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NO. 100429-0

SUPREME COURT OF THE STATE OF WASHINGTON

MINNIE THOMAS,

Appellant,

v.

SWEDISH MEDICAL CENTER,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. IDENTITY OF RESPONDING PARTIES 1

II. COURT OF APPEALS DECISION 1

III. COUNTERSTATEMENT OF ISSUES 3

IV. COUNTERSTATEMENT OF THE CASE 3

 A. Factual Background 3

 B. Procedural Background 4

 1. Trial Court 4

 2. Appeal 11

V. ARGUMENT WHY REVIEW SHOULD BE DENIED 13

 A. This Court should decline review under RAP 13.4(b)(3) and (4) because Ms. Thomas fails to support her arguments with pertinent authority or meaningful analysis and because this case does not invoke any significant questions of constitutional law or issues of substantial public interest. 15

 B. This Court should decline review under RAP 13.4(b)(1) and (2) because Ms. Thomas does not argue these sub-sections apply and Division I’s opinion and reconsideration order do not conflict with any appellate authority. 18

VI. CONCLUSION20

TABLE OF AUTHORITIES

STATE CASES	PAGE(S)
<i>Berger v. Sonneland</i> , 144 Wn.2d 91, 26 P.3d 257 (2001)	19
<i>Clam Shacks of Am., Inc. v. Skagit County</i> , 109 Wn.2d 91, 743 P.2d 265 (1987)	16
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992)	15
<i>Grove v. PeaceHealth, St. Joseph Hosp.</i> , 182 Wn.2d 136, 341 P.3d 261 (2014)	19
<i>Harris v. Robert C. Groth, M.D., P.S.</i> , 99 Wn.2d 438, 663 P.2d 113 (1983)	19
<i>Keck v. Collins</i> , 184 Wn.2d 358, 357 P.3d 1080 (2015)	19
<i>McLaughlin v. Cooke</i> , 112 Wn.2d 829, 774 P.2d 117 (1989)	19
<i>Pitzer v. Union Bank</i> , 141 Wn.2d 539, 9 P.3d 805 (2000)	19
<i>Saunders v. Lloyd's of London</i> , 113 Wn.2d 330, 779 P.2d 249 (1989)	15
<i>State v. Elliott</i> , 114 Wn.2d 6, 785 P.2d 440 (1990)	15
<i>State v. Johnson</i> , 119 Wn.2d 167, 829 P.2d 1082 (1990)	16
<i>State v. Watson</i> , 155 Wn.2d 574, 122 P.3d 903 (2005)	17

<i>Van Noy v. State Farm Mut. Auto Ins. Co.</i> , 142 Wn.2d 784, 16 P.3d 574 (2001)	16
<i>Vant Leven v. Kretzler</i> , 56 Wn. App. 349, 783 P.2d 611 (1989)	19
<i>Young v. Key Pharms., Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989)	19

STATUTES AND RULES

CR 12(b)(6)	5
CR 26	9
CR 56(f).....	1, 11, 16, 17, 18, 19
RAP 12.4	2, 13
RAP 13.4	3
RAP 13.4(b).....	14, 20
RAP 13.4(b)(1)	18, 20
RAP 13.4(b)(2)	18, 20
RAP 13.4(b)(3)	15, 18
RAP 13.4(b)(4)	15, 17, 18

I. IDENTITY OF RESPONDING PARTIES

Respondent Swedish Medical Center (“Swedish”) submits this Answer to Petitioner Minnie Thomas’s “Motion for Review of Order Denying Motion for Reconsideration,” which the Court of Appeals routed to this Court and is being treated as a Petition for Review.

II. COURT OF APPEALS DECISION

In an unpublished September 27, 2021 opinion, Division I affirmed the trial court’s order dismissing Ms. Thomas’s medical malpractice lawsuit against Swedish after determining that the trial court (1) correctly concluded that the law requires plaintiffs who bring medical malpractice claims to produce expert medical testimony on standard of care and causation, which Ms. Thomas failed to do, *Slip Op.* at 4-5, and (2) did not abuse its discretion in refusing to grant Ms. Thomas further CR 56(f) continuances when she already had received one and when she failed to provide a good reason for her additional continuance requests, *Slip Op.* at 5-7.

On October 18, 2021, Ms. Thomas filed a motion for reconsideration which failed to adequately establish that Division I had overlooked or misapprehended any points of law or fact, RAP 12.4. Division I thus correctly denied her motion for reconsideration on November 4, 2021.¹

On December 1, 2021, Ms. Thomas filed in the Court of Appeals a “Motion to Review the Denied Motion for Reconsideration,” routed to this Court and construed as a petition for review. This petition simply rehashes what she submitted below without providing adequate authority or reasoned argument. This Court should deny Ms. Thomas’s petition for review.

Division I properly affirmed the trial court’s order dismissing her medical malpractice lawsuit and correctly denied reconsideration of its decision. Neither decision is in conflict with any decision of this Court or the Courts of Appeals, nor does

¹ Division I’s opinion and its decision denying Ms. Thomas’s motion for reconsideration are appended.

either involve a constitutional question or issue of substantial public importance warranting acceptance of review by this Court. RAP 13.4.

III. COUNTERSTATEMENT OF ISSUES

1. Did Division I properly deny reconsideration of its decision affirming the trial court's summary judgment dismissal of Ms. Thomas's medical malpractice lawsuit because she failed to produce requisite expert medical testimony establishing a breach of the standard of care or causation?

2. Did Division I properly deny reconsideration of its decision affirming the trial court's denial of Ms. Thomas's request for a second continuance because she had already been granted a month-long continuance and did not provide good reason for delay?

IV. COUNTERSTATEMENT OF THE CASE

A. Factual Background

Ms. Thomas presented to Swedish's emergency department on April 19, 2016, where medical providers noted

“anxiety” as her chief complaint. CP 81. Ms. Thomas claims that was not her chief complaint, and alleges that she was refused medical care at Swedish despite complaining of severe chest pain. CP 2.

In July 2016, Ms. Thomas terminated care with Dr. Weitkamp, her primary care provider at Swedish’s Central Seattle Clinic, after a disagreement about release of her medical information. CP 2. On July 25, 2016, the Clinic sent Ms. Thomas a letter, informing her that “we will no longer continue as your physicians at Central Seattle Clinic,” based upon “a breakdown of trust in our doctor-patient relationship” after Ms. Thomas decided to transfer her care from Dr. Weitkamp. CP 67. Ms. Thomas alleges that this letter constituted “patient abandonment.” CP 2.

B. Procedural Background

1. Trial Court

Ms. Thomas filed her current complaint against Swedish on April 19, 2019, alleging medical malpractice claims based on

the April 19, 2016, and July 25, 2016 events, in addition to libel, slander, invasion of privacy, defamation, and civil rights violations. CP 01-07. Swedish moved to dismiss all of Ms. Thomas's claims under CR 12(b)(6) for failure to state a claim upon which relief could be granted. *See* CP 14, 17. The trial court granted Swedish's motion as to all claims "except for Plaintiff's medical malpractice claim arising from care received from Swedish on July 25, 2016, and April 19, 2016." CP 14-15.

On September 13, 2019, Swedish moved for summary judgment on the remaining medical malpractice claims, requesting an October 18, 2019 hearing. CP 16-23. In its motion, Swedish highlighted that Ms. Thomas was required to present expert medical testimony that Swedish both (a) breached the applicable standard of care, and (b) caused Ms. Thomas's injuries, CP 17, and that without such testimony from a qualified medical expert, she could not establish the essential elements of her medical malpractice claim. CP 21.

On September 27, 2019, Ms. Thomas moved to continue the summary judgment motion to November 29, 2019, a court holiday. CP 24, 315. She argued that she needed additional time to “keep trying to retain an attorney and to obtain the ‘crucial’ information,” for her claims. CP 25, 315. As an exhibit to her motion, Ms. Thomas attached a “Recovery Request” addressed to Swedish’s counsel, seeking various entries from her medical records. CP 29. Swedish opposed the motion for continuance, arguing that there was no good cause to continue because Ms. Thomas already had her medical records, CP 303, and noting that many of her requests for records bore no relation to the only two remaining medical negligence claims, CP 304.

On October 9, 2019, Ms. Thomas filed a declaration and another request to continue the summary judgment hearing, CP 39-58, this time to December 30, 2019, *see* CP 55-62. Relying upon the deadline for disclosure of possible witnesses set in the case schedule the trial court had issued under the local rules, CP

46, she argued that she was entitled to more time because she had “until November 18th 2019” to disclose a medical expert, CP 43.

Also on October 9, 2019, Ms. Thomas filed an opposition to the summary judgment motion, CP 59-81, arguing that, because she had “until November 18th 2019” to disclose a medical expert under the case schedule, the motion should be denied. CP 59-60, 62.

On October 17, 2019, the day before the scheduled summary judgment hearing, Ms. Thomas filed a reply in support of her motion for a continuance, CP 175-80, several of her own declarations, CP 126-128, 155-57, 137-39, and a “motion for perjury,” CP 185-87, all alleging that Swedish’s counsel had deceived the trial court in its opposition to Ms. Thomas’s request for a continuance. Specifically, Ms. Thomas alleged that defense counsel had misled the court by stating that Ms. Thomas already had copies of her medical records. CP 151, 162, 180. Yet at the time Ms. Thomas made this allegation, she had already filed with the trial court multiple pages from her medical records as exhibits

to her other pleadings. CP 67, 81, 101-102, 116, 319. On the copies of those pages, Ms. Thomas made her own handwritten interlineations, to show her disagreement with what was stated in those medical records. *Id.*

At the hearing on October 18, 2019, the trial court granted Ms. Thomas's request for a continuance. CP 188-189. In its order, the trial court made clear that if Ms. Thomas should "fail to file her expert's declaration by November 18, 2019, there will be no further oral argument and this Court will grant defendant's motion for summary judgment." CP 189. The court set November 21, 2019, as the date for the continuation of the summary judgment hearing should Ms. Thomas file an expert's declaration by the court's deadline of November 18, 2019. *Id.*

Ms. Thomas did not file an expert declaration. Instead, on October 24, 2019, she filed her own declaration, attaching copies of her previous October 9, 2019 motion for a continuance to December 30, 2019. CP 191-98; *see* CP 42-43, 55.

On November 15, 2019, Ms. Thomas filed a “Disclosure of Possible Primary Witnesses.” CP 212-14, listing as a “Primary Witness” her son, Lawrence Williams, and as a “Possible Expert Witness” Arthur Hedley, MD. CP 213. Although she listed Dr. Hedley as a “Possible Expert Witness,” she did not file a declaration from him or otherwise describe his expected testimony. *See* CP 212-14.

On November 20, 2019, two days after the court’s deadline to file an expert declaration in response to the summary judgment motion, Ms. Thomas filed a motion to compel discovery, CP 215-16, accompanied by her own declaration, CP 221-22, and two exhibits: a list of requested discovery, CP 223-28, and a printout of CR 26, CP 229-31.

On November 22, 2019, the trial court granted Swedish’s summary judgment motion. CP 321-23. In its order, the trial court noted that: “Plaintiff was supposed to submit a declaration from a medical expert by November 18, 2019. The Court informed plaintiff that it would grant defendant’s motion for

summary judgment if she failed to do so. She has failed to do so.” CP 322.

On December 19, 2019, Ms. Thomas filed her notice of appeal from the order granting Swedish’s motion for summary judgment. CP 324-29.

Meanwhile, on December 29, 2019, Ms. Thomas filed, albeit untimely, a motion for reconsideration, arguing that she should have been allowed more time to obtain an expert declaration because, she asserted, Swedish had not answered her discovery request for her medical records. CP 232-33, 239-44. In a detailed order, the trial court denied the motion for reconsideration both as untimely and on its merits. CP 314-320. The trial court explained that Ms. Thomas had not raised her need for discovery at the October 18, 2019 summary judgment hearing. CP 318. Nor had she provided good cause for failing to obtain her medical records earlier, identified the evidence that would be obtained from those records, or explained how those medical records would raise a genuine issue of material fact. *Id.*

The court noted that Ms. Thomas had at least some of her medical records, because she had previously filed copies of pages from them. *Id.* Finally, although Ms. Thomas argued she should have been given until November 29, 2019, to obtain an expert's declaration, Ms. Thomas never produced an expert's declaration in support of her claims. *Id.* Because the trial court denied her reconsideration request, Ms. Thomas pursued an appeal.

2. Appeal

Following many delays and extensions in the appeal, Ms. Thomas filed her opening appellate brief on March 17, 2021, contending that the trial court erred in denying her further CR 56(f) continuances and in granting Swedish summary judgment dismissal of her lawsuit against it. After Swedish filed its brief, and Ms. Thomas submitted her reply, Division I of the Court of Appeals determined that it would decide the appeal without oral argument on September 16, 2021.

On September 27, 2021, Division I issued a unanimous seven-page unpublished opinion affirming the dismissal of Ms. Thomas's lawsuit:

Because the evidence presented on summary judgment failed to establish genuine issues of material fact whether Swedish Hospital breached the standard of care or how the alleged breach proximately caused Thomas any injury, summary judgment was proper. And because the court granted Thomas a one-month continuance to obtain evidence substantiating her medical malpractice claims, the court did not abuse its discretion in denying Thomas an additional continuance.

Therefore, we affirm.

Slip Op. at 1.

On October 18, 2021, Ms. Thomas filed a motion for reconsideration, rehashing the arguments made in her appellate brief. She also concurrently, and without support, filed a motion to publish Division I's opinion. The Court of Appeals denied both motions on November 4, 2021.

On December 1, 2021, Ms. Thomas filed in Division I a "Motion to Review the Denied Motion for Reconsideration," routed to this Court and construed as a petition for review, and a

“Motion to Review the Decision not to Publish the Decision/Opinion, also routed to this Court and construed as a motion for discretionary review, an answer to which Swedish is filing separately.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

In her petition, Ms. Thomas seeks review only of Division I’s decision denying her motion for reconsideration, not its underlying opinion affirming the summary judgment. RAP 12.4 requires a party moving for reconsideration of a decision terminating review to “state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended.” Because Ms. Thomas’s motion for reconsideration wholly failed to meet this standard, Division I’s decision not to grant her reconsideration is supported on this ground alone.

Regardless of whether this Court considers Division I’s decision to affirm the summary judgment or its decision to deny her motion for reconsideration, Ms. Thomas has also failed to

demonstrate that any RAP 13.4(b) criteria applies. Under RAP 13.4(b), this Court may accept review only under limited circumstances:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, Ms. Thomas does not even cite RAP 13.4(b), let alone demonstrate that any of its criteria applies so as to warrant this Court accepting review.

A. This Court should decline review under RAP 13.4(b)(3) and (4) because Ms. Thomas fails to support her arguments with pertinent authority or meaningful analysis and because this case does not invoke any significant questions of constitutional law or issues of substantial public interest.

While Ms. Thomas makes conclusory assertions that Division I's decision constitutes a "constitutional violation" and that the public will have a "significant interest" in this case, *see Pet. at 5*, which could be construed as arguments under RAP 13.4(3) and (4), her conclusory assertions are insufficient. The Court should decline review because Ms. Thomas fails to support these assertions with any authority or meaningful analysis and because there are no significant questions of constitutional law or issues of substantial public interest at stake.

This Court need not consider arguments that are not supported by pertinent authority or meaningful analysis. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficiently argued claims); *Saunders v. Lloyd's of London*,

113 Wn.2d 330, 345, 779 P.2d 249 (1989) (arguments not supported by adequate argument and authority); *Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91, 98, 743 P.2d 265 (1987) (issues not concisely stated); *Van Noy v. State Farm Mut. Auto Ins. Co.*, 142 Wn.2d 784, 790, 16 P.3d 574 (2001) (issues not raised in the petition for review).

Moreover, “naked castings into the constitutional sea are not sufficient to compel judicial consideration and discussion.” *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1990). Ms. Thomas cites no state or federal constitutional provision that she believes was violated. Contrary to Ms. Thomas’s claims, she had no “right”, let alone any “constitutional” right to a continuance. Indeed, requests for summary judgment continuances are governed by CR 56(f), which provides that a trial court “may,” not that it “must,” grant a requested continuance:

Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to

justify the party's opposition, the court **may** refuse the application for judgment or **may** order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

CR 56(f) (emphasis added). Parties are thus not entitled to a continuance, much less a second one, as a matter of "right".

Ms. Thomas also contends, *Pet. at 5*, that "the general public will have an interest in this court's decision/opinion . . ." but does not explain how Division I's opinion or reconsideration order will have ramifications beyond the particular parties and particular facts of this case. See e.g., *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (finding a "prime example of substantial public interest" under RAP 13.4(b)(4) where the Court of Appeals' holding, while affecting the parties to the proceeding, "also has the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA sentence was or is at issue.").

Because Ms. Thomas fails to support her bald assertions of constitutional rights or substantial public interest in connection

with Division I's affirmance of the trial court's denial of additional CR 56(f) continuances, this Court should deny review under RAP 13.4(3) and (4).

B. This Court should decline review under RAP 13.4(b)(1) and (2) because Ms. Thomas does not argue these subsections apply and Division I's opinion and reconsideration order do not conflict with any appellate authority.

Although Ms. Thomas does not appear to argue that this Court should accept review under RAP 13.4(b)(1) and (2), to the extent that her petition implies these bases could apply, Division I's decisions are not in conflict with any appellate authorities. Rather, longstanding precedent confirms that expert testimony as to standard of care and causation, except in limited circumstances

not present here, is necessary in medical malpractice cases² and that continuances are within the trial court's discretion³.

Because Division I's decisions affirming the trial court's grant of summary judgment and denial of additional

² *E.g., E.g., Keck v. Collins*, 184 Wn.2d 358, 361, 357 P.3d 1080 (2015) (“Generally in a medical malpractice claim, a plaintiff needs testimony from a medical expert to establish two required elements—standard of care and causation.”); *Grove v. PeaceHealth, St. Joseph Hosp.*, 182 Wn.2d 136, 144, 341 P.3d 261 (2014) (“The applicable standard of care and proximate causation generally must be established by expert testimony.”); *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 228, 770 P.2d 182 (1989) (“[T]he cases uniformly hold that a physician's testimony is necessary in such cases to defeat a defendant's motion for summary judgment.”); *McLaughlin v. Cooke*, 112 Wn.2d 829, 837, 774 P.2d 117 (1989) (“Usually the standard of care must be established by expert testimony.”); *Harris v. Robert C. Groth, M.D., P.S.*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983) (“Absent exceptional circumstances..., expert testimony will be necessary to show whether or not a particular practice is reasonably prudent.”); *Berger v. Sonneland*, 144 Wn.2d 91, 110-11, 26 P.3d 257 (2001) (“Medical testimony on proximate cause is required in medical malpractice cases.”).

³ *E.g., Pitzer v. Union Bank*, 141 Wn.2d 539, 556, 9 P.3d 805 (2000) (“We review a trial court's denial of a CR 56(f) motion for abuse of discretion.”); *Vant Leven v. Kretzler*, 56 Wn. App. 349, 353, 783 P.2d 611 (1989) (“The trial court's decision on a motion for a continuance will not be disturbed on appeal absent a manifest abuse of discretion.”).

continuances are not in conflict with any decisions of this Court or of the Courts of Appeals, review is not warranted under RAP 13.4(b)(1) or (2).

VI. CONCLUSION

Division I's opinion and reconsideration order correctly upheld the trial court's summary judgment dismissal of Ms. Thomas's medical malpractice claims and denial of her request for additional continuances. Because no RAP 13.4(b) consideration applies, this Court should decline review.

I declare that this document contains 3,203 words.

RESPECTFULLY SUBMITTED this 31st day of March,
2022.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 31st day of March, 2022, I caused a true and correct copy of the foregoing document, “Respondent’s Answer to Petition for Review,” to be delivered in the manner indicated below to the following counsel of record:

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DATED this 31st day of March, 2022, at Seattle,
Washington.

s/Carrie A. Custer
Carrie A. Custer, Legal Assistant

FAVROS LAW

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APPENDIX TO RESPONDENT'S
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INDEX TO APPENDIX

<u>Document Description</u>	<u>App. No.</u>
Court of Appeals 9/27/21 Unpublished Opinion	1-7
11/04/21 Order Denying Motion for Reconsideration	8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MINNIE THOMAS,)	No. 80918-1-I
)	
Appellant,)	
)	
v.)	
)	
SWEDISH HOSPITAL,)	UNPUBLISHED OPINION
)	
Respondent.)	
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VERELLEN, J. — Minnie Thomas challenges the trial court’s grant of summary judgment in favor of Swedish Hospital and the court’s denial of her request for an additional continuance of the summary judgment hearing.

Because the evidence presented on summary judgment failed to establish genuine issues of material fact whether Swedish Hospital breached the standard of care or how the alleged breach proximately caused Thomas any injury, summary judgment was proper. And because the court granted Thomas a one-month continuance to obtain evidence substantiating her medical malpractice claims, the court did not abuse its broad discretion in denying Thomas an additional continuance.

Therefore, we affirm.

FACTS

On April 19, 2019, Minnie Thomas filed a complaint against Swedish Hospital alleging medical malpractice. Thomas alleged that on July 25, 2016, she was “wrongly discharged” from Swedish and that on April 19, 2016, Swedish “refused [her] medical care.”¹ Thomas also brought claims against Swedish for civil rights violations, libel, slander, intentional infliction of emotional distress, and invasion of privacy.

Shortly after Thomas filed her complaint, Swedish moved to dismiss Thomas’s claims under CR 12(b)(6) for failure to state a claim on which relief could be granted. The court granted the hospital’s motion in part and dismissed all of Thomas’s claims “except for [her] medical malpractice claim[s] arising from care received from Swedish on July 25, 2016, and April 19, 2016.”²

On September 13, 2019, Swedish moved for summary judgment on Thomas’s medical malpractice claims. The summary judgment hearing was scheduled for October 18. Thomas filed various requests to continue the October 18 hearing.

At the October 18 hearing, the court granted a continuance of the summary judgment hearing to November 21, 2019. In granting Thomas’s continuance the court stated that Thomas assures Swedish “and the [c]ourt that she will be able to file by November 18, 2019, an expert declaration setting forth precisely how, on a more probable than not basis to a reasonable degree of

¹ Clerk’s Papers (CP) at 2.

² CP at 14-15.

medical certainty, defendant's actions [fell] below the applicable standard of care and caused her harm."³ The court expressly required Thomas to file an expert witness declaration by November 18. On October 19, Thomas requested another continuance to December 30, 2019. The court did not grant this continuance.

On November 14, Thomas provided the court with a "disclosure of possible primary witnesses."⁴ The disclosure listed Dr. Arthur Hadley as a "possible expert witness."⁵ But Thomas did not identify any specific testimony Dr. Hadley would offer and provided no declaration from any expert witness in opposition to summary judgment.

On November 22, the trial court granted Swedish Hospital's summary judgment motion.

Thomas appeals.

ANALYSIS

I. Summary Judgment

Thomas argues that the trial court improperly granted summary judgment in favor of Swedish because the court's October 18 order requiring Thomas to submit a declaration of her expert witness by November 18 was "unfair."⁶

³ CP at 189 (emphasis omitted).

⁴ CP at 212-14.

⁵ CP at 212-13.

⁶ Appellant's Br. at 21-22.

We review an order granting summary judgment de novo.⁷ Summary judgment is appropriate “only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law.”⁸ A genuine issue of material fact exists if the evidence is sufficient for a reasonable person to return a verdict for the nonmoving party.⁹

In a medical malpractice case, a “defendant moving for summary judgment can meet its initial burden by showing that the plaintiff lacks competent expert testimony.”¹⁰ “The burden then shifts to the plaintiff to produce an affidavit from a qualified expert witness that alleges specific facts establishing [the] cause of action.”¹¹ Specifically, the plaintiff “must show that ‘[t]he health care provider failed to exercise the degree of care, skill, and learning expected of a reasonably prudent health care provider . . . in the same or similar circumstances.’”¹²

Here, on September 13, 2019, Swedish Hospital filed a summary judgment motion arguing that Thomas “has not, and cannot, produce the requisite testimony of an expert witness who will testify that [the hospital’s] medical providers failed to comply with the applicable standard of care and proximately caused” her injury.¹³

⁷ Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

⁸ Id. (citing Scrivener v. Clark Coll., 181 Wn.2d 439, 444, 334 P.3d 541 (2014)).

⁹ Reyes v. Yakima Health Dist., 191 Wn.2d 79, 86, 419 P.3d 819 (2018).

¹⁰ Guile v. Ballard Cmty. Hosp., 70 Wn. App. 18, 25, 851 P.2d 689 (1993).

¹¹ Id.

¹² Reyes, 191 Wn.2d at 86 (quoting RCW 7.70.040(1)).

¹³ CP at 16.

On November 14, Thomas filed a “disclosure of possible primary witnesses” listing Dr. Hadley as her “possible expert witness.”¹⁴ But her disclosure did not contain a declaration from Dr. Hadley establishing that Swedish Hospital was in breach of the standard of care, or that Swedish Hospital’s alleged breach proximately caused her any injury, or even describe any opinions Dr. Hadley might offer.¹⁵

Because Thomas failed to present the court with an expert’s declaration establishing the existence of a genuine issue of material fact, summary judgment in favor of Swedish Hospital was proper.

II. Motion for a Continuance

Thomas contends that the trial court “erred . . . by ignoring [Thomas’s] repeated request for additional time after November 18, 2019, to disclose [her] expert witness.”¹⁶

We review a trial court’s denial of a motion for a continuance for an abuse of discretion.¹⁷ A court abuses its discretion when its decision is based on untenable grounds or untenable reasons.¹⁸

¹⁴ CP at 212-14.

¹⁵ Thomas also argues that the court erred in granting Swedish Hospital’s summary judgment motion because the case setting schedule only required her to submit a “disclosure of possible primary witnesses” by November 18, 2019, and did not mention that she was also required to submit an expert’s declaration by that date. But because Thomas provides no authority supporting her assertion that declarations required by the trial court must appear on the case setting schedule, her argument is not compelling.

¹⁶ Appellant’s Br. at 17.

¹⁷ Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994).

¹⁸ Andren v. Dake, 14 Wn. App. 2d 296, 305-06, 472 P.3d 1013 (2020).

CR 56(f) governs continuances to obtain additional evidence in response to a summary judgment motion and provides:

Should it appear from the affidavits of a party opposing the motion that, for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

But the trial court can deny a motion for a continuance if “(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.”¹⁹

Here, on September 27, 2019, Thomas filed a motion to continue the October 18 summary judgment hearing alleging that her “limited resources” made it difficult to retain an attorney and that she needed more time to obtain “crucial information” to support her claims.²⁰ On October 7, 2019, Thomas filed another motion to continue arguing that she needed more time “based on the ‘deadline’ [set by the court to disclose] possible primary witnesses.”²¹

At the October 18 hearing, the court granted Thomas a one-month continuance to file an expert declaration and postponed the hearing to November 21. The court's written order stated that Thomas's contention “that a medical expert will opine that [Swedish Hospital's] actions [fell] below the applicable

¹⁹ Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989).

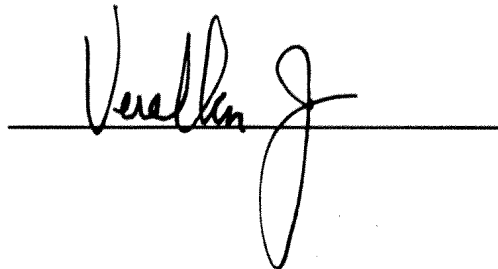
²⁰ CP at 25.

²¹ CP at 43.


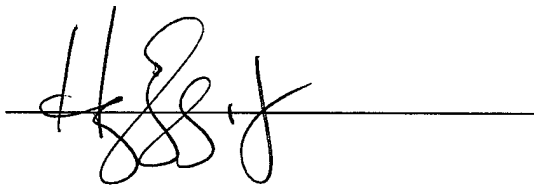
standard of care and caused her damage . . . met the requirements of CR 56(f) to obtain a limited continuance.”²²

A day after the court granted Thomas a one-month continuance, Thomas filed a declaration requesting an additional continuance to December 30, 2019, stating the additional continuance was “necessary for [her] to obtain an expert witness.”²³ But the court already granted Thomas a one-month continuance for additional time to obtain a declaration from an expert witness. Because Thomas failed to provide a “good reason” for her request, the trial court did not abuse its broad discretion in denying Thomas an additional continuance.²⁴

Therefore, we affirm.



WE CONCUR:



²² CP at 189.

²³ CP at 259-60, 317.

²⁴ Thomas contends that she was unable to file her expert’s declaration by November 18, 2019, because Swedish Hospital was withholding her medical records. But Thomas did not move to compel copies of her medical records until November 20, 2019, two days after she was required to submit her expert’s declaration. Because Thomas provided no “good reason” for her delay in pursuing her medical records, the court did not abuse its discretion in denying Thomas a continuance on this basis.

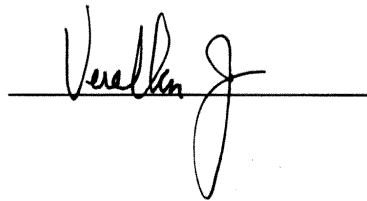
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MINNIE THOMAS,)	No. 80918-1-I
)	
Appellant,)	
)	
v.)	
)	
SWEDISH HOSPITAL,)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
Respondent.)	
_____)	

Appellant filed a motion for reconsideration of the court's September 27, 2021 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the appellant's motion for reconsideration is denied.

FOR THE PANEL:



A handwritten signature in black ink, appearing to read "Verellen J.", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 31st day of March, 2022, I caused a true and correct copy of the foregoing document, “Appendix to Respondent’s Answer to Petition for Review,” to be delivered in the manner indicated below to the following counsel of record:

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SENT VIA:

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- E-file / E-mail

DATED this 31st day of March, 2022, at Seattle,
Washington.

s/Carrie A. Custer
Carrie A. Custer, Legal Assistant

FAVROS LAW

March 31, 2022 - 1:32 PM

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