

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).

2026 IL App (4th) 251322-U

NO. 4-25-1322

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 16, 2026

Carla Bender

4th District Appellate
Court, IL

TRECIE LINVILLE,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Logan County
MEMORIAL HEALTH SYSTEM, an Illinois	)	No. 19L9
Corporation; ABRAHAM LINCOLN MEMORIAL	)	
HOSPITAL, an Illinois Corporation; ABRAHAM	)	
LINCOLN MEMORIAL HOSPITAL FOUNDATION,	)	
an Illinois Corporation; ROBERT SLIWA, D.O.,	)	
Individually and as Agent of Memorial Health System,	)	
Abraham Lincoln Memorial Hospital, and Abraham	)	
Lincoln Memorial Hospital Foundation; and MATTHEW	)	
SAXSMA, PA, Individually and as Agent of Memorial	)	
Health System, Abraham Lincoln Memorial Hospital, and	)	Honorable
Abraham Lincoln Memorial Hospital Foundation,	)	Jonathan C. Wright,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices DeArmond and Cavanagh concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's decision to (1) grant defendants' motions for summary judgment because plaintiff failed to establish a genuine issue of material fact as to causation in her medical negligence claims and (2) deny plaintiff's motion to amend her Illinois Supreme Court Rule 213(f)(3) (eff. Jan 1, 2018) expert witness disclosures.
- ¶ 2 Plaintiff, Trecie Linville, filed a 12-count complaint alleging negligence against various medical professionals who treated her during her three visits to the emergency room at Abraham Lincoln Memorial Hospital, as well as Memorial Health System (owner and operator of Abraham Lincoln Memorial Hospital), Abraham Lincoln Memorial Hospital, and the

Abraham Lincoln Memorial Hospital Foundation (collectively referred to as Memorial Health). During the time relevant to this appeal, Memorial Health and two individual defendants, Matthew Saxsma, a family nurse practitioner, and Dr. Robert Sliwa, a supervising emergency room physician, were the remaining defendants in this case. In separate decisions, the trial court granted summary judgment in favor of Saxsma, Dr. Sliwa, and Memorial Health. Plaintiff appealed, arguing the court erred in (1) denying her request for leave to amend her expert witness disclosure and (2) granting defendants' motions for summary judgment, finding no genuine issue of fact as to causation due to insufficiencies in plaintiff's expert witness's testimony. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Plaintiff's Injury and Complaint

¶ 5

On June 8, 2017, plaintiff arrived at the emergency department of Abraham Lincoln Memorial Hospital in Lincoln, Illinois, complaining of wrist pain resulting from a bee sting she received the previous day. She was treated with Benadryl, steroids, and topical antibiotics and sent home. Plaintiff returned to the hospital two days later, on June 10, 2017, with worsening pain, redness, and swelling. She received an antibiotic injection and was prescribed additional medication. On June 12, 2017, plaintiff returned to the emergency department with continued pain and swelling, as well as a fever and vomiting. At that time, she was examined by Saxsma. Laboratory tests and an ultrasound were performed, and plaintiff received intravenous fluids; medication for pain and nausea and was prescribed different antibiotics. Plaintiff was discharged with a diagnosis of suspected cellulitis and instructed to follow up with her primary care physician. Dr. Sliwa was the emergency room physician on duty during plaintiff's visits on June 10 and 12, 2017. Dr. Sliwa reviewed and cosigned plaintiff's treatment notes for those visits

but did not examine her.

¶ 6 On June 13, 2017, plaintiff sought treatment at the emergency department of OSF Saint Joseph Medical Center in Bloomington, Illinois. She was diagnosed with cellulitis and admitted to the hospital. Orthopedic and infectious disease specialists were consulted the following day. Although an MRI was ordered, an ultrasound was performed instead because plaintiff could not tolerate an MRI. On June 16, 2017, Dr. Edward Kolb performed an irrigation and debridement procedure with decompression of an abscess and tenosynovectomy in plaintiff's right forearm. Plaintiff was discharged on June 21, 2017. In December 2017, Dr. Mark Greatting, an orthopedic surgeon, performed surgery to release scar tissue surrounding a tendon in plaintiff's arm and to excise a neuroma.

¶ 7 In June 2019, plaintiff filed her complaint. Plaintiff alleged Saxsma and Dr. Sliwa breached their duty of care by carelessly and negligently committing one or more of the following when they examined and treated her in the emergency room: (1) failing to timely diagnose the severe infection in plaintiff's right arm; (2) failing to isolate and treat the infectious process; (3) failing to have plaintiff examined by a physician in the emergency room; (4) failing to have plaintiff examined by an infectious disease specialist in the emergency room; (5) failing to refer plaintiff to an infectious disease specialist; (6) failing to order special laboratory tests, which would have led to a proper diagnosis; (7) failing to admit plaintiff for inpatient care; and (8) giving improper discharge instructions to plaintiff as to how to treat and care for her arm while not in the hospital. She alleged she suffered severe and permanent injuries as a result of their failure to timely diagnose and treat her condition.

¶ 8 In all 12 counts of her complaint, plaintiff made allegations against Memorial Health, contending they owed a duty of care "by and through [their] agents, servants and

employees, including but not limited to [their] physicians, physician assistants, nurse practitioners, nurses, and laboratory personnel.” Plaintiff alleged she was examined, evaluated, and treated by various medical practitioners “who were the agents/employees” of Memorial Health. In each count, she alleged further that Memorial Health breached their duty “by and through its agents, servants and employees” and enumerated the same aforementioned alleged breaches of the duty by the agents, servants, and employees. In two counts of her complaint against Dr. Sliwa and one count against Saxsma, plaintiff alleged Memorial Health should be held liable under a theory of *respondeat superior*.

¶ 9 B. Deposition of Plaintiff’s Expert

¶ 10 Plaintiff ‘s expert witness, Dr. Jeffrey Kerr, graduated as a Doctor of Osteopathic Medicine in 1985. He was board certified with the American Osteopathic Board of Family Practice and had additional qualifications in geriatrics. Dr. Kerr was not board certified in emergency medicine. He worked as an attending physician and medical director of the emergency department at a hospital in Texas County, Missouri, for 20 years. In 2015, he became the medical director and attending physician of the emergency department at Phelps Health in Rolla, Missouri. During that time, he expanded his practice to include geriatric care. He left the emergency department in 2018 to become medical director of Phelps Health Immediate Care Clinics in Rolla, Missouri, which are walk-in clinics. Dr. Kerr still holds this position, treating patients during 12-hour shifts 5 days per month and performing other administrative duties. He testified he is not a surgeon, and the decision regarding whether to operate is made by a surgeon. When referring a patient to a surgeon, the emergency department’s role is to give the surgeon information and relay the urgency so the surgeon can make a decision. Dr. Kerr testified he is also not an infectious disease specialist, and like with a surgeon, his job in the emergency

department would be to give that specialist information and let them “take it from there.”

¶ 11 Dr. Kerr reviewed plaintiff’s medical chart and testified, after plaintiff was initially treated at the Abraham Lincoln Memorial Hospital emergency department, she was instructed to return if her symptoms worsened. She returned to the emergency department on June 10, 2017, and her records indicated she had developed secondary cellulitis on her wrist/forearm, which appeared to be red, hot, and swollen due to the bee sting. He acknowledged her records indicated no sores, lesions, or drainage were observed. Dr. Kerr stated that Eric Carrier, a physician’s assistant, treated plaintiff with an injection of antibiotics and prescribed more antibiotics, which indicated he assessed it was a bacterial infection, though the records indicated Carrier had not “totally ruled it out that there was still some allergy part of this.” Dr. Kerr stated, “That’s why he aggressively gave antibiotics.” Dr. Kerr testified that Carrier likely continued plaintiff on prednisone, given on her first visit, based on a belief that she may have been still experiencing a local allergic reaction to the bee sting. He agreed there were multiple situations where a provider may use his or her clinical judgment to determine that prednisone and an antibiotic were both appropriate treatment for a patient. However, he opined, to a reasonable degree of medical certainty, that plaintiff was worse on her second visit to the emergency department because of the administration of prednisone. Dr. Kerr testified that if a CAT scan were performed, it might have shown “something” such as a “fluid pocket, [or] it could have shown tendon swelling.” The “test of choice” would have been an MRI, but he acknowledged Abraham Lincoln Memorial Hospital did not have the ability to do an MRI. He further acknowledged he could not say to a reasonable degree of medical certainty what a CAT scan or an MRI would have shown, only that they might have shown “something that would have gotten the ball rolling quicker and saved her a lot of grief down the road.” It was Dr. Kerr’s

opinion that respondent had tenosynovitis on June 10, 2017, based on her symptoms of “[p]ain with range of motion and worsening, erythema tenderness and swelling in the radial aspect of the wrist, and we know that’s where the majority of the issue was at.” Dr. Kerr said he would have reached out to an orthopedic surgeon at that time. Dr. Kerr acknowledged that the first time plaintiff’s records show a diagnosis of tenosynovitis was June 15, 2017, after she had already been hospitalized at OSF St. Joseph Medical Center for two days. This was in the “infectious disease note.” She had been seen by an orthopedic surgeon on June 14, 2017, and Dr. Kerr did not recall that surgeon noting tenosynovitis.

¶ 12 Dr. Kerr acknowledged he could not opine whether an orthopedic surgeon would have determined surgery was necessary as of June 10, 2017. Dr. Kerr admitted the extent of his criticism regarding Dr. Sliwa’s care on June 10, 2017, was that when he reviewed Carrier’s notes, he should have seen plaintiff was a returning patient and questioned Carrier’s treatment, made arrangements to see plaintiff even if Carrier did not request it, and had someone call plaintiff back if she had already left.

¶ 13 Dr. Kerr testified regarding plaintiff’s records when she returned to the emergency department on June 12, 2017, and was seen by Saxsma. At that time, plaintiff reported having a fever and vomiting. While in the emergency department, she was afebrile. Saxsma switched plaintiff to a more broad-spectrum antibiotic. Dr. Kerr criticized this plan because plaintiff was clearly worse and it takes 24 hours for an oral antibiotic to get to the tissue level. Plaintiff had an IV, so Saxsma could have given her the antibiotic that way “to get her levels up immediately.” A venous Doppler ultrasound was performed on plaintiff’s arm in the emergency department on June 12, 2017, and Dr. Kerr noted the study was specifically of plaintiff’s veins to look for blood clots. However, he acknowledged that if a radiologist saw a

fluid collection in the soft tissue when examining the venous system, it would be noted in the chart. Dr. Kerr opined a CAT scan or MRI should have been ordered that day. Dr. Kerr testified his criticisms of Dr. Sliwa's conduct on June 12, 2017, were the same as those for his conduct two days earlier.

¶ 14 Dr. Kerr testified he has seen this specific type of infection in patients, and if caught early enough, it does not require surgery. He agreed it was "more probably true than not" that if plaintiff's infection had been caught earlier, it would not have needed a surgical intervention. Dr. Kerr testified Dr. Sliwa and his team recognized this was "an infectious disease problem" and it was worsening, and they did not do take the correct steps, including "connecting with the specialists about this condition." He testified they "miss[ed] the opportunity for aggressive treatment, including referral." He stated June 10, 2017, was the "turning point," where plaintiff should have been admitted and given intravenous antibiotics. He stated:

"[T]hey could have connected with the orthopedic surgeon, he may have said, Hey, just treat her with IV antibiotics there and then let me know if it's not getting better. We don't know what they would have said. But she needed aggressive IV antibiotic therapy and orthopedic consultation on the 10th."

¶ 15 C. Depositions of Plaintiff's Treating Physicians

¶ 16 Dr. Kolb, a board certified orthopedic surgeon, testified he treated plaintiff at OSF St. Joseph Medical Center. Dr. Kolb saw plaintiff on June 14, 2017, the day after she was admitted to the hospital. According to her records, plaintiff was diagnosed with cellulitis and swelling in her right hand and given oral antibiotics when she was admitted. Plaintiff's treatment plan notes indicated an ultrasound of the right wrist/forearm was ordered to look for fluid collection to evaluate for potential surgical irrigation and debridement and consideration of an

infectious disease consult. The notes indicated, if no fluid was found, a conservative treatment plan would follow, including elevation, splinting, and intravenous antibiotics. As of June 14, 2017, the plan was to treat conservatively, and there was no need for an emergency procedure. Dr. Kolb's notes indicated improvement in plaintiff's redness and swelling, but her pain continued to worsen. He discussed treatment options with plaintiff, who felt she would benefit from the surgical procedure. Dr. Kolb stated, because "they attained a minimal amount of fluid, and the patient's pain wasn't getting better[,] *** we opted for surgical intervention." On June 16, 2017, Dr. Kolb performed an irrigation and debridement on plaintiff's right forearm abscess with a tenosynovectomy. Cultures of the fluid removed from her forearm revealed streptococcus. Intravenous antibiotics were continued, and plaintiff improved after the procedure.

¶ 17 Dr. Greatting testified he performed surgery on plaintiff's right arm in December 2017, noting she had previously had surgery, had a lack of motion, and potentially appeared to have a ruptured tendon. He performed a tenolysis of the extensor pollicis longus tendon on her right wrist to free her tendon, which was not ruptured but was found to be intact, from scar tissue to restore mobility to her thumb. He also excised a neuroma in the branch of the right radial sensory nerve to relieve inflammation and scar formation in the area.

¶ 18 D. Saxsma and Dr. Sliwa's Motion for Summary Judgment

¶ 19 In December 2024, Saxsma and Dr. Sliwa filed a motion for summary judgment, arguing plaintiff could not establish proximate cause as a matter of law. Saxsma and Dr. Sliwa alleged the parties had disclosed and deposed their expert witnesses, and plaintiff presented Dr. Kerr as her only expert witness. They alleged the totality of the evidence demonstrated plaintiff failed to establish proximate cause because she failed to present sufficient competent evidence demonstrating that earlier diagnosis or treatment would have prevented the need for the

subsequent surgery and treatment she ultimately received. They argued Dr. Kerr's opinions purporting to establish proximate cause were conclusory, speculative, and lacked the requisite degree of foundation necessary to be presented to a jury. Further, they argued Dr. Kerr had no board certification in emergency medicine, had not worked in an emergency department since 2018, was not an orthopedic surgeon, and was not an infectious disease specialist. They argued Dr. Kerr's testimony revealed his efforts to attempt to state what a surgeon or infectious disease specialist would have done; and yet, he did not have the training, education, or expertise to offer an opinion as to what treatment those specialists would have rendered in the event that such consultations were ordered. Defendant's claimed Dr. Kerr's opinion speculated that if specialists were consulted earlier, it would have changed plaintiff's prognosis or need for surgery. However, he could not testify as to what treatments an infectious disease specialist or surgeon would have provided had they been consulted on June 10 or 12, 2017, or whether such treatment would have prevented the need for surgery.

¶ 20 In response, plaintiff argued Dr. Sliwa (addressing her response to Dr. Sliwa alone and not Saxsma) was not entitled to summary judgment because she had established a genuine issue of material fact on all of the elements of her claim, including proximate cause. She contended Dr. Kerr had experience, training, and knowledge in treating cellulitis and tenosynovitis and agreed it was "[m]ore probably true than not with [plaintiff] if this had been caught earlier, it would not have needed a surgical intervention." Plaintiff argued Dr. Sliwa's characterization of Dr. Kerr as a "family practitioner" is misleading, noting he had "decades of experience as an emergency care physician in the hospital and urgent care setting" and had decades of "experience treating this exact condition." She argued further that causation opinions did not have to come from someone licensed in the same field as the subsequent care specialist,

and a primary care physician is qualified to testify as an expert concerning the potential course and efficacy of treatment if they have experience managing the treatment of similar patients. She contended, in a “lost chance and delayed diagnosis case[],” she need only present some evidence that Dr. Sliwa’s delayed diagnosis deprived her of the opportunity to undergo treatment that could have been effective if given earlier, not that such treatment would have been effective. Finally, she contended Dr. Sliwa ignored the opinions of her treating physicians, Drs. Kolb and Greatting, who she claimed opined, had she been treated earlier, her infection would not have needed surgery.

¶ 21 At a hearing in March 2025, the parties presented oral argument on Saxsma and Dr. Sliwa’s motion for summary judgment. The trial court issued its written decision on June 30, 2025. The court found Dr. Kerr was qualified to render an expert opinion on matters pertaining to medical care provided in emergency medicine, and it was his opinion that Saxsma and Dr. Sliwa breached the standard of care by not ordering a MRI or CAT scan, consulting an orthopedic surgeon, prescribing prednisone, and failing to give plaintiff a specific antibiotic, clindamycin, intravenously on June 12, 2017. The court determined Dr. Kerr’s expertise in emergency medicine prevented him from rendering opinions as to whether surgery was required and what antibiotics should have been prescribed. Dr. Kerr conceded an orthopedic surgeon would make the decision whether to perform surgery, and an infectious disease specialist would make the ultimate decision of the appropriate antibiotic and length of time for prescribing it. The court determined Dr. Kerr’s testimony regarding the “lost chance” theory of recovery was speculative and insufficient to establish a factual issue for a jury to determine proximate cause. The court explained:

“This gap in Dr. Kerr’s testimony is fatal to the element of proximate cause because there is nothing in Plaintiff’s medical chart indicating an MRI/CT on June 10, 2017 or June 12, 2017 would have prevented the subsequent surgeries. [Citation.] Likewise, Plaintiff’s treating specialists Drs. Kolb and Greatting did not provide expert opinion that would establish a fact issue for a jury to determine proximate cause.”

The court granted summary judgment in favor of Saxsma and Dr. Sliwa.

¶ 22 E. Motions Filed on July 14, 2024

¶ 23 On July 14, 2024, Memorial Health filed a motion for summary judgment and plaintiff filed a motion for leave to amend her Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2018) expert witness disclosures.

¶ 24 1. *Memorial Health’s Motion for Summary Judgment*

¶ 25 Memorial Health filed a motion for summary judgment in which they adopted the arguments presented by Saxsma and Dr. Sliwa in their summary judgment motion, which had been granted by the trial court. Memorial Health argued further that each claim of liability against them was premised on the alleged acts or omissions of their agents, servants, and employees. As such, the theory of the law of the case precluded plaintiff from establishing an issue of material fact regarding proximate cause because the court had already ruled that plaintiff was unable to do so with regard to the claims against their alleged agents, servants, and employees—most recently with the ruling in favor of Saxsma and Dr. Sliwa. Because plaintiff’s claim against Memorial Health was exclusively based on a theory of agency and summary judgment was granted as to the claims against their alleged agents, the claims against Memorial Health also failed.

¶ 26 Plaintiff filed a response, stating she adopted her prior response to Dr. Sliwa's motion for summary judgment as her response to Memorial Health's motion.

¶ 27 *2. Plaintiff's Motion for Leave to Amend Rule 213(f)(3) Expert Disclosures*

¶ 28 On the same day, plaintiff filed a motion seeking leave to amend her Rule 213(f)(3) expert witness disclosures. She acknowledged that summary judgment had been granted in favor of Saxsma and Dr. Sliwa. However, she argued, "As there is no trial date and no unfair prejudice to Defendants, Plaintiff asks this Court for leave to filed amended [Rule] 213(f)(3) disclosure and time to retain a [Rule] 213(f)(3) expert on the issue of proximate cause." Plaintiff contended the "Defendants, on the other hand, ask that Plaintiff be barred from disclosing an additional expert." Although plaintiff does not specify which defendants and under what circumstances this contention was made, she appeared to allude to it in the next sentence of the motion, stating. "While the procedure posture is different, Defendant's request is the same as *Freeman v. Cray[s]*, 2018 IL App (2d) 170169], a case the Defendants relied on in the underlying motion." The context in which plaintiff made this claim appeared to refer to Saxsma and Dr. Sliwa's motion for summary judgment. Plaintiff likened Saxsma and Dr. Sliwa's motion for summary judgment to "essentially a request for an Illinois Supreme Court Rule 219 [(eff. July 1, 2002)] sanction" barring a potential expert witness. She then argued the factors to be considered when determining whether the exclusion of a witness is an appropriate sanction, as set forth in *Freeman*, favored her. Plaintiff concluded, "Defendants' requested discovery sanction is drastic and not warranted in this circumstance. Plaintiff's motion for leave to disclose an additional expert should be granted."

¶ 29 On July 28, 2025, Saxsma and Dr. Sliwa filed a response, arguing plaintiff's motion should be denied because she had ample time to make any such disclosures within the

time allowed by the trial court, and even after they filed their motion for summary judgment. They argued plaintiff misrepresented the reasoning in *Freeman*, and allowing plaintiff to disclose a new expert witness at this point in the litigation would severely prejudice them. The following day, Memorial Health filed their own response to plaintiff's motion, stating, for the purpose of judicial economy, they were adopting the arguments made by Saxsma and Dr. Sliwa in their response to plaintiff's motion. Thereafter, Dr. Sliwa and Saxsma filed a supplemental response to plaintiff's motion, arguing, *inter alia*, the holding in *Freeman* was inapplicable in this case, and "Plaintiff's attempt to belatedly disclose an additional expert witness after this Court has already granted summary judgment in favor of Dr. Sliwa and FNP Saxsma ought not be allowed." Once again, Memorial Health filed a motion to adopt Saxsma and Dr. Sliwa's supplemental response to plaintiff's motion.

¶ 30 *3. Trial Court's Rulings on the Motions*

¶ 31 There are no transcripts of hearings held regarding Memorial Health's motion for summary judgment or plaintiff's motion for leave to amend her Rule 213(f)(3) expert witness disclosures. However, according to the trial court docket, the parties appeared on August 8, 2025, and presented argument on plaintiff's motion. The court granted plaintiff leave to file a proffer of amended Rule 213(f)(3) expert disclosures, allowed defendants time to respond thereafter, and took the motion for summary judgment under advisement. Plaintiff's proffered amended Rule 213(f)(3) expert disclosures are not in the record on appeal.

¶ 32 According to the trial court docket, the parties appeared again on November 11, 2025, and were informed by the court that Memorial Health's motion for summary judgment was granted, plaintiff's motion for leave to amend her Rule 213(f)(3) expert witness disclosures was denied, and written decisions would follow.

¶ 33 On November 14, 2025, the trial court issued its written decision granting Memorial Health’s motion for summary judgment. The court restated its reasons for previously concluding that plaintiff failed to establish a genuine issue of material fact regarding proximate cause for medical malpractice by Saxsma or Dr. Sliwa. The court explained further, “In so finding, the Court finds the issue of agency is moot.” The court granted Memorial Health’s motion for summary judgment.

¶ 34 On November 17, 2025, the trial court issued its written ruling on plaintiff’s motion for leave to amend her Rule 213(f)(3) expert witness disclosures. The court noted plaintiff argued her motion should be analyzed “as a sanction under Illinois Supreme Court Rule 219(c)(iv) [(eff. July 1, 2002)] for missing the October 15, 2023 disclosure deadline” and the factors in *Freeman* should be applied in this case to find she should be allowed to disclose another expert witness. The court noted defendants argued this case is more analogous to *Woolums v. Huss*, 323 Ill. App. 3d 628 (2001), and argued the court should utilize the legal standard applicable when ruling on a motion to reconsider summary judgment. The court determined neither standard was applicable here and opted to analyze the motion under its equitable powers. In this case, plaintiff offered Dr. Kerr as her expert witness and explained she “believed in good faith that Dr. Kerr is qualified to give an opinion on causation.” The court explained, however, this explanation did not justify why the new expert’s opinion was not available or obtainable at the time of summary judgment. Plaintiff decided to limit her evidence via expert testimony to one witness, Dr. Kerr. The court stated it “respects each party’s right to exercise trial strategy but with that right comes the responsibility of the outcome, which in this case meant the possibility of this Court finding that Dr. Kerr lacks the expertise to opine on the issue of causation.” The court concluded, to allow plaintiff to “re-open evidence after summary

judgment would defeat the purpose of summary judgment.” The court denied plaintiff’s motion, finding plaintiff failed to provide “a reasonable justification for why new expert opinions were either not available or not obtainable at the time of summary judgment.”

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 On appeal, plaintiff argues the following: (1) the trial court erred in denying her request for leave to amend her expert witness disclosure because (a) the court failed to apply the correct “standard [and] analysis,” namely, the factors set forth in *Freeman* and (b) the “six factor test” in *Freeman* supports allowing plaintiff leave to disclose an additional causation expert and (2) the court erred in granting defendants’ motions for summary judgment and finding plaintiff failed to establish an issue of material facts as to causation due to various insufficiencies regarding Dr. Kerr’s testimony. Plaintiff’s approach to this appeal is premised upon her mischaracterization of defendants’ motions for summary judgment as motions to bar Dr. Kerr’s testimony. This approach is problematic because she contends she should have been granted leave to amend her expert disclosures *after* summary judgment was already granted in favor of Saxsma and Dr. Sliwa and while Memorial Health’s motion for summary judgment was pending. This court is obliged to address the issues in the logical order of decisions made by the trial court.

¶ 38 A. Summary Judgment in Favor of Saxsma and Dr. Sliwa

¶ 39 Plaintiff argues the trial court erred in granting Saxsma and Dr. Sliwa’s motion for summary judgment. In support, she contends Dr. Kerr’s experience as an emergency medicine physician and the fact that he had experience treating plaintiff’s condition qualified him to give opinion testimony that the conduct of Saxsma and Dr. Sliwa caused a delay in

plaintiff's treatment and was the proximate cause of her injuries. She argues the court recognized inconsistencies in Dr. Kerr's testimony, which should have been construed in her favor, and considered " 'some evidence that would arguably entitle her to recovery at trial' "; thus, summary judgment was not proper. Finally, she contends the court's decision ignored the fact that the subsequent surgeries were not the only damages claimed, and Dr. Kerr was qualified to provide "causation and damage opinions" regarding plaintiff's pain and suffering because of the delay in treatment. Thus, she contends, at most, only partial summary judgment was proper.

¶ 40 Summary judgment is appropriate when "the pleadings, depositions and admissions on file, together with the affidavits, if any, 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 2024). The trial court must construe the record strictly against the movant and liberally in favor of the nonmoving party. *Seymour v. Collins*, 2015 IL 118432, ¶ 42. Because summary judgment is a "drastic measure," it should only be granted when the movant's right to judgment is clear and free from doubt. *Id.* We review a decision to grant summary judgment *de novo*. *Ordaz v. Hurst*, 2026 IL App (4th) 251372, ¶ 91.

¶ 41 Plaintiff's negligence claims against Saxsma and Dr. Sliwa were based on a theory of medical malpractice, and therefore, she had the burden of proving the following: "the proper standard of care against which the defendant physician's conduct is measured; an unskilled or negligent failure to comply with the applicable standard; and a resulting injury proximately caused by the physician's want of skill or care." *Purtill v. Hess*, 111 Ill. 2d 229, 241-42 (1986). "Proximate cause is ordinarily a question of fact to be decided by a jury, but if there is no material issue of fact or only one conclusion is clearly evident, it may be decided as a matter of law." *Buck v. Charletta*, 2013 IL App (1st) 122144, ¶ 58. "The critical inquiry on proximate

cause is whether a defendant's alleged negligence was 'a material and substantial element in bringing about the injury, and, if so, was the injury a type that a reasonable person would see as a likely result of his or her conduct?' ” *Shicheng Guo v. Kamal*, 2020 IL App (1st) 190090, ¶ 18 (quoting *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 258-59 (1999)).

¶ 42 “In a medical malpractice action, the plaintiff bears the burden to present expert testimony that establishes the standard of care and that breach thereof was the proximate cause of the plaintiff's injury.” *Id.* ¶ 19. “The causal connection must be established to a reasonable degree of medical certainty and ‘must not be contingent, speculative, or merely possible.’ ” *Id.* (quoting *Buck*, 2013 IL App (1st) 122144, ¶ 59). Where a plaintiff's medical malpractice claim alleges a lost-opportunity theory of recovery, “the plaintiff may establish proximate cause through evidence, ‘to a reasonable degree of medical certainty, that the defendant's failure to render a timely diagnosis more probably than not compromised the effectiveness of treatment received or increased the risk of harm to the plaintiff.’ ” *Id.* ¶ 18 (quoting *Scardina v. Nam*, 333 Ill. App. 3d 260, 269 (2002)).

¶ 43 The record supports the trial court's conclusion that Dr. Kerr was qualified to testify within a reasonable degree of medical certainty as to the standard of care required of Saxsma when he treated plaintiff and Dr. Sliwa when he oversaw the treatment of plaintiff in the emergency room on June 10 and 12, 2017, and their alleged breach of that standard. Although not board certified in emergency medicine, Dr. Kerr had many years of experience in emergency medicine throughout his career. Dr. Kerr testified he had experience treating this specific type of infection in patients. As such, Dr. Kerr was qualified to give an expert opinion that plaintiff had tenosynovitis on June 10, 2017, an MRI or CAT scan should have been ordered at that time, and an orthopedic surgeon should have been consulted. Dr. Kerr was also qualified to opine that

when plaintiff returned on June 12, 2017, her condition had worsened, the prednisone previously prescribed by Carrier with Dr. Sliwa's oversight could have caused it to worsen, Saxsma and Dr. Sliwa should have administered antibiotics intravenously at that time, and an MRI or CAT scan should have been ordered and an orthopedic surgeon consulted. However, plaintiff must show the causal connection between Saxsma's and Dr. Sliwa's conduct and her alleged injuries. This is where Dr. Kerr's testimony failed.

¶ 44 Dr. Kerr acknowledged he could not testify with a reasonable degree of medical certainty what an MRI or CAT scan of plaintiff's right arm would have shown on June 10 or 12, 2017. He said it may have shown "something that would have gotten the ball rolling quicker and saved her a lot of grief down the road." However, he could not opine whether an orthopedic surgeon would have determined surgery was necessary on June 10, 2017. In fact, Dr. Kerr testified if Dr. Sliwa had consulted an orthopedic surgeon, "[the surgeon] may have said Hey, just treat her with IV antibiotics there and then let me know if it's not getting better." Uncertain or speculative statements such as these, as well as reliance upon "anecdotal evidence of what [a physician] has seen," have been deemed insufficient because they are not "opinions to a reasonable degree of medical certainty about what plausibly would occur with *this patient*." (Emphasis in original.) *Ordaz*, 2026 IL App (4th) 251372, ¶¶ 96-98. Dr. Kerr stated June 10, 2017, was the "turning point" where plaintiff should have been admitted and given intravenous antibiotics. However, the record shows plaintiff presented to OSF St. Joseph Medical Center on June 13, 2017, and, though she was admitted to the hospital, she received the same diagnosis and initial treatment that she had received at Abraham Lincoln Memorial Hospital—she was diagnosed with cellulitis and given oral antibiotics. Plaintiff gives great importance to Dr. Kerr's opinion that her infection would not have progressed on the same course had she not been given

prednisone. He did acknowledge Carrier's reasoning for administering prednisone could have been because he believed plaintiff was experiencing a continued local reaction to the bee sting. He acknowledged further that prednisone was not contraindicated for a person with lupus, which plaintiff stated in her history; there are many circumstances in which a patient would be prescribed prednisone and an antibiotic at the same time; and a provider will use his or her clinical judgment to come up with a treatment plan that may include both. Still, Dr. Kerr did not make a connection between this alleged breach of the standard of care and plaintiff's subsequent need for surgery and other alleged injuries.

¶ 45 Plaintiff's effort to establish proximate cause on the lost-opportunity theory also fails. Under this theory, a plaintiff may establish proximate cause by showing the doctor's negligence deprived him or her of "the opportunity to undergo treatment that *could* have been more effective if given earlier, not that such treatment *would* have been effective." (Emphasis in the original.) *Hemminger v. LeMay*, 2014 IL App (3d) 120392, ¶ 23. However, this theory "does not relax or lower [a] plaintiff's burden of proving causation." *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 120 (1997). "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*, 2018 IL App (2d) 170169, ¶ 26. The expert's testimony regarding causation must be offered to a reasonable degree of medical certainty. *Id.*

¶ 46 Dr. Kerr's testimony failed to meet this standard. Dr. Kerr testified it was more probable that additional testing on June 10, 2017, would have shown additional signs of infection but was unable to testify to this opinion to a reasonable degree of medical certainty. When asked whether plaintiff's infection worsened and was more difficult to treat because of the "delay in diagnosis," Dr. Kerr stated:

“Correct, it required surgery to drain the abscess and pack the wound open to allow the infection and swelling to go down. Not sure that would have happened if she were referred to a tertiary center on the 10th. She could have been—you know—so we don’t know what imaging would have shown, but if she didn’t have an abscess formation or pus forming on the 10th, she could have been treated aggressively with IV antibiotics, and a lot of this could have been circumvented. But we don’t know that. That’s all just guessing.”

Furthermore, Dr. Kolb’s testimony regarding plaintiff’s treatment at OSF Saint Joseph Medical Center days after she was last seen at Abraham Lincoln Memorial Hospital reveals a similar approach to her care. Dr. Kolb’s plan of care was to treat plaintiff’s condition “conservatively,” and he stated no emergency surgical intervention was needed as of June 14, 2017. Dr. Kerr’s testimony offered only conjecture and speculation, or as he stated, “just guessing,” which is insufficient to create an issue of fact for a jury. See *Ordaz*, 2026 IL App (4th) 251372, ¶ 97. Therefore, we conclude plaintiff failed to present any expert testimony to establish causation based on a lost-opportunity theory to a reasonable degree of medical certainty regarding the conduct of Saxsma and Dr. Sliwa.

¶ 47 Plaintiff’s efforts to separate her need for surgery from her ensuing pain and suffering as a reason to justify an argument that only partial summary judgment should have been granted is unconvincing.

¶ 48 Plaintiff points to Dr. Kerr’s testimony that the delay in treatment caused her to experience pain and suffer longer than she should have; thus, she should have been allowed to continue to pursue claims for pain and suffering standing alone. However, Dr. Kerr’s testimony in this regard is just as speculative and somewhat inaccurate. Notably, Dr. Kerr stated the delay

caused plaintiff to suffer and endure a “ruptured tendon and disability at the end.” Plaintiff never suffered a ruptured tendon. Dr. Greatting, who performed a follow-up surgery on plaintiff to remove scar tissue to increase mobility in her hand, testified the tendon appeared to have ruptured but was intact and just “caught up” in scar tissue.

¶ 49 Relying upon *Thompson v. LaSpisa*, 2023 IL App (1st) 211448, plaintiff also argues expert causation testimony was not necessarily required to prove pain and suffering resulting from a delay in treatment; thus, her claims for pain and suffering should have survived summary judgment. In *Thompson*, the appellate court determined only partial summary judgment was warranted because no specialized knowledge was necessary to understand that the plaintiff, whose calls to her oral surgeon for postsurgical follow-up care were not addressed, suffered with pain from cellulitis for 18 hours before being given the proper treatment, specifically, stronger pain medication, after being admitted to the hospital. *Id.* ¶¶ 48-49. In this case, there are no allegations that plaintiff was deprived of pain medication at any time during her treatment at Memorial Health. Plaintiff instead argues her alleged pain and suffering was because her condition allegedly worsened after being given prednisone. Whether prednisone was a proper treatment in this case or worsened plaintiff’s condition is not information within the common knowledge of a layman, and thus, it required an expert’s testimony. Therefore, plaintiff’s reliance on *Thompson* is misplaced, and as previously discussed (*supra* ¶ 44), Dr. Kerr’s testimony in this regard was insufficient to establish proximate cause.

¶ 50 In sum, we conclude Dr. Kerr’s testimony as to causation was speculative and offered mere possibilities or theories of connection, and thus, it was insufficient to establish a material issue of fact for a jury to determine proximate cause as to any of the damages alleged in the complaint. Therefore, we affirm the trial court’s decision to grant summary judgment in favor

of Saxsma and Dr. Sliwa.

¶ 51 B. Summary Judgment in Favor of Memorial Health

¶ 52 In her notice of appeal, plaintiff includes the trial court’s November 14, 2025, order granting summary judgment in favor of Memorial Health. In her brief, plaintiff refers to all defendants collectively and makes no reference to the court’s separate summary judgment rulings. In fact, plaintiff makes no argument with respect to the basis for the court’s separate decision to grant summary judgment to Memorial Health. As such, this argument is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (Points not made in an appellant’s opening brief are “forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”). Irrespective of plaintiff’s forfeiture of this issue, we conclude the court’s decision to grant summary judgment in favor of Memorial Health was proper.

¶ 53 “In Illinois, a hospital may be liable in a medical malpractice action in two circumstances: directly, when the hospital owes the plaintiff an independent duty to review and supervise the plaintiff’s medical care, or vicariously, when there exists a principal-agent relationship between the hospital and the physician accused of malpractice.” *Magnini v. Centegra Health System*, 2015 IL App (1st) 133451, ¶ 24. Based upon the well-settled principles of principal-agency liability, when a plaintiff’s claim against a hospital rests solely on a theory of agency, the hospital’s liability is entirely derivative of the physician’s liability. See *Moy v. County of Cook*, 159 Ill. 2d 519, 524 (1994) (“When an action is brought against a master based on allegedly negligent acts of the servant and no independent wrong is charged on behalf of the master, liability is entirely derivative, being founded upon the doctrine of *respondeat superior*.”); *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 1060 (2011) (“A principal found to be vicariously liable is not found to be at fault but, rather, only liable by application of the

doctrine of *respondeat superior*.”); *Campbell-Henry v. Good Samaritan Regional Health Center*, 2022 IL App (5th) 210147-U, ¶ 26; (“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.”); *Bilbrey v. Garcia*, 2026 IL App (5th) 250377-U, ¶ 18 (finding the plaintiff’s settlement with the physician extinguished any possible vicarious liability on the part of the hospital).

¶ 54 In this case, all of plaintiff’s allegations against Memorial Health were based on a theory of agency. Every count of plaintiff’s 12-count complaint contained allegations against Memorial Health, contending they owed a duty of care “by and through [their] agents, servants and employees, including but not limited to [their] physicians, physician assistants, nurse practitioners, nurses, and laboratory personnel,” or that specific individuals named “were the agents/employees of [Memorial Health].” In every count of the complaint, plaintiff alleged Memorial Health breached their duty “by and through [their] agents, servants, and employees” and enumerated the same alleged breaches of duty by the agents, servants, and employees. In two counts of her complaint against Dr. Sliwa and one count against Saxsma, plaintiff alleged Memorial Health should be held liable under a theory of *respondeat superior*. There are no separate and specific allegations of institutional negligence against Memorial Health in plaintiff’s complaint. As such, when summary judgment was granted in favor of the last remaining alleged agents of Memorial Health, any and all claims of vicarious liability against Memorial Health were extinguished. See *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 122-23 (1978) (holding, based on the doctrine of *res judicata*, “judgment for either the master or servant, arising out of an action predicated upon the alleged negligence of the servant, bars a subsequent suit against the other for the same claim of negligence where the agency relationship is not in

question”). Therefore, Memorial Health was entitled to judgment as a matter of law.

¶ 55 C. Plaintiff’s Motion for Leave to Amend Her Rule 213(f)(3) Expert Disclosures

¶ 56 The majority of plaintiff’s argument on appeal focuses on her claim that she should have been allowed to amend her Rule 213(f)(3) expert witness disclosures to add a new causation expert witness. In making this argument, plaintiff has completely ignored the erroneous procedural context in which she raised this claim in the trial court, and she has failed to comprehend the way in which the trial court decided to resolve it. On appeal, plaintiff’s argument also does not align with the procedural context in which this court must review the matter. The trial court’s efforts to clarify matters for plaintiff in its written decision were to no avail. This court will endeavor to do so with our review.

¶ 57 1. *The Purpose of Plaintiff’s Motion*

¶ 58 Although it was titled “Plaintiff’s Motion for Leave to Amend [Rule] 213(f)(3) Disclosures,” plaintiff’s motion was problematic in numerous ways. First, plaintiff acknowledged in the motion that summary judgment had already been granted in favor of Saxsma and Dr. Sliwa. Thus, any motion for new discovery served upon those defendants was, at best, untimely, but more aptly, incongruous. Second, plaintiff claimed she should be allowed time to retain and disclose a new causation expert anyway because “there is no trial date and no unfair prejudice to Defendants.” However, this was after the opinions of her disclosed expert witness were deemed insufficient to support a genuine issue of material fact as to causation, thereby extinguishing her claims against Memorial Health (*supra* ¶ 54). Third, plaintiff claimed the motion was a response to action taken by defendants, stating, “Defendants, on the other hand, ask that Plaintiff be barred from disclosing an additional expert.” We would presume plaintiff was referring to the only defendants remaining in the case, the Memorial Health defendants.

However, her subsequent reference to the “underlying motion” appears to be in reference to Saxsma and Dr. Sliwa’s motion for summary judgment, a motion that had already been granted. Likewise, there is nothing in the record showing any defendant in this case filed a motion for discovery sanctions or otherwise sought to bar plaintiff’s expert witness. Fourth, plaintiff then argued the factors courts consider when determining whether exclusion of a witness is an appropriate discovery sanction (as set forth in *Freeman*) should be applied in this case, and upon doing so, the result would favor her position. However, the factors in *Freeman* are inapplicable here because the trial court here did not impose a discovery sanction; the court granted summary judgment. Finally, plaintiff concluded her motion by reiterating, “Defendants’ requested discovery sanction is drastic and not warranted in this circumstance.” Again, there is nothing in the record to suggest that any defendants filed a motion seeking to bar a witness from testifying in this case.

¶ 59 Despite recognizing these significant problems with plaintiff’s motion, the trial court, exercising its equitable powers, decided to consider plaintiff’s motion based on her ultimate objective—to obtain reconsideration of summary judgment based upon new expert witness evidence. The court explained:

“[T]he legal standard for a motion to reconsider summary judgment is more appropriate to this fact pattern than treating it as a Rule 219 discovery violation. Technically, Plaintiff seeks only to amend Rule 213(f)(3) disclosures. But the clear endgame for Plaintiff is to seek reconsideration of the summary judgment based on the new Rule 213(f)(3) disclosures.”

Under these unique circumstances, we find it was within the court’s equitable powers to consider the motion as such. See *Woolums*, 323 Ill. App. 3d at 639 (“Petitions to vacate summary

judgment are addressed to the equitable powers of the court and should be granted or denied in the interest of justice and fairness.”).

¶ 60

2. *Freeman Is Inapplicable*

¶ 61

We agree with the trial court that plaintiff’s reliance upon the factors set forth in *Freeman* to argue she should have been granted leave to amend her Rule 213(f)(3) disclosures is misplaced. In *Freeman*, the plaintiff was allowed to voluntarily dismiss her complaint for medical negligence without prejudice after her expert witness, a family doctor, was found unqualified to testify regarding causation without the testimony of a qualified cardiologist. *Freeman*, 2018 IL App (2d) 170169, ¶¶ 8-9. Thereafter, the plaintiff refiled her complaint and stated her intent to disclose an expert witness in the field of cardiology. The defendant filed a motion to adopt the discovery order from the original case and bar the additional expert witness disclosures in the refiled case pursuant to Illinois Supreme Court Rule 219(e) (eff. Jan. 1, 1996). *Id.* ¶ 11. The trial court granted the defendant’s motion and later granted summary judgment in favor of the defendant. *Id.* ¶¶ 12, 14. In pertinent part, the appellate court held the factors considered when deciding whether the exclusion of a witness is an appropriate sanction in an original action should also be used as the framework for analyzing the application of Rule 219(e) to bar evidence and witnesses in a refiled action. Those factors include: “(1) surprise to the adverse party, (2) the prejudicial effect of the witness’s testimony, (3) the nature of the witness’s testimony, (4) the diligence of the adverse party, (5) whether objection to the witness’s testimony was timely, and (6) the good faith of the party calling the witness.” *Id.* ¶ 52 (citing *Smith v. P.A.C.E.*, 323 Ill App. 3d 1067, 1076 (2001)). Finding the trial court utilized the wrong legal standard in ruling on the Rule 219(e) motion, summary judgment was reversed, and the case was remanded for a new hearing on the Rule 219(e) motion applying the factors. *Id.* ¶¶ 60-61.

¶ 62 The criteria utilized in *Freeman* are simply inapplicable because there was no discovery sanction imposed in this case. Plaintiff's efforts to reimagine defendants' motion for summary judgment as a motion to bar her expert witness, and thereafter, interpret the trial court's decision to grant summary judgment as imposition of a discovery sanction, is untenable.

¶ 63 3. *Reconsideration of Summary Judgment*

¶ 64 When a party seeks reconsideration of a summary judgment decision based upon new evidence, he or she "must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unattainable." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141 (2004). A trial court's decision on a motion to reconsider summary judgment will not be disturbed on appeal absent an abuse of discretion. *Woolums*, 323 Ill. App. 3d at 639. An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view. *Seymour*, 2015 IL 118432, ¶ 41.

¶ 65 In this case, the trial court determined plaintiff failed to provide a reasonable explanation for why the new expert was not available at the time of summary judgment. The court explained:

"Plaintiff's explanation addresses why they offered Dr. Kerr by stating that Plaintiff and Plaintiff's counsel believed in good faith that Dr. Kerr is qualified to give an opinion on causation. But the explanation does not justify why Dr. Wysocki's opinion was not available or obtainable at the time of summary judgment. In essence, Plaintiff's explanation is based on trial strategy to limit their evidence of expert testimony to Dr. Kerr on all issues of medical malpractice. The Court respects each party's right to exercise trial strategy but

with that right comes the responsibility of the outcome, which in this case means the possibility of this Court finding that Dr. Kerr lacks the expertise to opine on the issue of causation. To allow Plaintiff's to re-open evidence after summary judgment would defeat the purpose of summary judgment. Either party could limit the cost of litigation by offering minimal evidence on the motion for summary judgment knowing that if unsuccessful they could move to re-open the evidence. This would lengthen the time and increase the expense of litigation, and this would also defeat the finality of summary judgment. Just as a verdict after trial is meant to be final so too is summary judgment meant to be final—absent reasonable justification for offering new evidence. With these reasons in mind, the Court finds that trial strategy is not a sufficient explanation for why Dr. Wysocki or any other expert witness was not available or unobtainable at the time of summary judgment.”

¶ 66 Our review of the trial court's decision is limited in this case due to an inadequate record on appeal. In its written decision, the court referred to plaintiff's proposed new expert witness by name (Dr. Wysocki), as well as plaintiff's “explanation” regarding her decisions with respect to her expert witnesses. We deduce that the sources of this information would have been the August 8, 2025, hearing on plaintiff's motion and plaintiff's proffered amended Rule 213(f)(3) expert disclosures, neither of which are part of the record on appeal.

“[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with [the] law and had a sufficient factual basis.” *Foutch v. O'Bryant*,

99 Ill. 2d 389, 391-92 (1984).

Any doubts that arise from the incompleteness of the record are resolved against the appellant.

Id. at 392. Clearly, plaintiff's objective in filing the motion to amend her disclosures was to get a second opportunity, after summary judgment had been granted in favor of Saxsma and Dr. Sliwa and was inevitable for Memorial Health, to provide an expert to establish causation because she failed to do so with her first expert witness. It was well within the trial court's discretion to deny plaintiff's motion.

¶ 67

III. CONCLUSION

¶ 68

For the reasons stated, we affirm the trial court's judgment.

¶ 69

Affirmed.