In the Missouri Court of Appeals
Eastern District

DIVISION TWO

MEGAN JERNIGAN, A/K/A MEGAN KRAUSE, Appellant, v. MERCY HOSPITAL EAST COMMUNITIES, ET AL., Respondents.	)	No. ED113609 Filed: December 30, 2025

Appeal from the Circuit Court of St. Louis County
The Honorable Thomas C. Albus, Judge

Introduction

This appeal stems from a medical malpractice cause of action. Megan Jernigan ("Appellant") appeals from the trial court's judgment granting summary judgment in favor of Mercy Hospital East Communities d/b/a/ Mercy Hospital St. Louis; Mercy Hospital Sounds d/b/a Mercy Clinic Oncology & Hematology; Mercy Clinic Oncology, LLC; David Super, MD; Mercy Internal Medicine d/b/a Crestwood Physician Offices;

Amna Anees, MD; and Catherine Z. Li, MD (collectively "Respondents").[1] Appellant asserts four points on appeal. In Point I, Appellant asserts the trial court erred in entering summary judgment in favor of Respondents because Appellant timely disclosed her expert. In Points II–IV, Appellant asserts the trial court erred in entering summary judgment in favor of Respondents because there are genuine issues of material fact.

This Court holds Appellant failed to timely disclose her expert. Without expert testimony, Appellant could not establish Respondents' actions fell below the standard of care, which is necessary to make a prima facie case for medical malpractice. Additionally, because Appellant did not timely file a response to Respondent's motion for summary judgment, Respondents' uncontroverted material facts were deemed admitted and Appellant's alleged disputed issues of material fact were not part of the summary judgment record. Respondents established a right to summary judgment as a matter of law and thus the trial court did not err in granting Respondents' motion for summary judgment. Points I–IV are denied.

Accordingly, the trial court's judgment is affirmed.

Background

On December 10, 2018, Appellant filed her medical malpractice suit. The matter was dismissed by the trial court for failure to prosecute. Appellant refiled her cause of

1 In reviewing the record, this Court notes Mercy Clinic Oncology, LLC, Amna Anees, MD, and Catherine Z. Li, MD were voluntarily dismissed by Appellant. The trial court granted Appellant's motion as to Mercy Clinic Oncology, LLC and Amna Anees, MD, but this Court could not find the order granting the dismissal of Catherine Z. Li, MD in the record. Nonetheless, the aforementioned Respondents still appear as parties in this appeal.

action on June 15, 2020. Therein, she alleged Respondents were negligent in providing medical care on two separate occasions. On November 13, 2023, the trial court entered a scheduling order, which provided Appellant's experts had to be disclosed by August 19, 2024, and Respondents' experts had to be disclosed by September 18, 2024.

On March 5, 2024, Respondents filed a motion for modification of the scheduling order. Subsequently, a consent scheduling order was entered by the trial court. The order provided Appellant had to disclose her experts by May 7, 2024, and Respondents had to disclose their experts by August 5, 2024. A jury trial was set for November 18, 2024.

On August 5, 2024, Respondents filed a motion for summary judgment and disclosed Dr. R.S. as their expert. Respondents noticed up their motion for September 12, 2024. On September 4, 2024, Appellant filed a motion for continuance, requesting "a continuance of the case management conference[2] currently scheduled for September 12, 2024." Separately, Appellant filed a "Motion for Additional Time to Conduct Discovery and for a Continuance of the Hearing on Defendant's Motion for Summary Judgment." The next day, Respondents filed a response in opposition to Appellant's motion for additional time to conduct discovery and for a continuance of the hearing on Respondents' motion for summary judgment.

2 This Court notes Respondents noticed up their motion for summary judgment for September 12, 2024. However, in her motion for a continuance, Appellant references the hearing as a "case management conference," which is not an accurate description of the scheduled hearing. For purposes of this appeal, we refer to the September 12th setting as a hearing.

On September 9, 2024, the trial court granted Appellant's motion for continuance and rescheduled the September 12th hearing to September 25, 2024. Three days later, on September 12, 2024, the trial court entered another order, stating "Cause has been rescheduled for 9/25/24." On September 24, 2024, Appellant filed her expert witness designation. At 2:00 a.m. on September 25th, Appellant filed her response to Respondents' motion for summary judgment and memorandum in opposition as well as her response to Respondents' statement of uncontroverted material facts.

On September 25, 2024, the trial court held a hearing on Respondents' motion for summary judgment, Respondent's motion to strike Appellant's pleadings due to filing her response to Respondents' motion for summary judgment at 2:00am on September 25th, and Appellant's motion for additional time to conduct discovery and for a continuance of the hearing of Respondent's motion for summary judgment. The trial court took all the motions under advisement.

On October 3, 2024, the trial court denied Appellant's motion to continue the hearing for the motion of summary judgment[3] and, on its own motion, vacated the trial date due to no division having availability to hear the matter. The trial court did not rule on Respondents' motion for summary judgment, Respondent's motion to strike Appellant's pleadings, or Appellant's motion for additional time.

3 The record is not clear as to why the trial court denied the motion to continue the hearing instead of finding it was moot as Respondents' motion for summary judgment had already been heard on September 25, 2024.

On April 18, 2025, the trial court granted Respondents' motion for summary judgment.

This appeal follows.

Standard of Review

This Court reviews the grant of summary judgment *de novo*. *Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020); *Z.S. by & through P.S. v. Rockwood Sch. Dist*., 674 S.W.3d 818, 820 (Mo. App. E.D. 2023). "We view the record in the light most favorable to the non[-] moving party and afford that party the benefit of all inferences which may be reasonably drawn from the record." *Mobile Nat'l Dev. Co., LLC v. Spectrum Mid-Am., LLC*, 705 S.W.3d 593, 599 (Mo. App. E.D. 2024).

In Missouri, Rule 74.04 governs summary judgment practice. *Green*, 606 S.W.3d at 116. A moving party is entitled to a summary judgment if it demonstrates:

> (1) facts negating any one of the elements of the non-movant's claim; (2) that the non-movant, after an adequate period for discovery, has not been able and will not be able to produce sufficient evidence to allow the trier of fact to find the existence of any one of the elements of the non-movant's claim; or (3) that there is no genuine dispute as to the existence of the facts necessary to support movant's properly pleaded affirmative defense.

City of Chesterfield v. State, 590 S.W.3d 840, 843 (Mo. banc 2019) (internal quotations and citation omitted). Regardless of which of the aforementioned means is employed by the moving party, each establishes a right to judgment as a matter of law as long as the moving party files a compliant Rule 74.04 motion for summary judgment. *See A.O. v. Lester E. Cox Med. Centers*, 719 S.W.3d 923, 933 (Mo. App. S.D. 2025); *JTB Properties, LLC. v. Zwillenberg*, 626 S.W.3d 255, 262 (Mo. App. W.D. 2021). "Once the

[movant] has made such a showing, the burden shifts to the [non-moving party], who must demonstrate by affidavit, depositions, answers to interrogatories[,] or admissions on file that one or more of the material facts relied upon by the [moving] party is genuinely disputed." *JTB Properties, LLC.*, 626 S.W.3d at 262 (quoting *Daniels v. Terranova*, 611 S.W.3d 799, 806 (Mo. App. W.D. 2020)).

Discussion

Rule 84.04 Violations

Before we reach the merits, this Court must address Respondents' motion to strike Appellant's brief for failure to comply with Rule 84.04.[4] Appellant's points relied on and argument section undoubtedly fail to comply with Rule 84.04(d) and (e), respectively. We discuss each violation in turn.

First, Appellant fails to comply with Rule 84.04(d)(1), which requires an appellant to "(A) [i]dentify the trial court ruling or action that the appellant challenges; (B) [s]tate concisely the legal reasons for the appellant's claim of reversible error; and (C) [e]xplain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error." To ensure compliance, 84.04(d)(1) provides the following template: "The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*]."

4 All references are to Missouri Supreme Court Rules (2025).

All of Appellant's points relied on completely fail to follow the template provided above. Specifically, Appellant's points fail to concisely state the legal reasons for the claims of reversible error and explain why those legal reasons support reversal. *See* Rule 84.04(d)(1)(B)–(C). "Given that a template is specifically provided for in Rule 84.04(d)(1), [Appellant] simply ha[s] no excuse for failing to submit adequate points relied on." *Young v. Missouri Dep't of Soc. Services*, 647 S.W.3d 73, 77 (Mo. App. E.D. 2022) (quoting *Bennett v. Taylor*, 615 S.W.3d 96, 99 (Mo. App. E.D. 2020)).

Second, Appellant's argument sections fail to comply with Rule 84.04(e). This rule specifies, for each claim of error, the appellant must include a concise statement describing whether the error was preserved for appellate review and, if so, how it was preserved. Rule 84.04(e). The rule further provides "[a]ll factual assertions in the argument shall have specific page references to the relevant portion of the record on appeal, i.e., legal file, transcript, or exhibits." *Id*. Appellant fails to include a preservation statement for any of her claims of error[5] and fails to cite to the record in all four argument sections.

We agree with Respondents, Appellant failed to abide by Rule 84.04. This Court, however, hesitates to dismiss an appellant's brief for failure to comply with Rule 84.04. "Our preference is to decide an appeal on the merits where disposition is not hampered by [Rule 84.04] violations and the argument is readily understandable." *Murphree v. Lakeshore Estates, LLC*, 636 S.W.3d 622, 624 (Mo. App. E.D. 2021) (quoting *Bennett*,

5 The parties do not dispute the issues are properly preserved.

615 S.W.3d at 98). Although this Court has the discretion to review a noncompliant brief *ex gratia*, "we will do so only when we can ascertain the gist of an appellant's arguments, notwithstanding minor shortcomings in briefing." *Id*. (quoting *Unifund CCR Partners v. Myers*, 563 S.W.3d 740, 743 (Mo. App. E.D. 2018)). Thus, despite Appellant's deficiencies in briefing the points relied on and argument sections, this Court exercises its discretion to reach the merits of the appeal as Appellant's claims of error are readily understandable and the briefing violations do not impede meaningful review of the matter. Accordingly, Respondents' motion is denied.

Point I: Appellant's untimely disclosure of expert

In Point I, Appellant contends the trial court erred in granting Respondents' motion for summary judgment because Appellant timely complied with the trial court's extended deadline for expert disclosures. We disagree. Appellant failed to disclose her expert witness by May 7, 2024, and nothing in the record supports the trial court granted Appellant's motion for additional time to disclose her expert witness, making her disclosure on September 24, 2024 untimely. Thus, without expert testimony, Appellant could not establish the requisite standard of care to prove a prima facie case for medical negligence.

To make a claim of medical malpractice, a plaintiff must prove the defendant "failed to meet a required medical standard of care, [their] acts or omissions were performed negligently, and those acts or omissions caused her injuries." *Ragsdale v. Charlton*, 689 S.W.3d 269, 271 (Mo. App. E.D. 2024). "To prove [her] theories of

medical negligence, [Appellant] had to present expert medical testimony concerning the requisite standard of care." *A.O.*, 719 S.W.3d at 935.

As referenced above, one of the ways a moving party can show it is entitled to summary judgment is by demonstrating that, "after an adequate period for discovery, the non-movant has been and will be unable to produce sufficient evidence to allow the trier of fact to find the existence of any one of the elements of the non-movant's claim." *Id*. Here, the legal basis for Respondents' motion for summary judgment was two-fold: (1) Appellant failed to timely endorse an expert to establish a breach of the standard of care and/or the breach caused her injuries; and (2) Respondents established they complied with the applicable standard of care in treating Appellant as supported by the affidavit of their expert, Dr. R.S.

The only issue here is whether Appellant timely disclosed her expert. The record shows the trial court entered a ***consent*** amended scheduling order on April 11, 2024. The consent order, in pertinent part, required Appellant to identify all experts by May 7, 2024. Four months later, on August 5, 2024, Respondents moved for summary judgment. Appellant did not file her expert witness designation and her response to Respondents' motion for summary judgment until September 24–25, 2024.

It is clear, Appellant failed to comply with the trial court's order to disclose her expert by May 7, 2024, and therefore the disclosure of her expert was untimely. If Appellant needed additional time to find an expert, she should have filed a motion with that specific request before the May 7th deadline. Instead, she filed a motion for additional

time four months after the deadline had passed, which happened to be on the date her response to Respondents' motion for summary judgment was due.[6]

Nevertheless, Appellant maintains the trial court granted her "Motion for Additional Time to Conduct Discovery and for a Continuance of the Hearing on Defendant's Motion for Summary Judgment" filed on September 4, 2024. Specifically, Appellant argues the trial court explicitly granted her request for additional time to conduct discovery when it issued a continuance order on September 9, 2024. We find Appellant mischaracterizes the trial court's order.

On August 5, 2024, Respondents timely disclosed their expert and filed their motion for summary judgment. Then, Respondents noticed up their motion for hearing on September 12, 2024. Appellant filed a motion on September 4, 2024 to ***continue the hearing*** set for September 12, 2024 as well as a "Motion for Additional Time to Conduct Discovery and for a Continuance of the Hearing on Defendant's Motion for Summary Judgment." On September 9, 2024, the trial court granted Appellant's motion for a continuance. As such, the matter was rescheduled from September 12th to September 25, 2024.[7] This continuance, however, ***did not*** expressly or implicitly grant Appellant an extension to disclose her expert.

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6 This Court notes Appellant had approximately six years from the date the matter was originally filed in 2018 to early 2024 to find an expert. And, even from the time the action was refiled in 2020, she had approximately four years to retain and disclose an expert. Yet, she failed to do so.

7 This Court notes the trial court granted Appellant's request for a continuance on two separate dates, September 9 and September 12, 2024. The docket entry for September 9, 2024 reads, "PLAINTIFF REQUESTS A CONTINUANCE FROM SEPTEMBER 12, 2024 TO SEPTEMBER 25, 2024 AT 8:30AM. SO ORDERED:

Furthermore, no other ***order*** entered by the trial court before or after September 25, 2024 expressly granted Appellant's motion for additional time to conduct discovery, including endorsing an expert.[8] If there is any doubt, which there is not, as to whether the trial court granted Appellant's motion, this Court need only review the trial court's September 25th order. There, the trial court expressly stated it was taking Appellant's motion for additional time to conduct discovery under advisement. Even in its October 3rd order, the trial court again does not rule on Appellant's motion and, instead, it passes it to January 27, 2025. This is a clear indication the trial court had not granted Appellant's request for additional time prior to Appellant's filing on September 24th. Put plainly, there would be no need for the trial court to take a motion under advisement that was previously granted.

Thus, Appellant's expert witness designation filed on September 24, 2024 was untimely. Without the testimony of an expert, Appellant could not establish Respondents'

JUDGE THEA A. SHERRY." The September 12, 2024 docket entry provides: "MOTION FOR ADDITIONAL TIME GRANTED. CAUSE HAS BEEN RESCHEDULED FOR SEPTEMBER 25, 2024 SO ORDERED: JUDGE THEA A SHERRY" Although the September 12th entry states "MOTION FOR ADDITIONAL TIME GRANTED," this docket entry does not correspond with the actions of the trial court. The trial court's September 12th order only stated "Cause has been rescheduled for 9/25/24." This Court is unsure as to why the trial court granted the motion for continuance on two separate dates, and can only speculate. Nevertheless, this clerical error in the docket entry does not change or affect our analysis.

8 This Court notes Appellant's motion included the following request: "Plaintiff needs additional time to endorse an expert and believes she will be able to do so by September 20, 2024." Even if this Court deemed her motion granted, which we do not, Appellant's argument fails because she did not meet her own self-imposed deadline included in her motion. Thus, the disclosure of her expert would still be considered untimely.

actions fell below the standard of care to make her prima facie case for medical malpractice. *See A.O.*, 719 S.W.3d at 935 (affirming grant of summary judgment because plaintiff failed to timely present expert medical testimony regarding the requisite standards of care to support her medical malpractice claim).

Point I is denied.

Points II–IV: Genuine issue of material fact

In Points II–IV, Appellant asserts the trial court erred in entering summary judgment because there are genuine issues of material fact. Again, we disagree.

"Facts come into a summary-judgment record only via Rule 74.04(c)'s numbered-paragraphs-and-responses framework." *Kruse v. Karlen*, 692 S.W.3d 43, 47 (Mo. App. E.D. 2024). After the movant moves for summary judgment, "the non-movant is required to file a response either admitting or denying the movant's material facts." *Green*, 606 S.W.3d at 117. "A response that does not comply with this Rule 74.04(c)(2) with respect to any numbered paragraph in movant's statement is an admission of the truth of that numbered paragraph." *Id*. (quoting Rule 74.04(c)(2)) (emphasis removed).

"[Trial] [c]courts determine and review summary judgment based on that Rule 74.04(c) record, not the whole trial court record." *Id*. (quoting *Jones v. Union Pac. R.R. Co*., 508 S.W.3d 159, 161 (Mo. App. S.D. 2016)) (emphasis removed). "Appellate review of a summary judgment is similarly limited solely to those facts." *Hershey v. Curators of Univ. of Missouri*, 719 S.W.3d 915, 921 (Mo. App. E.D. 2025). "If the court were to look beyond the facts pled on the Rule 74.04 record to the trial court's full record it would be impermissibly acting as an advocate for a party." *O'Donnell v. PNK (River*

City), LLC, 619 S.W.3d 162, 166 (Mo. App. E.D. 2021). Therefore, "when reviewing a summary judgment, we may only review the undisputed material facts established by the process set forth in Rule 74.04(c); we do not review the entire trial court record." *Id*. (quoting *Alvis v. Morris*, 520 S.W.3d 509, 512 (Mo. App. S.D. 2017)).

Here, Respondents timely disclosed their expert and filed their motion for summary judgment on August 5, 2024. Respondents' filing triggered Rule 74.04(c)(2), which provides: "Within 30 days after a motion for summary judgment is served, the adverse party shall serve a response on all parties." Accordingly, pursuant to Rule 74.04(c)(2), Appellant's response to Respondents' motion for summary judgment was due by September 4, 2024. On that date, Appellant filed a "Motion for Additional Time to Conduct Discovery and for a Continuance of the Hearing on Defendant's Motion for Summary Judgment." Therein, Appellant requested "a short extension to obtain the requisite evidence required for Plaintiff to respond to Defendants' Motion for Summary Judgment." The trial court did not grant Appellant's aforementioned motion, *see supra* Point I, and no order entered by the trial court can be construed to have granted Appellant's motion. Thus, Appellant failed to timely respond to Respondents' motion for summary judgment.

Consequently, the facts presented by Respondents were deemed admitted by Appellant, *see Green*, 606 S.W.3d at 117, and Respondents established a right to summary judgment as a matter of law. Without a timely response from Appellant, the alleged disputed issues of material fact were not made a part of the summary judgment record. "Where the opposing party fails to respond to a motion for summary judgment

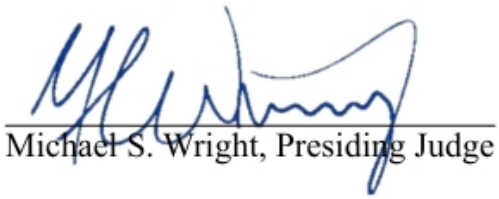
within the time prescribed by Rule 74.04(c), any later response is inadequate and fails to preserve any dispute of a material fact." *Butler v. Tippee Canoe Club*, 943 S.W.2d 323, 325 (Mo. App. E.D. 1997).

Therefore, Appellant fails to demonstrate there is a genuine issue of material fact, precluding summary judgment.

Points II–IV are denied.

Conclusion

For the forgoing reasons, the trial court did not err in entering summary judgment in favor of Respondents. Accordingly, the trial court's judgment is affirmed.



Michael S. Wright, Presiding Judge

Philip M. Hess, Judge and
Virginia W. Lay, Judge concur.