).

Cantu requested his fourth continuance on the ground that discovery was ongoing and that a trial date had not yet been set.[4] But Cantu knew in March 2019, about three months before the summary judgment hearing, that no more continuances would be granted. The court advised Cantu that there "will be no more continuances based on not having a lawyer; no more continuances based on not being ready to proceed with expert testimony: and no more continuances based on incomplete discovery." Cantu had approximately 15 months from the date of the filing of his complaint to conduct discovery, retain counsel, and obtain any experts needed before his complaint was dismissed.

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[3] A court abuses its discretion when it bases its decision on manifestly unreasonable or untenable grounds. Trummel v. Mitchell, 156 Wn.2d 653, 671, 131 P.3d 305 (2006).

[4] Initially, the summary judgment hearing was set for December 28, 2018. The hearing was first continued to February 7, 2019 based on Cantu's claims of unavailability. Then, based on Cantu's requests for more time to conduct discovery, the hearing was continued to March 8, 2019 and finally continued to June 6, 2019.

Under the circumstances, the trial court did not abuse its discretion in denying Cantu another continuance.[5]

B.

Cantu next argues that the trial court erred in denying reconsideration under CR 59 and CR 60. Since he failed to establish any grounds to justify reconsideration, the trial court did not err.

We review a trial court's decision on a motion for reconsideration for abuse of discretion. Rivers v. Wash. State Conference of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). There was a tenable basis for the trial court to rule as it did. Cantu's motion for reconsideration, in various forms, asserted that he had only recently learned of the identity and employer of Dr. Nikolay Usoltsev, the anesthesiologist he later claims gave him the wrong medication.[6] His motion did

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[5] Cantu also asserts that the trial court erred by denying his motion to compel discovery from Providence he deemed necessary to defeat summary judgment. As nothing in this record shows the trial court ruling on such a motion, there is no ruling for us to review on appeal. Mayekawa Manufacturing Co., Ltd., v. Sasaki, 76 Wn. App. 791, 796 n.6, 888 P.2d 183 (1995) (ruling must be final and definitive to preserve the right to review).

[6] The record does not support Cantu's claim of recently learning" of Dr. Usoltsev's identity. In medical records Cantu attached as an exhibit to a November 2018 pleading. Dr. Usoltsev's name was mentioned as one of three doctors who visited him after the Providence respiratory incident. At a minimum. Cantu was aware for Dr. Usoltsev's identity for seven months before the June 2019 summary judgment hearing.

not disclose any new experts for the trial court's consideration. Thus, the court did not err in denying reconsideration.

C.

Cantu also argues that the trial court erred by denying his motion to amend his complaint to add Dr. Usoltsev as a defendant. Leave to amend pleadings is freely given by a trial court when justice so requires. CR 15(a). However, "[w]hen 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). We review the denial of a motion to amend for abuse of discretion. Cambridge Townhomes, LLC v. Pac. Star Roofing, Inc., 166 Wn.2d 475, 483, 209 P.3d 863 (2009).

Here, Cantu moved to amend his complaint more than 15 months after his original complaint, about seven motions after filing medical records containing Dr. Usoltsev's name, and over a week after summary judgment. On this record, the trial court had tenable grounds to deny Cantu's motion to amend. It did not err.

D.

Finally, Cantu contends that the "denial of discovery, amendment to add doctor Usoltsev coupled with

dismissal of the case violate[d his] due process rights guaranteed" by the state and federal constitutions. But his brief neither states how the trial court's orders violated his rights to due process nor cites to relevant parts of the record or to any legal authority that supports his contention. Accordingly, this argument is insufficient for appellate review. RAP 10.3(a)(6): Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

V.

We deny Cantu's request for attorney fees and costs on appeal. Beyond not being the prevailing party, such fees are not available on appeal to a nonlawyer, pro se litigant. In re Marriage of Brown, 159 Wn. App. 931, 938, 247 P.3d 466 (2011).

VI.

For the reasons discussed above, we affirm the trial court's summary judgment dismissal and denial of reconsideration.

/s/ Mann, C.J.

WE CONCUR:

/s/ Andrus, A.C.J. /s/ Leach, J.

SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

GEORGE V. CANTU Plaintiff, v. PROVIDENCE HOSPITAL and SANJEEV VADERAH, MD, Defendants.	Case No. 18-2-02129-31 ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION (Filed Jun. 26, 2019)

THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration, entered June 6, 2019. The Court, having reviewed the Motion for Reconsideration and supporting documents, and having reviewed the records and files therein, hereby DENIES Plaintiff's Motion for Reconsideration.

Dated this 26th day of June, 2019.

/s/ Richard T. Okrent
The Honorable Richard T. Okrent
Judge

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR
THE COUNTY OF SNOHOMISH

GEORGE V. CANTU, Plaintiff, v. PROVIDENCE HOSPITAL and SANJEEV VADERAH, M.D., Defendants.	NO. 18-2-02129-31 ~~[PROPOSED]~~ ORDER DISMISSING ALL CLAIMS AGAINST DEFENDANT PROVIDENCE HOSPITAL WITH PREJUDICE (Filed Jun. 6, 2019) *Clerk's Action Required*

THIS MATTER having come before the Court on Defendant Providence Hospital's Joinder in Defendant Sanjeev Vaderah, M.D.'s Motion for Summary Judgment, and the Court having received and considered the following:

1. Defendant Sanjeev Vaderah, M.D.'s Motion for Summary Judgment;
2. Declaration of Colin F. Kearns in support of Defendant Sanjeev Vaderah, M.D.'s Motion for Summary Judgment;
3. Defendant Providence Hospital's Joinder In Defendant Sanjeev Vaderah, M.D.'s Motion for Summary Judgment;
4. Plaintiff's Response to Defendants' Motion for Summary Judgment,

5. Defendant Providence Hospital's Reply in Support of Joinder In Defendant Sanjeev Vaderah, M.D.'s Motion for Summary Judgment;

6. Court's March 8, 2019 Order Granting Plaintiff's Motion to Continue;

7. _____

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AND THE COURT having reviewed the authorities stated in the pleadings, having reviewed and considered the court file, and having heard oral argument from the parties, and being otherwise advised in the premises, it is now hereby ORDERED as follows:

1. All claims asserted against Defendant Providence Hospital in this lawsuit are DISMISSED in their entirety and with prejudice.

2. _____

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DATED this 6 day of June, 2019.

/s/ Richard T. Okrent
THE HONORABLE
RICHARD T. OKRENT

Presented by:

FAIN ANDERSON VANDERHOEF ROSENDAHL
O'HALLORAN SPILLANE, PLLC

By: /s/ Caitlyn Portz
Eric A. Norman, WSBA No. 37814
Caitlyn Portz, WSBA No. 51437
Attorneys for Defendant Providence Hospital

Approved as to form:

By: /s/ George Cantu
Plaintiff George Cantu

JERRY MOBERG & ASSOCIATES, P.S.

By: /s/ Colin F. Kearns
Colin F. Kearns, WSBA #45282
Attorneys for Defendant Sanjeev Vaderah, MD

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

GEORGE V. CANTU, **Pro Se Plaintiff,** **vs.** **PROVIDENCE HOSPITAL and SANJEEV VADERAH, MD,** **Defendants.**	**NO. 18-2-02129-31** **ORDER GRANTING DEFENDANT SANJEEV VADERAH MD'S MOTION FOR SUMMARY JUDGMENT** **[PROPOSED]** (Filed Jun. 6, 2019) **Clerk's Action Required**

THIS MATTER having come regularly before the Court upon motion of Sanjeev Vaderah, M.D, for an order dismissing all plaintiff's claims with prejudice, including dismissing claims of medical negligence and a failure to secure informed consent, and the Court, having reviewed all pleadings and files herein, including:

1. Defendant's Motion for Summary Judgment;
2. Declaration of Colin F. Kearns in Support of Defendant's Motion for Summary Judgment and exhibits therein;
3. Court's complete files and records in this case;
4. _____
5. _____
6. The oral arguments of the parties.

NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED in its entirety. IT IS FURTHER ORDERED, ADJUDGED and DECREED that all plaintiff's claims and allegations against Sanjeev Vaderah, M.D. be dismissed in their entirety, with prejudice and without costs.

There being no just reason for delay, the clerk is hereby directed to enter judgment upon this matter forthwith.

DONE IN OPEN COURT this 6 day of June, 2019.

/s/ Richard T. Okrent
HONORABLE
RICHARD T. OKRENT

Presented by:

FLOYD, PFLUEGER & RINGER, P.S.

By: /s/ Colin F. Kearns
Colin F. Kearns, WSBA #45282
Of Attorneys for Defendants

Approved as to form:

By: /s/ George Cantu
George Cantu

/s/ Caitlyn Portz
Caitlyn Portz #51437
for Providence