

NOTICE
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2022 IL App (5th) 210147-U

NO. 5-21-0147

IN THE

APPELLATE COURT OF ILLINOIS

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

PENNY CAMPBELL-HENRY, as)	Appeal from the
Special Administrator of the Estate of)	Circuit Court of
Kent Henry, Deceased,)	Jefferson County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 16-L-20
)	
GOOD SAMARITAN REGIONAL HEALTH)	
CENTER, WALTER A. PARHAM, M.D., and)	
PHYSICIAN SERVICES CORPORATION OF)	
SOUTHERN ILLINOIS, INC., d/b/a HEART AND)	
VASCULAR CENTER, his employer,)	
)	
Defendants)	
)	
(Physician Services Corporation of Southern)	Honorable
Illinois, Inc., d/b/a Heart and Vascular Center,)	Michael J. Valentine,
Defendant-Appellee).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Wharton and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in entering a summary judgment in favor of the physician’s employer where physician’s settlement with the plaintiff extinguished the vicarious liability of the physician’s employer. The order granting summary judgment is affirmed.

¶ 2 The plaintiff, Penny Campbell-Henry, special administrator of the estate of Kent Henry, deceased, filed a medical negligence action against the defendants, Good Samaritan Regional Health Center (Good Samaritan), Walter A. Parham, M.D., and Physician Services Corporation of Southern Illinois, Inc., d/b/a Heart and Vascular Center (Physician Services), his employer. After the plaintiff settled with Dr. Parham, Physician Services filed a motion for summary judgment. Physician Services argued that the claims against it were based upon vicarious liability for the actions of its employee, Dr. Parham, and that those claims were extinguished when Dr. Parham settled with the plaintiff. The trial court granted Physician Services' motion for summary judgment, and subsequently denied the plaintiff's motion to reconsider. On appeal, the plaintiff contends that the trial court erred in granting summary judgment in favor of Physician Services because count I of the first amended complaint included separate and independent allegations of negligence against Physician Services. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On or about April 28, 2014, Kent Henry was admitted to Good Samaritan, complaining of "cardiac symptoms." While an inpatient, Henry suffered a myocardial infarction. He was transferred to the cardiac catheterization unit at Good Samaritan, and came under the care of Dr. Parham, a physician employed by Physician Services. Dr. Parham performed an angioplasty procedure, but he was not able to repair the obstructed artery. Henry was discharged from the hospital on May 1, 2014, and he died on May 3, 2014.

¶ 5 On May 2, 2016, the plaintiff brought this action under the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2016)), alleging that Kent Henry died as a result of medical negligence. Count I of the first amended complaint was brought against Dr. Parham and “Physician Services, his employer.”¹ In count I, the plaintiff claimed that Dr. Parham and “Physician Services, his employer,” discharged Kent Henry from the hospital “at a time when Henry’s potassium level was unchecked, undiagnosed, and untreated.” The plaintiff alleged that Dr. Parham and “Physician Services, his employer,” carelessly, negligently, and improperly: (a) failed to perform angioplasty; (b) failed to monitor the electrical beat of the patient’s heart; (c) failed to continue to monitor the patient’s potassium level; (d) failed to continue to monitor the patient’s magnesium level; (e) failed to replace the patient’s potassium during his hospital admission; (f) failed to repeat testing of the potassium level; (g) failed to obtain an EKG on “a daily basis, and in particular on the 30th and 1st of May, 2014”; (h) discharged the patient in the presence of a continuous drop in his potassium level; (i) discharged the patient in the absence of a daily check of his magnesium; (j) failed to give magnesium; and (k) failed to repeat and confirm potassium and magnesium levels before discharging the patient.

¶ 6 Count II of the first amended complaint was brought against Good Samaritan. In count II, the plaintiff alleged that Good Samaritan failed to employ a sufficient number of nurses and technicians to monitor and care for the patient in the cardiac catheterization unit

¹The original complaint was brought against Good Samaritan Regional Health Center, Dr. William A. Parham, M.D., and Heart and Vascular Center, his employer. After filing the complaint, the plaintiff learned that Heart and Vascular Center was the “doing business” designation for Physician Services Corporation of Southern Illinois, Inc. On February 28, 2017, with leave of court, the plaintiff amended the complaint to correct the misnomer.

and failed to exercise the ordinary amount of diligence required by a hospital of its cardiac catheterization unit during performance of an angioplasty and thereafter. The plaintiff also alleged that Good Samaritan failed to properly supervise and monitor or provide follow-up testing of the patient's potassium and magnesium levels; failed to obtain an EKG on a daily basis, including May 1, 2014; and discharged the patient when his potassium levels were dangerously low.

¶ 7 An affidavit by plaintiff's counsel and the written report by Dr. Bruce Charash, plaintiff's reviewing physician, were attached to the plaintiff's complaint in accordance with section 2-622 of the Code of Civil Procedure (735 ILCS 5/2-622 (West 2016)). In his written report, Dr. Charash stated that he reviewed Kent Henry's medical records and determined that there was a reasonable and meritorious cause for filing an action against Good Samaritan and Dr. Parham. Dr. Charash stated that the electrical beat of a heart depends on potassium. He opined that the medical records revealed a steady drop in Kent Henry's potassium level during his hospital stay, and that Kent Henry's death was directly related to the drop in the potassium level. Dr. Charash listed several deviations from the standard of care, including the failure to check and confirm the patient's potassium and magnesium levels; the failure to replace potassium to address the drop in the patient's potassium level; the failure to give magnesium; the failure to get an EKG on April 30 and May 1; and the discharge of the patient in the presence of a drop in his potassium level. Dr. Charash did not indicate which deviations from the standard of care were committed by Dr. Parham and which were committed by Good Samaritan. Physician Services was not referenced in Dr. Charash's written report.

¶ 8 On April 17, 2017, Physician Services filed an answer to count I of the first amended complaint. In the answer, Physician Services admitted that when Dr. Parham treated Kent Henry in April and May 2014, Dr. Parham was employed by Physician Services.

¶ 9 The parties engaged in discovery over the next several months. On October 3, 2018, the trial court issued an agreed scheduling order for the disclosure of controlled experts under Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2018). The plaintiff was directed to disclose her controlled expert witnesses by March 1, 2019, and to produce them for deposition by April 30, 2019. The defendants were directed to disclose their controlled expert witnesses by June 28, 2019, and to produce them for deposition by August 31, 2019. The court also imposed a deadline of September 6, 2019, for the completion of all written discovery and the filing of all case dispositive motions.

¶ 10 On October 9, 2019, the court issued an amended scheduling order. Under the amended order, the defendants' controlled expert witnesses were to be deposed by December 12, 2019, and all case dispositive motions were to be filed by January 13, 2020. The trial was set for April 27, 2020. The amended order also indicated that all claims against Good Samaritan were dismissed "with prejudice and by agreement with plaintiff."

¶ 11 On March 20, 2020, Dr. Parham filed a motion for approval of a settlement with the plaintiff, along with a proposed order. In the motion, Dr. Parham asserted that the plaintiff had expressed her intent to pursue her claim against Physician Services, and that the settlement applied only to him. Dr. Parham also indicated that the terms of the settlement agreement were confidential. Dr. Parham asked the trial court to make a finding that this

was a good-faith settlement pursuant to the Joint Tortfeasor Contribution Act (740 ILCS 100/2 (West 2016)).

¶ 12 A teleconference was held on March 24, 2020. A docket entry from that date indicates that the trial was continued from April 27, 2020, and reset for June 22, 2020, due to the coronavirus pandemic.

¶ 13 On April 1, 2020, the trial court entered the order that had been submitted by Dr. Parham, approving the settlement with the plaintiff.² The order contained a finding that the settlement was a good-faith settlement under the Joint Tortfeasor Contribution Act. The court also issued a separate order that day, approving the distribution of the settlement funds to cover the costs incurred in litigating the case and future litigation costs.

¶ 14 On April 6, 2020, Physician Services sought leave of court to file a motion for summary judgment outside of the January 13, 2020, deadline for filing dispositive motions. The plaintiff filed an objection and argued that allowing Physician Services to pursue the untimely motion would prejudice her case. Following a telephonic hearing on April 21, 2020, the court allowed Physician Services to file its summary judgment motion.

¶ 15 In its motion for summary judgment, Physician Services asserted that the plaintiff's claim against it was based on its vicarious liability for the negligence of its employee, Dr. Parham. Relying upon *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 528-29 (1993), Physician Services claimed that summary judgment was appropriate because its vicarious liability was extinguished when its employee, Dr. Parham, settled with the

²The record shows that the trial court signed the order on March 27, 2020, and that it was filed on April 1, 2020.

plaintiff. In a supporting memorandum, Physician Services asserted that the plaintiff's only claim against it was based upon *respondeat superior*, and that there were no allegations of independent negligence made against it. Physician Services noted that the deadline for the disclosure of the plaintiff's Rule 213(f) expert witnesses had passed, and that the plaintiff had disclosed only one Rule 213(f) expert witness, Dr. Charash. Physician Services asserted that when deposed, Dr. Charash testified that all of his opinions addressed the negligence of Dr. Parham. Dr. Charash did not opine that Physician Services, itself, or any agents or employees of Physician Services, other than Dr. Parham, were negligent. In support of its motion, Physician Services attached excerpts from Dr. Charash's deposition taken June 28, 2019, and the settlement agreement between Dr. Parham and the plaintiff.

¶ 16 On May 22, 2020, the plaintiff filed a response in opposition to Physician Services' summary judgment motion. At the outset, the plaintiff noted that she settled with Dr. Parham, that the settlement was a "cost of defense" settlement, and that the remaining claim against Physician Services was "for the medical negligence of its undisputed agent, Dr. Parham." The plaintiff claimed that she made the decision to settle with Dr. Parham approximately six weeks before the April 2020 trial setting, after considering, among other things, the likelihood of prevailing against an individual doctor versus a corporation, and the cost of litigating against two defendants rather than one defendant. The plaintiff argued that *Gilbert* did not apply under the facts of her case. She asserted the rationale for the *Gilbert* decision was to eliminate the possibility that an agent who settled his case would then be required to indemnify the principal where the claim against the principal was based on *respondeat superior* and was expressly reserved under the terms of the settlement. The

plaintiff reasoned that even if Physician Services sought indemnity from Dr. Parham, there was no possibility that Dr. Parham would be exposed to double payments because her settlement with Dr. Parham was *de minimis*. The plaintiff further claimed she should be permitted to pursue her claim against Physician Services based on equitable considerations, noting that Kent Henry's heirs and plaintiff's counsel received no compensation from the settlement and that the public policy of Illinois favored the peaceful and voluntary settlement of disputes. The plaintiff attached a supporting affidavit of one of her attorneys, Phillip Gruss, who stated that the settlement with Dr. Parham was a "cost of defense" settlement that covered incurred costs and future costs of litigation.

¶ 17 Physician Services' motion for summary judgment was called for hearing on June 18, 2020, and taken under advisement. On July 15, 2020, the trial court entered summary judgment in favor of Physician Services and ordered the plaintiff to reimburse Physician Services for court costs.³ After reviewing the parties' memorandum and the legal authorities they relied on, the court determined that *Gilbert* was the controlling authority. The court found that there were no genuine issues of material fact, and that Physician Services was entitled to a judgment as a matter of law for the reasons stated in Physician Services' motion and supporting memoranda.

¶ 18 On August 14, 2020, the plaintiff filed a motion to reconsider the order granting summary judgment for Physician Services. The plaintiff claimed that the trial court erred

³The trial court did not provide the basis for awarding court costs, and there is no indication that the defendant filed a bill of taxable court costs. As a result, the matter of court costs is not currently before us, and we express no opinion on the propriety of the order.

in finding that the matter was controlled by the *Gilbert* decision. The plaintiff argued that the *Gilbert* case was decided solely on the theory of vicarious liability, and that the factual allegations in the first amended complaint established an independent claim of direct negligence against Physician Services that was separate from the negligence of Dr. Parham. The plaintiff concluded that there were genuine issues of material fact as to whether Physician Services breached its independent duty of care to Kent Henry. The plaintiff also asserted that two factors mitigated against a summary judgment in favor of Physician Services—that the settlement between the plaintiff and Dr. Parham was a good-faith settlement and that Physician Services would be entitled to a setoff if a verdict was rendered for the plaintiff at trial.

¶ 19 On August 28, 2020, Physician Services filed a response in opposition to the plaintiff's motion to reconsider. Physician Services argued that the allegations in the first amended complaint were solely based upon *respondeat superior*, and that plaintiff's counsel, in oral and written arguments in opposition to the summary judgment motion, admitted that Physician Services' liability was based on *respondeat superior*. Physician Services asserted that the plaintiff first made the argument that Physician Services committed independent acts of medical negligence in her motion to reconsider, and that the plaintiff's failure to raise the argument during the summary judgment proceedings resulted in a forfeiture of the argument. Physician Services also asserted that the plaintiff had not offered any evidentiary facts or disclosed an expert to support the claim that Physician Services committed independent acts of medical negligence. Physician Services

sought attorney fees under Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018), claiming that the plaintiff's motion to reconsider was frivolous.

¶ 20 In a reply filed on October 16, 2020, the plaintiff again claimed that count I of the first amended complaint alleged direct negligence against Physician Services. The plaintiff also argued that the statements by one of her attorneys regarding the nature of her claim against Physician Services were not binding judicial admissions because the statements were manifestly incorrect and contradicted by the allegations in the complaint. The plaintiff next argued that deposition testimony by Karla Webb, a Rule 213(f) expert witness disclosed by Physician Services, supported the plaintiff's claim of independent negligence against Physician Services. The plaintiff asserted that Webb, an advanced practice registered nurse employed by Physician Services, admitted that she provided treatment to Kent Henry that was independent of Dr. Parham. The plaintiff argued that the admissions made by Webb, together with the testimony of the plaintiff's expert, created an issue of material fact as to the independent liability of Physician Services. The deposition of Karla Webb, taken June 7, 2019, was attached in support of the plaintiff's position.

¶ 21 Physician Services filed a supplemental memorandum in opposition to the plaintiff's motion to reconsider the summary judgment ruling. Physician Services noted that the allegations in the first amended complaint were directed toward the care and treatment provided by Dr. Parham, not Karla Webb. Physician Services further noted that the plaintiff did not seek leave to amend her complaint to add a specific count of negligence against it, based upon its liability for the actions of Karla Webb, or to supplement her Rule 213(f) expert disclosure to add an expert in the field of advanced practice nursing.

¶ 22 On April 29, 2021, the trial court issued an order denying the plaintiff's motion to reconsider. The court also denied Physician Services' request for attorney fees pursuant to Rule 137. The court again found that *Gilbert* was controlling, and that the vicarious liability of Physician Services was extinguished when its employee, Dr. Parham, settled with the plaintiff. The court further found that the plaintiff made her argument regarding an independent claim of negligence against Physician Services for the first time in the motion to reconsider and that the plaintiff's argument was contrary to her original response to Physician Services' summary judgment motion.

¶ 23

II. ANALYSIS

¶ 24 On appeal, the plaintiff contends that the trial court erred in granting summary judgment in favor of Physician Services. The plaintiff argues that the trial court incorrectly found that her claim against Physician Services was based upon vicarious liability, and that her settlement with Dr. Parham extinguished her claim against Physician Services under the *Gilbert* decision. The plaintiff claims that count I of the first amended complaint alleges facts that establish an independent claim of negligence against Physician Services. She asserts that if the allegations applicable only to Dr. Parham were removed, the remaining allegations would provide a basis for an independent negligence claim against Physician Services.

¶ 25 Summary judgment is proper where the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2020). In determining whether a genuine issue of material fact exists, the court must

construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the nonmoving party. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004); *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 518 (1993). A trial court's decision to grant a motion for summary judgment is reviewed *de novo*. *Adams*, 211 Ill. 2d at 43; *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 26 In Illinois, a health care provider may be liable for medical negligence under two distinct theories. *Gilbert*, 156 Ill. 2d at 518. Under principles of vicarious liability, a health care provider may be liable for a physician's medical negligence based upon an employer-employee relationship or a principal-agent relationship. *Gilbert*, 156 Ill. 2d at 518. In that case, the principal's liability is derivative. *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 533 (1987). When a plaintiff brings an action against the principal under a theory of vicarious liability, a settlement between the agent and the plaintiff extinguishes the principal's vicarious liability, even if the plaintiff's covenant not to sue the agent expressly reserves the plaintiff's right to seek recovery from the principal. *Gilbert*, 156 Ill. 2d at 528-29.

¶ 27 A health care provider may also owe a duty, independent of any relationship between the physician and the patient. *Gilbert*, 156 Ill. 2d at 518. In a direct negligence claim, the plaintiff must prove that the principal was itself negligent and the principal's breach of its duty was a proximate cause of the plaintiff's injury. *Vancura v. Katris*, 238 Ill. 2d 352, 375 (2010). Negligent supervision is an example of a claim of direct negligence. See, e.g., *Vancura*, 238 Ill. 2d at 375.

¶ 28 Our analysis begins with a review of the plaintiff's first amended complaint. The plaintiff's first amended complaint contains a single count directed against both Dr. Parham and Physician Services. In count I, the plaintiff alleged that Dr. Parham and Physician Services, his employer, were guilty of 1 or more of 11 negligent acts or omissions. The plaintiff, however, did not allege that some of the enumerated acts and omissions were attributed only to Dr. Parham, and the others were attributed to Physician Services. All of the alleged deviations from the standard care were directed toward Dr. Parham and "Physician Services, his employer." Count I does not contain any specific allegations of direct negligence against Physician Services. In the section 2-622 report accompanying the complaint, Dr. Charash opined that there was a reasonable and meritorious cause for filing an action against Good Samaritan and Dr. Parham. Dr. Charash identified several deviations from the standard of care, but he did not indicate which deviations were committed by Dr. Parham and which were committed by Good Samaritan. Dr. Charash did not identify any separate and independent acts of negligence by Physician Services. He made no reference to Physician Services in his report.

¶ 29 The plaintiff's first amended complaint is not a model pleading. The plaintiff did not file separate counts against Dr. Parham and Physician Services as required in section 2-603 of the Code of Civil Procedure (Code) (735 ILCS 5/2-603 (West 2016)). Section 2-603 of the Code requires that the complaint contain "a plain and concise statement of the pleader's cause of action." 735 ILCS 5/2-603(a) (West 2016). Section 2-603 further requires that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count," and that each count "shall be separately pleaded,

designated and numbered.” 735 ILCS 5/2-603(b) (West 2016). The purpose of the pleading requirements in section 2-603 is to provide notice to the court and the parties of the claims being presented. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009). If a pleading contains information that reasonably informs the opposing party of the claims or defenses that he or she is called to meet, it is not bad in substance. 735 ILCS 5/2-612(b) (West 2016).

¶ 30 Here, the plaintiff acknowledges that she did not plead her cause of action against Physician Services in a separate count. She contends that Physician Services could have filed a motion to dismiss count I under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)), to challenge any deficiency in that count. The basic pleading requirements in our Code of Civil Procedure apply to all litigants. Plaintiffs and defendants alike have a responsibility to comply with the rules of pleading. The crucial test of any pleading is whether the document reasonably informs the opposing party of the nature of the claim which it is called upon to meet. After reviewing the allegations in count I, as pled, it is reasonable to conclude that the plaintiff’s claim against Physician Services was based solely on a theory of vicarious liability for the acts of its employee, Dr. Parham. The allegations in count I did not reasonably inform the defendants or the trial court that the plaintiff’s claim against Physician Services was separate from and independent of the negligence claim against Dr. Parham.

¶ 31 The plaintiff’s expert disclosure supports the conclusion that the plaintiff’s claim against Physician Services was based upon its vicarious liability for the negligence of Dr. Parham. In her answers to interrogatories pursuant to Illinois Supreme Court Rule 213(f)(3)

(eff. Jan. 1, 2018),⁴ the plaintiff identified one controlled expert, Dr. Charash. When Dr. Charash was deposed, he opined that Dr. Parham deviated from the standard of care when treating Kent Henry. Dr. Charash did not offer any opinions about the negligence of Physician Services itself, or any employee or agent of Physician Services, other than Dr. Parham. In addition, the plaintiff's written and oral arguments opposing summary judgment were premised upon Physician Services' vicarious liability for the actions of Dr. Parham. The plaintiff did not argue that any portion of the allegations in count I stated an independent claim of negligence against Physician Services.

¶ 32 According to the record, the first time the plaintiff argued that she had an independent claim of direct negligence against Physician Services was in her motion to reconsider the summary judgment order. Even then, the plaintiff did not identify any specific acts of direct negligence attributable to Physician Services. In a supplemental memorandum in support of the motion to reconsider, the plaintiff argued that the claim of independent negligence against Physician Services was based upon the actions of its employee, Karla Webb, an advanced practice nurse. This new theory was not one of direct negligence against Physician Services. The plaintiff's arguments in support of her motion to reconsider toggled between two theories—Physician Services' direct negligence and its

⁴Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2018) requires the parties to disclose the subject matter, conclusions, opinions, bases for the opinions, qualifications and reports of a witness who will offer any opinion testimony. Illinois Supreme Court Rule 213(i) (eff. Jan. 1, 2018) requires the parties to seasonably supplement any previous answers when additional information becomes known. A witness may elaborate on a previously disclosed opinion as long as the testimony is encompassed by the original opinion and is not a new one. The purpose of Rule 213 is to avoid surprise and discourage tactical gamesmanship. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109-10 (2004).

vicarious liability for the acts of Karla Webb—neither of which had been pled in the first amended complaint. By that point in the proceedings, discovery had long been closed. The plaintiff had not asked for leave to amend her complaint to add these new theories of liability against Physician Services. She had not sought leave to disclose an expert witness to address any deviations from the standard of care of a member of the nursing profession. In addition, the plaintiff's only expert, Dr. Charash, offered no opinions about the negligence of Physician Services itself, or any employee or agent of Physician Services, other than Dr. Parham.

¶ 33 After examining the pleadings, the exhibits, the depositions, and the affidavits, we find that summary judgment was properly granted in favor of Physician Services. The plaintiff's claim that she alleged a separate and independent claim of negligence against Physician Services is refuted by the allegations in count I of the first amended complaint, and by the plaintiff's overall prosecution of her case against Physician Services. The record demonstrates that the plaintiff relied upon the theory that Physician Services was vicariously liable for the negligence of Dr. Parham from the inception of the case through the summary judgment proceedings. Based upon the record, the trial court reasonably concluded that the plaintiff's claim against Physician Services was based solely on a theory of vicarious liability for the alleged negligence of Dr. Parham, and that the *Gilbert* case applied. Under *Gilbert*, when a plaintiff's action against a principal is based upon vicarious liability, any settlement between the agent and the plaintiff must also extinguish the principal's vicarious liability, regardless of whether the plaintiff's covenant not to sue the agent expressly reserves the plaintiff's right to seek recovery from the principal. *Gilbert*,

156 Ill. 2d at 528. Thus, the trial court did not err in finding that the plaintiff's settlement with Dr. Parham extinguished the vicarious liability of his employer, Physician Services.

¶ 34 We also conclude that the plaintiff's motion to reconsider was properly denied. The purpose of a motion to reconsider is to bring to the trial court's attention newly discovered evidence, changes in the law, or errors in the trial court's application of existing law. *Spencer v. Wayne*, 2017 IL App (2d) 160801, ¶ 25. The denial of a motion to reconsider based on a purported misapplication of the existing law is subject to *de novo* review. *Spencer*, 2017 IL App (2d) 160801, ¶ 25. In contrast, the denial of a motion to reconsider that raises new facts, arguments, or legal theories not presented during the proceedings leading to the challenged order is reviewed for an abuse of discretion. *Spencer*, 2017 IL App (2d) 160801, ¶ 25.

¶ 35 Here, the trial court denied the plaintiff's motion to reconsider after finding that the plaintiff's argument regarding an independent claim of negligence against Physician Services was raised for the first time in her motion to reconsider and was contrary to her position in defending against Physician Services' motion for summary judgment. The court further found that the plaintiff's claim against Physician Services was based upon its vicarious liability for the negligence of Dr. Parham, and that under *Gilbert*, the plaintiff's settlement with Dr. Parham extinguished the liability of Physician Services. The trial court's findings are supported by the record.

¶ 36 Kent Henry died on May 3, 2014, and this case was filed on May 2, 2016. When summary judgment was entered on July 15, 2020, the case had been pending for more than four years. The plaintiff's new theory of medical negligence against Physician Services,

independent of the negligence of Dr. Parham, was made for the first time in a motion to reconsider. Even then, the plaintiff did not clearly state whether the claim against Physician Services was based on its direct negligence or its vicarious liability for the acts of its employee, Karla Webb. In addition, the plaintiff did not identify any error in the trial court's application of existing law. After reviewing the record, and considering the unique circumstances presented, we conclude that the plaintiff's motion to reconsider was properly denied.

¶ 37

III. CONCLUSION

¶ 38 For the reasons stated, the judgment of the circuit court of Jefferson County is affirmed.

¶ 39 Affirmed.