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NO. 4-25-1372

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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DEANA ORDAZ, as Special Administrator of the Estate of Noah Ordaz, Deceased, Plaintiff-Appellant, v. DANIEL HURST, D.O., and SPECIALISTS IN MEDICAL IMAGING, S.C., an Illinois Corporation, Defendants-Appellees.	))))))))	Appeal from the Circuit Court of Peoria County No. 19L55 Honorable Stewart J. Umholtz, Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court, with opinion.
Justices Grischow and Harris concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Deana Ordaz, the mother of decedent Noah Ordaz and special administrator of his estate, brought wrongful death claims against defendants Daniel Hurst, D.O., and his employer, Specialists in Medical Imaging, S.C., alleging that Hurst provided negligent medical treatment to decedent. During discovery, plaintiff twice failed to abide by the deadline for disclosing expert witnesses and their opinions. This ultimately resulted in the circuit court granting defendants' motion to bar the late-disclosed expert testimony and denying plaintiff's motion to reconsider. The court subsequently granted defendants' motion for summary judgment, reasoning that plaintiff would be unable to prove the proximate cause element of her claims without expert testimony on that issue. She now appeals, arguing both that the preclusion of her experts' testimony was an abuse of discretion and the granting of defendants' motion for summary judgment was

erroneous. We affirm the circuit court's judgment.

¶ 2 I. BACKGROUND

¶ 3 A. Decedent's Death

¶ 4 The record developed in connection with the motion for summary judgment reflects the following. On March 25, 2017, decedent awakened with sudden-onset chest pain. He went to the Proctor Hospital emergency department in Peoria, Illinois, where he was seen by James Brown, M.D., an emergency medicine physician. Decedent complained of left-sided substernal chest pain, which he characterized as a 7 on a scale of 1 to 10. Brown's differential diagnosis included pneumonia, myocarditis, and pericarditis, and he ordered chest X-rays.

¶ 5 Defendant Hurst, a radiologist, then read and interpreted the results of the X-rays. He concluded "there is no evidence of acute disease in the chest." Brown relied upon Hurst's impression in his treatment of decedent. He discharged decedent with a diagnosis of chest pain of an unspecified type.

¶ 6 That night, decedent told his family that his pain was feeling much better. Two days later, one of decedent's family members heard a thud coming from behind the locked door of decedent's bedroom. First responders arrived at the house and pronounced decedent dead. A pathologist's report concluded that he died due to a hemopericardium associated with a ruptured dissecting aortic aneurysm.

¶ 7 B. Plaintiff's Initial Investigation and This Action

¶ 8 In March 2019, diagnostic and interventional radiologist Myron Marx, M.D., conducted his own review of decedent's chest X-rays and autopsy. He ultimately disagreed with defendant Hurst's interpretation, writing as follows in a letter to plaintiff's counsel:

"There is clear evidence of abnormal density in the retro sternal clear space on the

lateral film. The differential diagnosis of a mass in this region includes lymphoma, teratoma, ascending aortic aneurysm, thymoma and retrosternal thyroid mass. The diagnosis of an aneurysm of the ascending aorta is supported by poor definition of the aortic knob on the frontal film, increased soft tissue density cephalic to the aortic knob and clearly defined density outlining the anterior proximal ascending aorta on the lateral radiograph.

To have met standard of care, the interpreting physician needed to make note of the mass and recommend further imaging studies, specifically a contrast enhanced chest [computed tomography (CT)]. The failure to have made this observation and recommendation resulted in this aneurysm/dissection going untreated until it ruptured into the pericardial sac resulting in the patient's death two days later."

¶ 9 Plaintiff filed this wrongful death action in March 2019. Count I asserted a claim of medical negligence against Hurst, and count II asserted a *respondeat superior* claim against his employer, Specialists in Medical Imaging, S.C. Plaintiff brought claims against other hospital entities as well, but they were voluntarily dismissed.

¶ 10 C. Discovery

¶ 11 In August 2019, the circuit court issued its first case management conference order regarding discovery. It imposed no deadlines for discovery but set a subsequent case management conference for December of that year.

¶ 12 The deposition of Brown, the emergency room doctor, was taken in November 2019. Regarding his expertise, the following exchange occurred during the deposition:

"Q. Based on what you know of Noah passing just a couple days after this,

do you believe that he had an aortic dissection at the time he was in the emergency room on March 25, 2017?

A. I can't formulate that opinion.

Q. Is that based on history, information or specialty that you're not able to formulate the opinion?

A. I think all of those things."

Brown further testified that, if he had diagnosed decedent with an aortic dissection, he would have placed an "[i]mmediate call to [a] cardiothoracic surgeon." When asked if, in the past, he had diagnosed an aortic dissection and had a cardiothoracic surgeon "fly in there and perform surgery on the patient," he answered in the affirmative. In those instances, he indicated that he "believes" the patient survived and that "in my 20-plus year career that maybe I have had it five times and they have all been adults or if there was a younger person with significant risk factors for that."

¶ 13 In May 2020, defendants filed a motion to compel discovery responses on the basis that discovery requests served in July 2019 had not yet been responded to. The record does not clarify what came of this motion. Over six months later, in January 2021, plaintiff provided her initial disclosures, listing, in pertinent part, Brown as an independent expert witness, Hurst as an adverse fact witness, and Marx as a controlled expert witness, pursuant to Illinois Supreme Court Rule 213(f)(2), (1), (3) (eff. Jan. 1, 2018), respectively. Plaintiff disclosed anticipated testimony from Hurst and Marx concerning the applicable standard of care. The disclosure listed only Marx as having opinions about "the cause, proximate or otherwise, in bringing about the harm suffered by decedent," stating more specifically that the alleged negligence "resulted in the death of the decedent" and deprived him of a "chance to survive or recover." Plaintiff's disclosures included a copy of Marx's March 2019 letter to plaintiff's counsel. The letter focused on the standard of care

related to the care provided by Hurst; it made no mention of the treatment decedent would have received, such as cardiothoracic surgery, had a proper diagnosis been made.

¶ 14 Defendant Hurst's deposition was taken in November 2021. He testified about the radiological standard of care, indicating that a CT scan with contrast is the "gold standard" for diagnosis of an aortic aneurysm, with a probable accuracy rate of higher than 95%. However, he had no opinion as to if or when cardiothoracic surgery would have occurred or if it would have been successful. When asked whether he was "going to offer any opinions regarding standards of care or medical opinions in the area of cardiology" or "cardiothoracic surgery or cardiothoracic opinions" in this case, he said he would not unless they specifically pertained to radiology.

¶ 15 In August, the circuit court entered a case management conference order setting a November 14, 2022, trial date. No other deadlines were set in the order.

¶ 16 An e-mail chain from April 20, 2022, shows the parties appeared to be working on scheduling the deposition of Marx. An April 28 letter from plaintiff's counsel states, "[t]here will be a more detailed disclosure, I'm hoping to get that to you shortly." A July 25 letter from defense counsel to plaintiff's counsel stated that the supplemental disclosures had still not been received, despite repeated requests. The letter also indicated in relevant part that they were running out of time to complete expert discovery by the trial date, so it should be vacated by an agreed scheduling order setting disclosure and deposition deadlines.

¶ 17 In an order entered in late September 2022, the circuit court struck the trial date by agreement of the parties and ordered plaintiff to file her supplemental expert report within 45 days. The court set a December 2 case management conference "for status on expert discovery and trial setting."

¶ 18 When the parties returned for the December 2 status date, plaintiff had not complied

with the prior order requiring expert supplementation within 45 days. No transcription of the December 2 hearing is contained in the record, but the circuit court issued an order at that hearing providing as follows: "Plaintiff to supplement expert disclosures by no later than 12/30/22." The court set January 27, 2023, as the next case management conference date.

¶ 19 It is undisputed that plaintiff did not supplement her expert disclosures by the extended deadline of December 30, 2022. She also did not request an extension prior to expiration of the deadline.

¶ 20 The record does not reflect what was discussed at the case management conference of January 27, 2023. On February 2, plaintiff's counsel left a voicemail for defense counsel indicating that plaintiff needed a few more days to complete the supplemental disclosure of Marx. The voicemail also mentioned for the first time that plaintiff was planning to disclose a cardiothoracic surgeon as an expert and that his report would be served shortly.

¶ 21 D. Motion to Bar

¶ 22 On February 10, 2023, defendants filed a motion to bar plaintiff's supplemental Rule 213(f)(3) disclosure. The same day, plaintiff filed her supplemental expert disclosure regarding Marx; this disclosure did not purport to name any new experts. However, on February 17, plaintiff disclosed Carl Adams, M.D., a cardiothoracic surgeon, as a controlled expert witness. Later that month, defendants served discovery requests for production of documents related to Marx and Adams. In March, defendants filed an amended motion to bar the supplemental disclosures of plaintiff to account for the new disclosures. In April, plaintiff provided defendants with deposition dates for Adams in May and June and for Marx in June and July. She also filed her response to the motion to bar.

¶ 23 On April 20, plaintiff delivered her responses to defendants' request for production

regarding Adams. The same day, the hearing on the motion to bar took place. Among various arguments, defense counsel argued that defendants were prejudiced because the delayed trial date resulted in a larger prejudgment interest amount and because the pending litigation is bad for the doctors as they reapply for insurance. Plaintiff argued that defense counsel failed to address the test that applies when a circuit court is considering a motion to bar. She also argued that

> "Dr. Marx is going to render the opinions of standard of care. Dr. Adams is going to kind of fill in the gap of, okay, if this dissection is properly diagnosed, what happens? What surgery is performed? What are the chances of survival? So he is not rendering opinions of standard of care."

Plaintiff's counsel later stated that defendants were trying to prevent plaintiff from bringing what she needs "to have a trial on the merits of the case to court." Defense counsel responded that "[p]laintiff still can have a trial on the merits. He has Dr. Marx. He has not been barred from calling any fact witnesses, any treating physicians, any lay witnesses, and he has not been barred from calling Dr. Marx." Defense counsel also noted his efforts to give plaintiff's counsel more time—agreeing to a continuance, corresponding with counsel about discovery, and

> "finally fil[ing] the motion to bar as a last act, because I didn't want to file a motion to bar but the disclosure hadn't been coming for months and months and months. I finally filed it. And only after I filed a motion to bar did we get the disclosure."

¶ 24 After hearing the arguments, the circuit court reasoned as follows:

> "I mean that is something I find troublesome here because I wonder why orders are entered? Why deadlines are set? And this judge, I started my training as a journalist where deadlines were deadlines. If you didn't meet the deadline, done. And I think it's important that in fairness to both parties to have deadlines, to have rules that

everybody follows. And I really wasn't even looking at this in terms of sanctions, but rather looking at the integrity of the Court and the Court's ability to set deadlines in order to move cases along.

* * *

*** The court after considering the pleadings and the arguments that have been made and taking into account numerous previous orders of the Court setting deadlines for discovery finds that it would be appropriate and maintain the integrity of the Court to stick with those deadlines and to bar the disclosure of Dr. Adams and additional disclosures of Dr. Marx after the deadlines have passed. The Court does not find any basis for finding that such delay was reasonable.

And for those reasons the Court will grant that in addition to the Court waiving any prejudgment interest for the period of time that this has caused delay."

Despite this ruling, plaintiff requested leave to file an affidavit explaining the reasons for the late disclosure, and the court granted leave to do so.

¶ 25 By May 18, 2023, plaintiff had not yet filed the explanatory affidavit the circuit court had permitted her to file. The court at that point issued its order granting defendants' motion to bar the late-disclosed supplemental opinion of Marx and effectively any opinions from Adams. The court also tolled all prejudgment interest accrued between February 20, 2022, and April 20, 2023. The same day, defendants issued a notice of deposition of Marx, scheduled for June 7, 2023.

¶ 26 During his June 2023 deposition, Marx repeatedly indicated that he is not a cardiothoracic surgeon. He stated that

"the radiologist needed to call the abnormality on the chest X-ray, recommend a

> CT angiogram. Given the presence of chest pain, a CT angiogram would have diagnosed the aneurysm and the dissection and that information could have been used by the emergency room department and the referring cardiothoracic surgeon to figure out what they wanted to do for this patient."

He later indicated that aortic aneurysms are not always emergencies and stated:

> "I am not a cardiothoracic surgeon, but many people live with aneurysms for many years. I think the criteria for surgery is size, rapid change in size or pain. Again, I am not a surgeon *** Some dissections are chronic and are not treated or can be treated medically. Others are emergencies or need to be corrected surgically, but who falls into what category I would leave to a cardiothoracic surgeon."

When specifically asked moments later whether he would defer opinions as to the appropriate treatment of aortic dissection, he again answered in the affirmative. He testified that his "job as a radiologist is to report [aortic aneurysms], give dimensions, any other findings that might be associated with an aneurysm, such as the dissection."

¶ 27 He also testified that he had patients in the past who were referred to surgery as a result of a diagnosis of an aortic dilation, dissection, or aneurysm. When asked whether they survived, he stated:

> "I don't have a particular recollection of a particular case to opine or to answer that question, but obviously replacement of a thinning thoracic aorta due to an aneurysm and dissection is a major surgery. It is my impression, not being a cardiothoracic surgeon, that most patients would survive that operation successfully."

Defense counsel objected to this statement for lack of foundation. Marx later indicated that surgery is the "most common way once these are diagnosed." Furthermore, he stated that, "[b]ased on my

experience, if you made the diagnosis of an ascending aortic dissection and aneurysm in a patient with acute pain, they would have had timely surgery, meaning rapid surgery, and the patient, in my experience, would survive."

¶ 28 E. Motion to Reconsider

¶ 29 On June 19, 2023, plaintiff filed her motion to reconsider, accompanied by her attorney's affidavit. The affidavit details plaintiff's counsel's unexpected need to devote significant time to cases other than this one from December 2022 until April 2023. This was offered as the explanation for the late disclosures without requesting an extension, which the affidavit stated was not intended to undermine the circuit court's authority.

¶ 30 In November 2023, the circuit court held a hearing on the motion to reconsider. Among other arguments, defense counsel expressed that he "did not want to incur the cost of taking his expert's deposition until [he] had the entire disclosure." There was also some disagreement about the appropriate role the affidavits should play in the analysis on a motion to reconsider. Plaintiff took the position that the court granted leave to file the affidavits, and defense counsel agreed. However, defense counsel argued that the appropriate time to file the affidavits would have been during the initial motion to bar proceedings, not during the motion to reconsider. The court ultimately agreed with defendants and did not consider the affidavits.

¶ 31 During that hearing, the circuit court alluded to the fact that, in another case, plaintiff's counsel had relied upon the adverse discovery ruling in this case to argue the opposite position. Specifically, plaintiff's counsel argued in the separate matter that "what's good for the goose is good for the gander" in an attempt to impose sanctions on the other party. Plaintiff's counsel admitted to this and attempted to reconcile this positional conflict by arguing that he was not challenging the imposition of sanctions in the present case so much as the sanction chosen:

that of barring the late-disclosed expert and opinions.

¶ 32 After hearing argument, the circuit court said it considered the relevant factors cumulatively instead of any one factor exclusively and held as follows:

> "Even though this case law wasn't argued at the motion and it was brought to the attention of the Court in the motion for reconsideration, I believe the Court has considered all of those factors, and I don't believe that there's anything to suggest that any of those factors are controlling or that any of those factors might indeed overlap or be conjoined in some way with regard to the arguments that were made about surprise and prejudicial effect. I think surprise, if you look at the basis for why a Court would even recognize such a notion of surprise as a factor, it is because of the goal of preventing gamesmanship. And I can't think of—well, the Court, after hearing all of the arguments and the factors that were argued both at the original hearing as well as today, the Court has not yet heard an explanation for why deadlines were not met that were set. And the plaintiff certainly had an opportunity to seek extensions of deadlines, and I haven't heard any argument or explanation as to why those extensions of deadlines were not sought. I think that is part of surprise to a—to a party not meeting deadlines. I for one as a judge believe that deadlines are important. And my background before I was an attorney was as a journalist. We had deadlines. And if you didn't hit the deadline, your story is dead. That's why they called it deadline. And unless there was some type of extension, it wasn't possible for that to survive. Here certainly it's easy enough for an attorney to seek an extension of a deadline. And I think barring a reasonable explanation for why those extensions were not sought—and nothing has been raised

> in this matter suggesting that—I think that overlaps also into the sixth factor, which was good faith. I think all of these factors kind of work together in ensuring that they don't have gamesmanship, that we have cases proceed in a workable fashion. I do find that the defendants have shown prejudicial effect of these late disclosures. I do find that the defendant was diligent in pursuing plaintiff's discovery. I do find that the defendants' objection was timely. I do find that in this motion for reconsideration there's been no new case law raised."

The circuit court issued an order in November 2023 denying the motion to reconsider.

¶ 33 In December 2023, plaintiff filed a motion requesting leave to appeal pursuant to Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019), which the circuit court denied in February 2024 after a brief hearing on the issue. On August 9, 2024, the court set a deadline of October 4, 2024, for the disclosure of defendants' Rule 213(f)(3) experts. The case was set for a case management conference October 18, 2024, to "discuss deposition deadlines for Defendants' experts and a trial date." Defendants disclosed their experts in September 2024.

¶ 34 F. Motion for Summary Judgment

¶ 35 Shortly after disclosing their experts, defendants filed a motion for summary judgment, arguing plaintiff failed to present evidence to establish that the claimed negligence proximately caused decedent's death. Specifically, defendants argue that plaintiff's case rests on the assumption that an earlier diagnosis by Hurst would have led to successful surgical treatment, but there is no expert opinion from a cardiothoracic surgeon that an earlier diagnosis would have led to earlier treatment or that the treatment would likely have been successful.

¶ 36 In February 2025, the circuit court set a trial date for January 2026.

¶ 37 In November, after full briefing from the parties, the circuit court held a hearing on

the motion for summary judgment. After the parties' arguments, the court reasoned that

> "the Court has made rulings in this case barring testimony, and nothing—nothing within those rulings would alleviate the burden that the Plaintiff has in presenting its case, particularly with regard to the issue of proximate cause.
>
> The Court has reviewed the totality of everything that's been presented in the pleadings, in the attachments. The Court really is left with a finding and understanding that the evidence and testimony that's been presented does not satisfy the plaintiff's burden on the issue of proximate cause. Opinions offered by the plaintiff do not meet the requisite degree of medical certainty regarding proximate cause. *** [T]he Court has reviewed Dr. Marx's supplemental opinions that even though—even though those were barred in this case, as is the Court's understanding of earlier rulings that the Court has made, I'm not considering those opinions. I have looked at what has been presented, but even if I had considered, I do not believe that the burden has been met here; and for those reasons and the reasons [that] have been discussed today ***."

In December, the court issued its order granting the motion for summary judgment.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 A. Precluding Expert Testimony

¶ 41 Plaintiff argues that the barring of Adams's and Marx's late-disclosed opinions is purely punitive and an abuse of discretion. She does not challenge the imposition of sanctions generally and acknowledges that she failed to abide by the deadlines to file expert witness disclosures. Rather, she argues the specific sanction outweighs the wrongdoing to such an extent

that no reasonable court would have imposed it.

¶ 42 1. *General Principles*

¶ 43 Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2018) requires parties to furnish information about their expert witnesses, including, for independent expert witnesses, the subjects on which each will testify and the opinions the party expects to elicit. For controlled expert witnesses, like those at issue here, Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2018) requires the party to further disclose the bases for all the witnesses' opinions and to produce any reports prepared by the witnesses about the case.

¶ 44 Illinois Supreme Court Rule 219(c)(iv) (eff. July 1, 2002) states that the unreasonable failure to comply with the rules or orders of the circuit court allows the court to enter orders that are just, including barring a witness from testifying. In this context, the "orders of the circuit court" at issue are most likely to be case management orders entered pursuant to Illinois Supreme Court Rule 218 (eff. Feb. 2, 2023). Among the matters Rule 218 directs courts to address are "the area of expertise and the number of expert witnesses who may be called" and "deadlines for the disclosure of witnesses." Ill. S. Ct. R. 218(a)(5)(ii), (iii) (eff. Feb. 2, 2023). The supreme court's rule directs that "[a]ll dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates that trial will commence." Ill. S. Ct. R. 218(c) (eff. Feb. 2, 2023). The "rule is to be liberally construed to do substantial justice between and among the parties." *Id.*

¶ 45 When analyzing a circuit court's decision under Rule 219 to preclude expert testimony at trial, the standard of review is abuse of discretion. *Parker v. Illinois Masonic Warren Barr Pavilion*, 299 Ill. App. 3d 495, 501-02 (1998). As the Illinois Supreme Court has noted, this

is "the most deferential standard of review available with the exception of no review at all." (Internal quotation marks omitted.) *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). A circuit court abuses its discretion only when its decision is "arbitrary, fanciful or unreasonable [citation] or where no reasonable person would agree with the position adopted by the [circuit] court." *People v. Becker*, 239 Ill. 2d 215, 234 (2010). In this context, it has been said that the "circuit court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the circuit court." *Frulla v. Hyatt Corp.*, 2018 IL App (1st) 172329, ¶ 26.

¶ 46 Moreover, when assessing whether the sanction was an abuse of discretion, we examine the same factors the circuit court considers when deciding whether to exclude a witness as a discovery sanction: "(1) the surprise to the adverse party; (2) the prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and (6) the good faith of the party calling the witness." *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 110 (2004) (hereinafter referred to as the *Sullivan* factors). As plaintiff recognizes, each case is to be considered based on its unique factual situation. *Boatmen's National Bank of Belleville v. Martin*, 155 Ill. 2d 305, 314 (1993). No single factor is determinative. *In re Estate of Kline*, 245 Ill. App. 3d 413, 433 (1993). A reviewing court is to focus on whether the record provides an adequate basis for upholding the decision to sanction. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 47 2. *The* Sullivan *Factors*

¶ 48 Plaintiff argues that the circuit court did not consider the *Sullivan* factors in making its ruling. We disagree. Though the court may not have specifically referenced the *Sullivan* factors

when making its initial ruling, it acknowledged that it had considered the parties' arguments. Moreover, at the hearing on the motion to reconsider, the court expressly acknowledged them and indicated that its original ruling was consistent with its consideration of the factors. "[I]t is a fundamental principle of appellate law that when an appeal is taken from a lower court judgment, the question before the court of review is the correctness of the result, not the correctness of the reasoning on which the result was reached." (Internal quotation marks omitted.) *People v. White*, 2025 IL App (2d) 240477, ¶ 41 (citing *People v. Johnson*, 208 Ill. 2d 118, 128 (2003)). Furthermore, this rule has applied in the context of reviewing sanctions for an abuse of discretion. *Arnold*, 2015 IL 118110, ¶ 16. We therefore examine the *Sullivan* factors individually.

¶ 49 a. Surprise

¶ 50 Regarding the first factor, pertaining to the surprise to the defendants, plaintiff argues that there was no unfair surprise because there was still time for expert discovery. Specifically, she points to the fact that no trial date was set in this matter. Initially, we observe that this case *had* been set for trial at one time, but that trial date was canceled due to the slowness of plaintiff's disclosures.

¶ 51 It is conceded that, though plaintiff was given time to supplement her earlier disclosure of Marx's opinions, it was not until February 2, 2023, that plaintiff's counsel first advised defense counsel of the intention to obtain an expert in the field of cardiothoracic surgery. In other words, this was not a development that had been explicitly discussed in the preceding years in which the case was pending.

¶ 52 Defendants were not surprised by the disclosure of new opinions from Marx, as a supplemental disclosure of his opinions had been clearly anticipated for quite some time. They were, however, surprised by the addition of a new and previously undisclosed expert. Still, this is

not the same degree of surprise that would be generated by a disclosure at or near to trial; consequently, it weighs only slightly in favor of the circuit court's sanction. The prejudice suffered as a result of the late disclosure is discussed next.

¶ 53 This factor alone does not weigh in favor of a sanction barring the late-disclosed testimony. The import of the circuit court's scheduling orders, however, will be discussed below.

¶ 54 b. Prejudice

¶ 55 Plaintiff's argument with respect to prejudice is largely the same as that concerning surprise. There was no trial date set, so defendant still had time to conduct discovery of the new expert and new opinions. Initially, we observe that this case had been set for trial at one time, but that trial date was canceled due to the slowness of plaintiff's disclosures.

¶ 56 Furthermore, whether a circuit court sets a future trial date falling at the end of a long discovery schedule or only as discovery nears completion is a courtroom management decision within the circuit court's discretion. Here, the circuit court attempted both methods, and neither succeeded. The first trial date was canceled because of plaintiff's lagging disclosures, and the late disclosures at issue would prevent a trial date from happening for months. The likelihood is that defendants would wish to retain their own cardiothoracic expert; locating, retaining, and disclosing the opinions of such an expert would add to the time necessary before the trial could be scheduled.

¶ 57 More fundamentally, we cannot agree with plaintiff's implication that, so long as no trial date has yet been set (or, in this case, reset), no discovery violation can earn a severe sanction. As we discuss further below, scheduling orders entered by a circuit court serve an important purpose and must be respected. Other cases have precluded expert testimony because of a missed deadline, even when there was no trial date set. See, *e.g.*, *Castro v. South Chicago*

Community Hospital, 166 Ill. App. 3d 479, 480-83 (1988) (analyzing Illinois Supreme Court Rule 220 (eff. Oct. 1, 1984) and holding that the circuit court did not abuse its discretion in disqualifying late-disclosed experts even when there was no trial date set); *Mitchell v. Wayne Corp.*, 180 Ill. App. 3d 796, 800, 802 (1989) (holding that circuit court did not abuse its discretion in barring an expert witness due to late disclosures, even when there was no trial date set).

¶ 58 In assessing prejudice, we are really considering *undue* prejudice. The issue is not whether defendants would be prejudiced by the new opinions but by the *late disclosure* of those opinions. In our view, the only prejudice that defendants suffered from the late disclosure was the possible delay of a future trial date as a result of the untimely disclosures. This weighs only very slightly in favor of a discovery sanction.

¶ 59 c. Nature of the Witnesses' Testimony

¶ 60 The parties devote little space in their briefs to discussing the third *Sullivan* factor: the nature of the witnesses' testimony. As discussed more completely below, the general rule is that the plaintiff in a medical malpractice case must present appropriate expert testimony on the issue of proximate cause. *Simmons v. Garces*, 198 Ill. 2d 541, 556-57 (2002). While barring such testimony can have harsh consequences, the need for it should come as no surprise.

¶ 61 Furthermore, given the importance of expert testimony in malpractice cases, disclosure and discovery of their opinions is of central importance. The obligation of disclosure is at its zenith when it comes to controlled expert witnesses like Marx and Adams. Slow disclosure of expert opinions has a ripple effect on the ultimate timeline for the completion of discovery and trial.

¶ 62 We conclude that this factor weighs in favor of the sanction imposed.

¶ 63 d. Defendants' Diligence and Timeliness

¶ 64 Relevant to the fourth and fifth factors, regarding defendants' diligence and timeliness, plaintiff argues that they cannot now claim prejudice from continuing the trial because they had agreed to it. Perhaps defendants agreed to the continuance, but it does not change the fact that their agreement was made necessary by plaintiff's delays. Furthermore, we will not punish defendants for attempting to accommodate plaintiff. We view their agreement to a continuance as a diligent, earnest, and cooperative effort to keep the litigation on track. Indeed, they were thinking months ahead, filing a motion to compel and subsequently writing to plaintiff in July 2022 to ask about a joint extension, given the trial date in November of that year. Even plaintiff has acknowledged that the rules are intended to enable the parties to work together, discourage tactical gamesmanship, and avoid surprise. Contrary to this notion is her suggestion that defendants' agreement to a continuance is in some way a mark against them. Defendants acted promptly instead of letting the matter sit for future adjudication.

¶ 65 We find that this factor weighs distinctly in favor of the sanction imposed.

¶ 66 e. Plaintiff's Good-Faith Efforts to Comply

¶ 67 The sixth factor pertains to whether plaintiff had exerted good-faith efforts in meeting the deadlines. We agree that plaintiff did not completely abandon her responsibilities, but she fell short of the mark on more than one occasion. Discovery was served on her in July 2019, but 10 months later, defendants were still required to file a motion to compel. As discussed above, plaintiff's lack of a response to defendants' requests to supplement her expert disclosures played a major role in scuttling the trial set for November 2022. In September 2022, plaintiff was ordered to disclose expert opinions within 45 days; she failed to do so. The deadline was extended to December 30; plaintiff again failed to comply. Plaintiff filed no motion seeking additional time, apparently intending to ask for forgiveness rather than permission.

¶ 68 On February 2, 2023, plaintiff's counsel left a voicemail for opposing counsel indicating that supplementation would be coming "shortly." On February 10, 2023, she disclosed Marx's supplemental opinions but nothing about Adams's opinions. She finally made a disclosure of Adams's opinions on February 17, 2023. This was 5 months after she was ordered to make the disclosure and 1½ months after an extended deadline. Watching two deadlines come and go makes a poor case for finding good faith.

¶ 69 Plaintiff filed affidavits along with her motion to reconsider the circuit court's rulings, which describe an exceptionally busy period at plaintiff's counsel's law firm from December 2022 to April 2023. However, the lack of diligence exceeds that period on each end. Plaintiff indicated as early as April 2022 that the supplemental disclosures were forthcoming soon, and her claimed office difficulties did not begin until six months later. Furthermore, she was able to make her disclosures in February 2023, so any continuing difficulty beyond that time seems to be unrelated to the issues here. In any event, these were matters not brought forward at the time of the hearing on the motion to bar and were raised only at reconsideration. The court was justified in not considering these newly raised matters. See *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248-49 (1991) (stating that "the interests of finality and efficiency *require* that the trial courts not consider such late-tendered evidentiary material, no matter what the contents thereof may be" (emphasis in original)).

¶ 70 We find that this factor weighs in favor of the sanction imposed.

¶ 71 f. Consideration of All Factors

¶ 72 Our role here is not to reweigh the *Sullivan* factors as they apply here but to determine whether the circuit court acted within its discretion in concluding that they weighed in favor of barring the late-disclosed testimony. As noted above, the abuse of discretion standard is

greatly deferential to the lower court. We note that the court could have made its ruling more clearly defensible if the record showed that it engaged in progressive sanctions or if it made clear to the parties that the somewhat lax management of the case earlier in its life would be coming to an end and that the deadlines set in late 2022 would be more strictly enforced. On the latter point, we note that plaintiff has not included a transcript of the proceedings from the dates on which those deadlines were set.

¶ 73 Plaintiff relies heavily on *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112 (1998), and *Besco v. Henslee, Monek & Henslee*, 297 Ill. App. 3d 778 (1998), in support of her contention that the circuit court's sanction was too severe. We find both cases to be distinguishable.

¶ 74 *Shimanovsky* dealt with a sanction for allegedly destroyed evidence, not failing to abide by a court order. Moreover, the sanction imposed—outright dismissal—was even more severe than the sanction imposed here. See *Shimanovsky*, 181 Ill. 2d at 128-29. The issues were more on point in *Besco*, but the circumstances were different. In *Besco*, both parties were responsible for numerous discovery delays, the case was still in the early stages of discovery, and the expert was the plaintiff's only expert. Additionally, the defendants there were alleged to be part of the reason for the delay in disclosure. *Besco*, 297 Ill. App. 3d at 783. Again, this case does not bear the same characteristics.

¶ 75 Our ultimate conclusion, given the deferential standard of review, is that the circuit court acted within its discretion in determining that the sanction of barring the testimony was appropriate.

¶ 76 3. *The Court's Sanction Is Not Punishment*

¶ 77 Plaintiff argues the circuit court order constituted punishment, contravening notions in our case law that "the punishment should fit the crime" (*Coleman v. Abella*, 322 Ill. App. 3d

792, 800 (2001)) and that a court "may not impose sanctions that are intended primarily as punishment" (*Ruane v. Amore*, 287 Ill. App. 3d 465, 472 (1997)).

¶ 78 It is true that the purpose of a discovery sanction "is to coerce compliance with discovery rules and orders, not to punish the dilatory party." *Shimanovsky*, 181 Ill. 2d at 123. From the perspective of the sanctioned party, however, the end result of a significant sanction can feel like punishment regardless of its purpose. Other cases have upheld severe sanctions that the affected party might have perceived as punishment. In *Prather v. McGrady*, 261 Ill. App. 3d 880, 887 (1994), a party's expert was barred for noncompliance with the court's scheduling order; that sanction was not "punishment." Moreover, repeated violations of court orders may properly lead to outright dismissal. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 67 (1995). A sanction should not be characterized as "punishment" simply due to its severity.

¶ 79 Here, looking at the context for the circuit court's orders, we conclude that they were not intended as punishment but were simply actions in enforcement of its Rule 218 scheduling orders. A case management order is intended to bring a case to trial following the orderly progress of discovery. While the end of the process is the trial, the deadlines established pursuant to a case management order are themselves important benchmarks along the road to that end. Simply stating that the case had not *yet* been set (or here, reset) for trial overlooks the relevance and importance of the schedule the court establishes to reach that goal. When the court issued a discovery sanction in *Clymore v. Hayden*, 278 Ill. App. 3d 862, 869 (1996), for the failure to abide by its orders, it invoked the supreme court's admonition that "court rules and orders are not merely suggestions to be complied with if convenient." *Id.* (citing *People v. Wilk*, 124 Ill. 2d 93, 103 (1988)). Instead, they "constitute obligations that counsel disregard at their *personal* peril and that trial courts must enforce." (Emphasis in original.) *Id.*

¶ 80 Other developments have reinforced the importance of Rule 218 case management orders. The Illinois Supreme Court's strategic agenda identifies the goal to have a court system "that resolves disputes fairly and timely." Ill. Jud. Branch, Illinois Judicial Branch Strategic Agenda 2026-2028 at 10 (January 2026), available at https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/cbe12922-0fc6-4af0-a1d8-352337d28f7d/2026-2028%20Strategic%20Agenda.pdf [https://perma.cc/XPN5-KD4C]. The supreme court has also adopted time to disposition standards that specify that 98% of even complex cases should be resolved within 36 months of filing. Ill. S. Ct., Time Standards for Case Closure in the Illinois Trial Courts (July 1, 2022), available at https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f5cdd7d7-49b1-409e-b556-56c1f55060c3/M.R.%2031228%20-%20Time%20Standards%20for%20Case%20Closure%20in%20the%20Illinois%20Trial%20Courts%20-%2003-25-22.pdf [https://perma.cc/MVE2-LUPF]. This case is not subject to the standards only because it is too old; it began three years before the standards were adopted. Still, circuit courts are being asked to be more sensitive to the time it takes to resolve cases in our courts.

¶ 81 When making its ruling here, the circuit court cited the justice system's integrity and the importance of adhering to deadlines. This consideration finds resonance in established caselaw. The Illinois Supreme Court has upheld sanctions based on "maintaining the integrity of our court system." *Sander*, 166 Ill. 2d at 68. Further, we have permitted courts to bar witnesses to manage their dockets, prevent delays, and control discovery. See *Baxter v. Mount Sinai Hospital Medical Center of Chicago*, 2026 IL App (1st) 241968-U, ¶ 27; see also *Amoco Oil Co. v. Segall*, 118 Ill. App. 3d 1002, 1013 (1983) (stating that the purpose of sanctions is not to punish litigants but rather to accomplish the object of discovery and promote the unimpeded flow of litigation). And we have permitted circuit courts the discretion to enforce court-ordered deadlines, treat those

orders as law, and determine what sanctions to impose. See *Baxter*, 2026 IL App (1st) 241968-U, ¶ 20; see also *Department of Transportation v. Crull*, 294 Ill. App. 3d 531, 538-39 (1998) (reasoning that Rule 213 establishes more exacting requirements for disclosure of expert witnesses than did the former Rule 220 and, as such, "[t]rial courts should be more reluctant under Rule 213 than they were under former Rule 220 (1) to permit the parties to deviate from the strict disclosure requirements, or (2) not to impose severe sanctions when such deviations occur").

¶ 82 Simply put, we cannot ask our circuit courts to take a firm hand in setting deadlines to manage their cases and then too lightly set aside steps taken in enforcement of those deadlines. Here, a trial date was set and then stricken because of plaintiff's initial slowness in responding to discovery. Only three months after the trial date was stricken, the court set a specific deadline for plaintiff to complete her expert disclosures; she ignored it. The court extended the deadline again; plaintiff ignored it again. The complete disclosure was not made until a month and a half after the extended deadline. We do not find it an act of "punishment" for the circuit court to treat its orders as just that—orders.

¶ 83 Plaintiff also argues that there is a future and final opportunity for her to disclose her experts and their opinions: at deposition. It is true that Rule 213(g) limits a witness's testimony on direct examination to "information disclosed in answer to a Rule 213(f) interrogatory, *or in a discovery deposition*." (Emphasis added.) Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2018). This does not mean, as plaintiff implies, the discovery obligations under Rule 213(f) concerning interrogatories are optional or meaningless. It is true that Rule 213(f) requires a more modest disclosure of the opinions of an independent expert and less still of the expected testimony of a lay witness. See Ill. S. Ct. R. 213(f)(1), (2) (eff Jan. 1, 2018). For a controlled expert, such as those at issue here, however, the required disclosure via interrogatory is extensive, extending to the conclusions and

opinions of the witness and all bases therefor. Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2018).

¶ 84 Consequently, while a party may choose to depose the opponent's controlled expert witness to probe the expert's opinions and reasoning, the deposition is not intended to be the time to learn of wholesale new and previously undisclosed opinions. "The party propounding the expert is generally required to disclose the expert's opinion *before* the deposition, not at the deposition." (Emphasis in original.) *Schuler v. Mid-Central Cardiology*, 313 Ill. App. 3d 326, 332 (2000).

¶ 85 For all the foregoing reasons, we conclude that the circuit court did not abuse its discretion when it barred plaintiff's disclosures made well after the court's established—and extended—deadline.

¶ 86 B. Motion for Summary Judgment

¶ 87 Plaintiff argues that granting defendants' motion for summary judgment was erroneous because the expert testimony makes a *prima facie* showing of proximate causation in support of the medical negligence claim. Defendants, in turn, argue that summary judgment was proper because plaintiff lacked the expert testimony needed to establish proximate cause.

¶ 88 The Code of Civil Procedure allows a defendant to file a motion for summary judgment "at any time." 735 ILCS 5/2-1005(b) (West 2024). Furthermore, summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmovant, reveal that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *State Farm Fire & Casualty Co. v. Martinez*, 384 Ill. App. 3d 494, 497-98 (2008). "[A]ny evidence which would be inadmissible at trial cannot be considered by the court in support of or opposition to a motion for summary judgment." *Watkins v. Schmitt*, 172 Ill. 2d 193, 203-04 (1996). If what is contained in the pleadings and affidavits would have constituted all the evidence at trial, then a summary

judgment should be entered. *Jones v. Pneumo Abex LLC*, 2019 IL 123895, ¶ 25.

¶ 89 Here, defendants filed a variety of summary judgment motion sometimes called a *Celotex* motion, a term derived from the United States Supreme Court's decision in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293, ¶ 25. A *Celotex* motion asserts that the nonmoving party's evidence is insufficient to avoid judgment as a matter of law.

¶ 90 Because this action asserts a claim of medical negligence, plaintiff must establish the breach of a duty that proximately caused injury to her decedent. *Rohe v. Shivde*, 203 Ill. App. 3d 181, 192 (1990). As a general rule, a plaintiff must establish proximate causation in a medical negligence case through expert testimony. *Simmons*, 198 Ill. 2d at 556-57; see *Thompson v. LaSpisa*, 2023 IL App (1st) 211448, ¶¶ 40-41 (discussing exceptions to the general rule). While there is no dispute here concerning the adequacy of the evidence in other respects, the question is whether plaintiff has adduced sufficient evidence to create an issue of fact as to the issue of proximate cause.

¶ 91 We review a grant of summary judgment *de novo*. *Bright v. Yenchko*, 2026 IL 132015, ¶ 14.

¶ 92 1. *The Expert Testimony of Record*

¶ 93 Here, we accept plaintiff's assertion that the evidence is sufficient to create an issue of fact as to the following: (1) that defendant Hurst should have seen signs on the X-ray of the need for additional action; (2) that, if he had seen such signs, Hurst would have ordered a CT scan with contrast; (3) that, if such a test had been conducted, it is highly likely it would have led to diagnosis of decedent's aortic dissection; and (4) that such a diagnosis would have led to consultation with a cardiothoracic surgeon. The issue boils down to the adequacy of the evidence

to support plaintiff's final assertion: "that the consult would have led to surgery" that would have "likely been successful."

¶ 94 We need not consider whether Adams might have provided the necessary testimony, as he was barred as a witness. As discussed above, we conclude that the circuit court acted within its discretion in that determination. We have repeatedly granted summary judgment based on a gap in the plaintiff's evidence that could only be filled by an already precluded expert witness. See *Smith v. Bhattacharya*, 2014 IL App (2d) 130891, ¶ 21 (affirming summary judgment and finding no abuse of discretion when the circuit court barred expert testimony for failure to abide by the disclosure deadline even when trial was months away); see also *Bennett v. Raag*, 103 Ill. App. 3d 321, 327-28 (1982) (affirming summary judgment in medical negligence claim when necessary expert testimony was barred); *James v. Yasunaga*, 157 Ill. App. 3d 450, 457 (1987) (affirming summary judgment and finding no abuse of discretion when the circuit court barred expert testimony for failure to abide by the disclosure deadline even when the discovery deadline had not passed and trial was months away).

¶ 95 Beyond Adams, plaintiff points to other physicians who, as she puts it, "address this 'gap' " in proximate cause testimony. The irony here is that it is undisputed that these other specialties are not medically competent to administer the treatment at issue, but plaintiff relies on them to offer testimony on what treatment was necessary and the chances that it might succeed. Examination of the proffered opinions of each such witness shows that they fall short of the mark.

¶ 96 Plaintiff argues that Marx would testify that, had a cardiothoracic surgeon been consulted, her decedent "would have had *** timely surgery" and he is of the opinion "that most patients who have this kind of surgery in a timely fashion before the aneurysm ruptures survive." But Marx is a radiologist, not a cardiothoracic surgeon, and he agreed that not every aneurysm is

an emergency requiring surgery. We *do not know* the likelihood that decedent's presentation on a hypothetical CT scan would lead a surgeon to judge that surgery was the appropriate treatment for this patient, and we *do not know* the likelihood that surgery would have been successful. Marx concedes that it would be up to the surgeon to "figure out what they wanted to do for this patient." If the surgeon did choose to act promptly, Marx said that he would defer to the surgeon on the appropriate treatment.

¶ 97 Under *Aguilera v. Mount Sinai Hospital Medical Center*, 293 Ill. App. 3d 967, 974-75 (1997), bare statements from experts about survival rates increasing if the missing medical treatment had been provided is, by itself, the kind of insufficient speculative expert testimony that does not create an issue of fact for the jury. Without factual bases supporting the expert opinion, "the opinions offered by the plaintiff's experts *** must be viewed as conjecture." *Id.* at 976. Marx's testimony about what he has seen happen with other patients is also "contingent, speculative or merely possible." (Internal quotation marks omitted.) *Id.*; see *Ayala v. Murad*, 367 Ill. App. 3d 591, 601-02 (2006) (reasoning that an expert's ability to testify in general terms is insufficient to establish proximate cause). The testimony functions more as a limited recollection of his experience rather than an expert opinion based on medical science. It shows that, while he interacts with cardiothoracic surgeons, he is not a specialist or practitioner in that area. Marx's testimony is not similar to that in *Hemminger v. LeMay*, 2014 IL App (3d) 120392, ¶¶ 22-25, where a qualified expert provided a statistical analysis comparing the odds of survival during stage 1 of the cancer versus stage 3 of the cancer and supplemented that with her own professional experience, knowledge, and training, which established a *prima facie* case of proximate cause to a "reasonable degree of medical certainty."

¶ 98 As to Brown, the emergency room physician, plaintiff's disclosure offered a few

boilerplate generalities on the topics on which he might testify, but it did not specifically mention experience with cardiothoracic surgery. At his deposition, he testified that, if he had diagnosed someone with an aortic dissection at the emergency room, he would have immediately called a cardiothoracic surgeon. Over the course of his 20-plus-year career, he has had a cardiothoracic surgeon come in and perform the surgery a handful of times, and he believes the patient lived in those instances. However, this testimony is largely based on his sporadic experience working upstream from cardiothoracic surgeons and is not based on his own medical expertise. Indeed, he also testified that, due to his specialty, he could not formulate an opinion about whether decedent passed away because of an aortic dissection. For similar reasons applicable to Marx's testimony, Brown's testimony does not create a genuine issue of material fact about proximate cause. He offers anecdotal evidence of what he has seen but not opinions to a reasonable degree of medical certainty about what plausibly would occur with *this patient*.

¶ 99 Defendant Hurst himself was named as an independent expert witness, but he seems like an unlikely candidate to provide the missing link in plaintiff's evidence of proximate cause. During his deposition, he testified that he is a radiologist. When asked, he indicated that a CT scan with contrast is the gold standard for diagnosis of an aortic aneurysm with accuracy, with a probable accuracy rate of higher than 95%. However, he did not opine on the likelihood that such a radiographic result would lead to surgery or whether surgery would have been successful. He also directly stated that he would not be offering opinions in this case about cardiology or cardiothoracic surgery. This, too, fails to create a genuine issue of material fact on the issue of proximate cause, for reasons similar to those described above.

¶ 100 2. *Applicability of* Dunbar v. Carlson

¶ 101 Plaintiff also argues that summary judgment is inappropriate because, even if a

prima facie case has not been established yet, it could be at trial. In making this argument, she relies on *Dunbar v. Carlson*, 2025 IL App (4th) 241143-U, which distinguishes between the procedural posture of a motion for summary judgment, in which not all evidence has been heard, and a judgment notwithstanding the verdict, in which evidence has closed.

¶ 102 *Dunbar* is distinguishable. Plaintiff suggested it was the now-barred Adams that would supply the needed testimony on proximate cause: "Dr. Adams is going to kind of fill in the gap of, okay, if this dissection is properly diagnosed, what happens? What surgery is performed? What are the chances of survival?" But, as already established, Adams is entirely precluded from testifying. The other three experts in plaintiff's disclosure have affirmatively shown that they are not surgeons and do not perform surgery on the condition at issue; they would defer to surgeons on the question of if and when cardiothoracic surgery would have occurred and whether it would have succeeded in resolving the issue. There is no door open to any new or different testimony at trial concerning proximate cause.

¶ 103 Compare this situation to *Dunbar*, where we concluded that there were multiple possible avenues for establishing proximate cause and at least one of those theories was backed by specific testimony based on objective guidelines, studies, and experience. See *id.* ¶¶ 53-55. Furthermore, proximate cause in *Dunbar* was based on treatments of the patient that had subsequently occurred and definitively showed their effectiveness. Contrarily, here, decedent never received surgery, making the relevant expert testimony from a qualified surgeon essential.

¶ 104 To paraphrase *Townsend v. University of Chicago Hospitals*, 318 Ill. App. 3d 406, 414 (2000), "a [surgeon is] the one required to say [surgery] should have occurred absent the defendant's negligence." Here, however, where the only possible testifying experts would not be able to offer opinions establishing the element of proximate cause, summary judgment is

appropriate. Consequently, the circuit court's ruling is not erroneous.

¶ 105 3. *Applicability of the Lost-Chance Doctrine*

¶ 106 As a final matter, we address plaintiff's brief invocation of the "lost-chance" doctrine, and we do so mainly to demonstrate that it does not affect our analysis here. The evidence of record suggests that decedent died because of a dissecting aorta; in other words, that medical condition is a cause of his death. That does not eliminate the possibility that medical negligence, such as a delay in treatment, was also a contributing proximate cause. Consequently,

> "[t]o the extent a plaintiff's chance of recovery or survival is lessened by the malpractice, he or she should be able to present evidence to a jury that the defendant's malpractice, to a reasonable degree of medical certainty, proximately caused the increased risk of harm or lost chance of recovery." *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 119 (1997).

However, this concept "does not relax or lower [a plaintiff's] burden of proving causation." *Id.* at 120. The pattern jury instruction given in other types of tort cases is equally appropriate in lost-chance cases. See *id.* at 110-11.

¶ 107 Furthermore, there is no different or more forgiving rule concerning the necessity for expert testimony when a plaintiff relies on the lost-chance theory. If anything, the issues are more complicated by the presence of more than one contributing cause of the injury or death. Consequently, evidence to a reasonable degree of medical certainty that negligent delay in diagnosis or treatment lessened the effectiveness of treatment is required. *Snelson v. Kamm*, 204 Ill. 2d 1, 47 (2003). For that reason, there is no greater tolerance for speculative testimony when a plaintiff employs the lost-chance theory.

> "Contrary to plaintiff's argument in this case, *Hemminger* did not signal that

a medical expert's testimony under a lost-chance theory of recovery is subject to a lower threshold for admissibility. The door is not opened for speculation as to whether a defendant doctor's negligence deprived the patient of the opportunity to undergo treatment that could have been effective if given earlier." *Freeman v. Crays*, 2018 IL App (2d) 170169, ¶ 26.

¶ 108 We find that the importance of such testimony in a case such as this one is well stated in *Thompson*, where the plaintiff claimed that an earlier diagnosis of cellulitis would have prevented its progression:

> "In our view, expert testimony would be necessary to establish a proximate causal relationship for this injury. The difference between how much Thompson's facial cellulitis would have progressed had she immediately received emergent hospital care, versus how much it did progress with those additional 18 hours lacking such care, requires knowledge beyond the ken of the layperson. We know there was a delay in her treatment, and we know from her testimony, the medical records, and the grisly photos that her condition worsened over those 18 hours. We also know that her swelling improved quite soon after she was hospitalized.
>
> We do not know, however, whether earlier treatment would have prevented that additional swelling or whether this particular infection would have reached its full potential anyway, even if immediately treated. We do not know whether or to what extent her hospital stay would have been shortened, either. To answer these questions would require a firm knowledge of the finer points of facial cellulitis. The average person knows nothing of that affliction, its treatment, and its course of progression; expert testimony was necessary to explain it." (Emphasis omitted.)

Thompson, 2023 IL App (1st) 211448, ¶¶ 45-46.

¶ 109 The fact that plaintiff here is pursuing a theory that negligence caused a lost-chance theory of recovery does not diminish the need for expert testimony on causation; if anything, it makes such testimony even more essential.

¶ 110 III. CONCLUSION

¶ 111 For the reasons stated, we affirm the circuit court's judgment.

¶ 112 Affirmed.

Decision Under Review:	Appeal from the Circuit Court of Peoria County, No. 19-L-55; the Hon. Stewart J. Umholtz, Judge, presiding.
Attorneys for Appellant:	Jeff Green, of Peoria Heights, for appellant.
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