Rel: September 25, 2020

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

1190216

Regina D. Hannah

v.

Michael J. Naughton, M.D., Michael J. Naughton, M.D., Ph.D., LLC, Terisa A. Thomas, M.D., and Terisa A. Thomas, M.D., P.C.

Appeal from Etowah Circuit Court
(CV-07-900185)

BOLIN, Justice.

Regina D. Hannah appeals from a summary judgment entered by the Etowah Circuit Court in favor of Michael J. Naughton, M.D.; Michael J. Naughton, M.D., Ph.D., LLC; Terisa A. Thomas,

M.D.; and Terisa A. Thomas, M.D., P.C. (hereinafter collectively referred to as "the defendants"), on Hannah's claims alleging medical malpractice.

Facts and Procedural History

On August 1, 2005, Hannah was seen by Dr. Terisa A. Thomas, a board-certified general surgeon, for a female health-care examination. Hannah was 32 years old at the time she was first seen by Dr. Thomas and was complaining of fatigue, weight gain, heavy menstrual cycles, cramping, and painful sexual relations. Hannah also reported a significant family medical history of cervical cancer and stated that she was fearful of getting cancer. Hannah stated that her mother, grandmother, and sister had suffered from cervical cancer. Dr. Thomas ordered a number of tests, including a pelvic ultrasound and a Pap smear. Hannah returned to Dr. Thomas on August 10, 2005. Dr. Thomas informed Hannah at that time that the pelvic ultrasound was normal and that the results of the Pap smear were still pending.

Dr. Thomas received the results of Hannah's Pap smear on August 12, 2005. The Pap-smear report indicated that it was "abnormal" with a diagnosis of "Epithelial Cell Abnormality.

Atypical Squamous Cells Cannot Exclude High Grade Squamous Intraepithelial Lesion (HSIL)." Dr. Thomas stated that this was not a diagnosis of cancer but, rather, that she considered it an abnormal finding indicative of an "increased risk" of cancer. After receiving the Pap-smear report, Dr. Thomas's office contacted Hannah to schedule a follow-up appointment for August 15. Dr. Thomas's office also faxed a copy of the Pap-smear report to Dr. John Morgan, an obstetrician/gynecologist, and scheduled an appointment for Hannah with Dr. Morgan for August 16. Dr. Thomas explained that she went ahead and scheduled the appointment for Hannah with Dr. Morgan before actually seeing Hannah because she anticipated the need for follow-up care and testing and because she did not want Hannah to have to wait for follow-up care in light of her extreme fear of cancer and her family history of cancer.

Hannah testified that a nurse from Dr. Thomas's office contacted her while she was at work to schedule the follow-up appointment for August 15. Hannah testified that the nurse told her that the results of the Pap smear indicated the presence of atypical squamous cells. Hannah stated that she

asked the nurse what atypical squamous cells were and that the nurse responded that they were cervical cancer. Hannah testified that when the nurse told her on the telephone that she had cervical cancer she became very upset and started crying. Hannah stated that at that point Dr. Thomas got on the telephone to ask her to come into the office and that they would discuss the results of the Pap smear further. Hannah testified that her coworkers were present and witnessed her conversation with Dr. Thomas's office. Dr. Thomas stated that her staff would not discuss the results of the Pap smear with Hannah over the telephone and that she "would just be told that she needed to come back in to discuss her results." Dr. Thomas further stated that she did not remember talking to Hannah on the telephone.

Hannah was seen by Dr. Thomas on August 15 for the follow-up appointment regarding the results of the Pap smear. Dr. Thomas testified that she discussed the results of the Pap smear with Hannah, telling her that the Pap smear showed the presence of "abnormal squamous cells" and that "it could not exclude high grade squamous intraepithelial lesion." Dr. Thomas stated that she told Hannah the Pap smear was abnormal

but that it "certainly was not cancer." Dr. Thomas said she further informed Hannah that the presence of abnormal cells put her at an increased risk for cervical cancer and that she would need to be closely monitored.

Dr. Thomas explained to Hannah that her normal practice with patients who have an abnormal Pap smear is to refer them to an obstetrician/gynecologist for a second opinion and that they had already scheduled an appointment for her with Dr. Morgan. Dr. Thomas testified that Hannah continued to be extremely anxious and repeatedly stated that she had a significant family history of cervical cancer and that she was fearful of getting cancer. Dr. Thomas testified that Hannah told her that "she wanted to have it all [taken] out" and wanted to discuss surgical options. Dr. Thomas stated that she proceeded to discuss a total abdominal hysterectomy with Hannah, which may or may not involve the removal of her ovaries. Dr. Thomas stated that she told Hannah that if she had her ovaries removed she would require hormone-replacement therapy. Dr. Thomas documented her conversation with Hannah in her records, noting that the "[patient] wishes to proceed

[with] hysterectomy due to abnormal Pap and strong [family history of cancer]."

Hannah testified that, when she arrived at Dr. Thomas's office on August 15, she signed in and was taken to Dr. Thomas's private office. Hannah testified that Dr. Thomas told her that she had cervical cancer and that she recommended Hannah have a hysterectomy, including the removal of her ovaries. Hannah stated that no options were given other than a hysterectomy. Hannah denied making the statement to Dr. Thomas that she "wanted it all out." Hannah testified that she was upset and that Dr. Thomas was "very consoling."

Hannah's appointment with Dr. Morgan was canceled. Because Dr. Thomas does not perform hysterectomies, Hannah was given the names of several surgeons to whom Dr. Thomas referred patients for hysterectomies. Hannah selected Dr. Naughton, a board-certified general surgeon. Dr. Thomas contacted Dr. Naughton while Hannah was still in her office. Dr. Thomas related to Dr. Naughton that she had a patient she wanted to refer to him for a second opinion following an abnormal Pap smear. Dr. Thomas told Dr. Naughton that Hannah was 32 years old and was extremely fearful of contracting

cervical cancer because of her significant family history of cervical cancer. Dr. Thomas informed Dr. Naughton that Hannah insisted on having a complete hysterectomy. Dr. Naughton asked Dr. Thomas if Hannah had children because she was young to have a hysterectomy. Dr. Thomas responded that Hannah had had a previous tubal ligation and did not want to have more children. Dr. Naughton agreed to see Hannah that day.

Hannah was first seen by Dr. Naughton on August 15, for an evaluation for a hysterectomy. Hannah related a history to Dr. Naughton of two vaginal births, heavy bleeding during menstrual cycles, painful sexual intercourse, a tubal ligation, and a significant family history of breast cancer and cervical cancer. Dr. Naughton stated that Hannah told him that she was "very fearful of having cancer." Dr. Naughton performed a pelvic exam on Hannah and noted that she experienced pain upon any movement of her cervix or uterus. Dr. Naughton also noted that he did not observe any lesions or abnormal tissue during the examination. Dr. Naughton testified that he told Hannah "at least three times" that she did not have cancer and that the majority of abnormal Pap smears revert to normal.

Dr. Naughton testified that he told Hannah there were "multiple options" available to her and that his initial recommendation to her was to repeat the Pap smear in six months. Dr. Naughton informed her that if the second Pap smear came back abnormal they could discuss the option of having a directed biopsy performed. Dr. Naughton also discussed more aggressive treatment options, including the removal of the uterus and cervix with the preservation of the ovaries or the removal of the uterus, cervix, and the ovaries. Dr. Naughton testified that Hannah chose the most aggressive option, specifically stating that she wanted "it all out," including her ovaries. Dr. Naughton agreed that Hannah's choice to remove her ovaries was indicated, given her fear of developing ovarian cancer as well as the fact that an abnormality on the ovaries could be the cause of her painful intercourse. Dr. Naughton informed Hannah that if her ovaries were removed she would require hormone-replacement therapy.

Dr. Naughton had Hannah execute a "surgical-awareness" form indicating that she accepted full responsibility for her decision to have the surgery. Dr. Naughton stated that he made the following notes on the form in Hannah's presence:

"told Pap smear not cancer and high chance would change back to normal -- discussed conversion. Options for treatment of cervix given. Ovarian preservation discussed." Both Dr. Naughton and Hannah signed the "surgical-awareness" form. The form containing Dr. Naughton's handwritten notations was faxed by Dr. Naughton's office to the Riverview Medical Center before surgery and was received by that facility at 6:34 A.M. on August 18, 2005.[1]

Hannah testified that when she first saw Dr. Naughton he reviewed her test results, took a medical history, and performed a pelvic exam. Hannah stated that Dr. Naughton then told her that he "agreed with Dr. Thomas ... that I had cervical cancer, and he told me [that] his staff could set the surgery." Hannah stated that she asked Dr. Naughton about preserving her ovaries and that he stated that there was a chance the cancer would come back in the ovaries so he recommended removing the ovaries. Hannah stated that Dr. Naughton never informed her that cancer could not be diagnosed from an abnormal Pap smear. Hannah further testified that Dr.

[1]Hannah has asserted that Dr. Naughton's handwritten notations were added after her surgery.

Naughton did not mention any treatment options other than a full hysterectomy. Hannah testified that she did sign the "surgical-awareness" form but denies that the form contained any handwritten notes by Dr. Naughton stating that she did not have cancer or that he discussed with her preserving her ovaries.

Hannah's surgery was performed on August 18, 2005. Dr. Naughton noted in the records an admitting diagnosis of dyspareunia (painful intercourse), pelvic pain, and an abnormal Pap smear. There was no indication of any diagnosis of cervical cancer mentioned in the surgical record. Dr. Naughton noted in the surgical record Hannah's family history of cervical cancer and her own "great fear" of cancer. Dr. Naughton further noted that it was explained to Hannah that the abnormal Pap smear was not an indication for the hysterectomy and that she was given conservative treatment options. Dr. Naughton noted that Hannah elected to have a full hysterectomy, including the removal of her ovaries. Hannah's surgery was completed without complication.

Dr. Naughton testified that he saw Hannah in the hospital on the day after surgery and that she complained of continued

pain and problems "voiding." Dr. Naughton examined Hannah at this time and decided to keep her in the hospital one more night because he did not want to send her home when she was feeling uncomfortable. Hannah's mother, Darlene Templeton, states that she spoke with Dr. Naughton during this visit and asked him if he got all the cancer and that he responded "yes."

Hannah returned to see Dr. Naughton on August 24 for a follow-up appointment. Dr. Naughton noted at that time that the wound was healthy and that he removed her surgical staples. Dr. Naughton also had received at this time a copy of the pathology report, which indicated that Hannah did not have cancer. Dr. Naughton testified that he reviewed this report with Hannah and told her there was no cancer present. Dr. Naughton testified that he did not discuss chemotherapy treatments with Hannah because she did not have cancer. Dr. Naughton stated that Hannah asked him if he "got everything." Dr. Naughton testified that, because he had already told Hannah she did not have cancer, he assumed she meant anatomically, and he responded "yes." Dr. Naughton testified that Hannah was to follow up with Dr. Thomas. Following the

surgery, Hannah sent Dr. Naughton a note thanking him for his care and informing him that she was "recovering well and feeling great."

Hannah testified that Dr. Naughton told her at the August 24 visit that he did not have the pathology report back but that he "felt comfortable that ... he had gotten all the cancer." Hannah also stated that she asked Dr. Naughton about chemotherapy treatments and that he stated that he "felt that all the cancer had been taken, gotten out, and he felt good about the surgery." Hannah was not seen by Dr. Naughton after August 24.

Although Hannah denies any further visits with Dr. Thomas, the medical records indicate that she was also seen by Dr. Thomas on August 24. Dr. Thomas stated that Hannah was happy that everything had gone well with her surgery and was relieved that she did not have cancer. Dr. Thomas noted that Hannah had had her surgical staples removed earlier that day and that she was doing well following the surgery. Dr. Thomas testified that she had a copy of the pathology report, which indicated that Hannah did not have cancer, and that she discussed the results of the report with Hannah. Dr. Thomas

stated that she did not discuss chemotherapy options with Hannah because she did not have cancer. Dr. Thomas did not see Hannah again after this visit.

Hannah testified that she attempted to follow up with Dr. Naughton regarding her pathology report on several occasions but states that her telephone calls were not returned. Hannah testified that she became aggravated with the lack of response from Dr. Naughton's office so she saw a physician in Gadsden who referred her to Dr. Max Austin, a gynecologic oncologist. Dr. Austin obtained a copy of Hannah's pathology report and, according to Hannah, told her that she "never had nor did [she] have cervical cancer."

On July 31, 2007, Hannah sued the defendants under § 6-5-480 et seq. and § 6-5-541 et seq., Ala. Code 1975, the Alabama Medical Liability Act ("the AMLA"), alleging that the defendants had "negligently or wantonly provided health care services and/or medical care to [Hannah], including surgical services, post surgical follow up care, [and] diagnostic care." Specifically, Hannah alleged, among other things, that the defendants breached their standard of care by falsely informing her that she had cervical cancer based on an

abnormal Pap-smear result; by advising her that she should undergo an immediate hysterectomy, including the removal of her ovaries; by performing a complete hysterectomy on Hannah without first performing necessary tests/procedures to properly diagnose the cause of Hannah's symptoms; by failing to fully and properly advise Hannah of options other than surgery; by failing to inform Hannah that she never had cancer and/or falsely representing to her that cancerous organs/tissue had been removed during surgery; and by failing to inform her of the results of the pathology report.

On March 8, 2012, the defendants moved the trial court for a summary judgment. The summary-judgment motion was supported by affidavits from Dr. Thomas and Dr. Naughton stating that they both met the applicable standard of care for board-certified general surgeons in their care and treatment of Hannah. The defendants further argued that Hannah had failed to support her claims with the required testimony from a similarly situated medical expert.

On March 13, 2012, the trial court ordered Hannah to respond to the defendants' summary-judgment motion within 30 days. On April 9, 2012, Hannah moved the trial court for

additional time to respond to the defendants' summary-judgment motion, stating, among other things, that she was required to support her claims with expert medical testimony and that she needed additional time to obtain a medical expert. On April 11, 2012, the trial court entered an order granting Hannah additional time to respond.

On October 22, 2012, Hannah filed her response in opposition to the defendants' summary-judgment motion. Hannah's opposition was supported by the testimony of Dr. Fred Duboe, a board-certified physician of obstetrics and gynecology, who testified that Dr. Thomas and Dr. Naughton breached the applicable standard of care in several regards.

On March 6, 2013, the defendants moved the trial court to preclude his testimony and strike Dr. Duboe's affidavit, arguing that Dr. Duboe was not a "similarly situated" health-care provider because Dr. Duboe was board certified in obstetrics and gynecology and was not board certified in general surgery as were Dr. Thomas and Dr. Naughton. Accordingly, the defendants argued that Dr. Duboe was not qualified to testify as to the standard of care applicable to

Dr. Thomas and Dr. Naughton as board-certified general surgeons in their treatment of Hannah.

On June 14, 2013, Hannah responded to the defendants' motion to preclude Dr. Duboe's testimony and strike his affidavit, arguing that, although the "standard of care allegedly breached virtually requires no expert testimony, the plaintiff's expert witness Dr. Fred Duboe, who is board certified in Obstetrics and Gynecology but not General Surgery, is nevertheless similarly situated to the defendant board certified general surgeons." Hannah also argued that the deposition testimony of Dr. Thomas supports the position that the standard of care to which Dr. Thomas and Dr. Naughton are to be held and allegedly breached is undisputed and requires no expert testimony because Dr. Thomas "readily agreed in her deposition that if she [or Dr. Naughton] did tell Ms. Hannah that she had cancer based on her Pap smear results that would be below the standard of care." Hannah also notes that Dr. Thomas testified that it would be below the standard of care for either her or Dr. Naughton to fail to tell Hannah that the pathology report in her case showed no cancer. Hannah further argued that Dr. Duboe's testimony was not precluded because

Dr. Thomas's and Dr. Naughton's alleged misrepresentations regarding the Pap-smear results and alleged cancer were not within their specialty of general surgery. Finally, Hannah requested additional time to support her response in opposition to the summary-judgment motion with a new expert should the trial court grant the defendants' motion to preclude Dr. Duboe's testimony and strike his affidavit.

On September 20, 2013, the trial court entered an order precluding any standard-of-care testimony from Dr. Duboe and striking his affidavit. The trial court granted Hannah additional time to find and depose a substitute standard-of-care medical expert.

On December 10, 2013, Hannah filed a notice identifying Dr. Lawrence Brickman, a general surgeon, as her standard-of-care medical expert. Dr. Brickman was deposed on June 5, 2014. Dr. Brickman testified during his deposition that, although he was board certified in general surgery at the time of Hannah's surgery in 2005, he was no longer board certified in general surgery at the time of his testimony.

Subsequently, the trial court entered an order setting the case for trial on May 6, 2019, and ordered Hannah to

disclose any additional experts 90 days before trial, i.e., by February 6, 2019. The trial court also specified in its order that no continuances would be granted except for "extraordinary reasons."[2]

On March 6, 2019, the defendants moved the trial court to preclude the testimony of Dr. Brickman, arguing that, because Dr. Brickman was not currently board certified in general surgery as were Dr. Thomas and Dr. Naughton, he was not a "similarly situated health care provider" as defined by § 6-5-548(c)(3), Ala. Code 1975, which provides that a similarly situated health-care provider is one that "[i]s certified by an appropriate American board in the same specialty." The defendants renewed their motion for a summary judgment, arguing that Hannah had failed to support her claims with expert testimony from a similarly situated health-care provider as required by the AMLA and that, with or without Dr. Brickman's testimony, Hannah had failed to establish by substantial evidence that Dr. Thomas and Dr. Naughton had breached the standard of care and that that breach probably caused Hannah's injury.

[2]The trial of this case did not take place on May 6, 2019.

On August 16, 2019, Hannah filed another response in opposition to the motion for a summary judgment, arguing that she had presented substantial evidence creating a genuine issue of material fact as to whether she was falsely told by Dr. Thomas and Dr. Naughton that she had cervical cancer and whether those false statements convinced her that she had no option but to undergo a complete hysterectomy.

Hannah further noted that Dr. Brickman had become a board-certified general surgeon in 1978 and that he was board certified in general surgery at the time Dr. Thomas and Dr. Naughton treated Hannah. Relying upon Chapman v. Smith, 893 So. 2d 293 (Ala. 2004), Hannah argued that § 6-5-548(c)(3) did not contain any requirements as to the period that a proffered medical expert must be board certified before that medical expert can testify as a similarly situated health-care provider. Thus, Hannah argued that Dr. Brickman's testimony could not be precluded. Further, Hannah contended that her claims alleging that she was falsely told by Dr. Thomas and Dr. Naughton that she had cervical cancer, which false statements, she said, convinced her to have a hysterectomy, are the type of claims that do not require the presentation of

expert medical testimony because, she says, they are not "beyond the ken of the average layman." Lively v. Kilgore, 51 So. 3d 1045, 1050 (Ala. Civ. App. 2010). In addition to the response in opposition to the motion for a summary judgment, Hannah also sought, pursuant to Rule 56(f), Ala. R. Civ. P., an opportunity and a reasonable period within which to find a substitute expert to respond to the defendants' summary-judgment motion should Dr. Brickman's testimony be precluded.

On September 17, 2019, the trial court entered a summary judgment finding that the defendants had made "a prima facie showing of non-liability and [Hannah] ha[d] failed to overcome this prima facie showing by failing to present substantial evidence through a similarly situated health care provider that the alleged negligence on the part of the defendants probably caused the alleged injury to [Hannah]." The trial court also determined that Hannah's request for additional time to obtain a medical expert was moot. Hannah's postjudgment motion to alter, amend, or vacate the summary judgment was denied, and she appealed.

Standard of Review

This Court's standard of review relative to a summary judgment is as follows:

> "'"'This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce "substantial evidence" as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. "[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to

> be proved." West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989).'"
>
> "'Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004)).'
>
> "Brown v. W.P. Media, Inc., 17 So. 3d 1167, 1169 (Ala. 2009).
>
> "'"In order to overcome a defendant's properly supported summary-judgment motion, the plaintiff bears the burden of presenting substantial evidence as to each disputed element of [its] claim." Ex parte Harold L. Martin Distrib. Co., 769 So. 2d 313, 314 (Ala. 2000).'
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> "White Sands Grp., L.L.C. v. PRS II, LLC, 32 So. 3d 5, 11 (Ala. 2009)."

Laurel v. Prince, 154 So. 3d 95, 97-98 (Ala. 2014).

This Court has further stated, in the context of a medical-malpractice claim:

> "'Substantial evidence is defined in the medical-malpractice context as "that character of admissible evidence which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed." § 6-5-542(5)[, Ala. Code 1975]. Rule 56, Ala. R. Civ. P., governing motions for summary judgment, must be read in conjunction with that definition of substantial evidence. Golden v. Stein, 670 So. 2d 904, 907 (Ala. 1995).

"'This Court's review of a summary judgment in a medical-malpractice case, as in other cases, is guided by the proposition that "this Court must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant." Hobson v. American Cast Iron Pipe Co., 690 So. 2d 341, 344 (Ala. 1997), quoted in Hauseman v. University of Alabama Health Servs. Found., 793 So. 2d 730, 734 (Ala. 2000).

"'If the movant in a medical-malpractice case makes a prima facie showing that there is no genuine issue of material fact, then, as in other civil cases, the burden shifts to the nonmovant to present substantial evidence creating such an issue. Ex parte Elba Gen. Hosp. & Nursing Home, Inc., 828 So. 2d 308, 311 (Ala. 2001).

"'"...."

"'....

"'"[A] medical malpractice plaintiff must produce substantial evidence that 'the alleged negligence "probably caused the [complained of] injury,"' in order to survive a summary judgment motion, if the defendant has made a prima facie showing that no genuine issue of material fact exists as to the issue of causation."

"'Golden, 670 So. 2d at 907.

"'"'To present a jury question, the plaintiff [in a

> medical-malpractice action] must adduce some evidence indicating that the alleged negligence (the breach of the appropriate standard of care) probably caused the injury. A mere possibility is insufficient. The evidence produced by the plaintiff must have "selective application" to one theory of causation.'"
>
> "'Rivard v. University of Alabama Health Servs. Found., P.C., 835 So. 2d 987, 988 (Ala. 2002).'
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> "Cain v. Howorth, 877 So. 2d 566, 575-76 (Ala. 2003)."

Boyles v. Dougherty, 143 So. 3d 682, 685 (Ala. 2013).

Discussion

Hannah argues that the trial court erred in determining that Dr. Brickman was not a similarly situated health-care provider under § 6-5-548(c)(3) because he was not board certified in general surgery at the time he gave his testimony regarding the applicable standard of care in this case.

Section 6-5-548, Ala. Code 1975, provides, in part:

> "(a) In any action for injury or damages or wrongful death, whether in contract or in tort, against a health care provider for breach of the standard of care, the plaintiff shall have the burden of proving by substantial evidence that the health care provider failed to exercise such reasonable care, skill and diligence as other similarly situated health care providers in the same

general line of practice ordinarily have and exercise in a like case.

"....

"(c) Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is certified by an appropriate American board as a specialist, is trained and experienced in a medical specialty, and holds himself or herself out as a specialist, a 'similarly situated health care provider' is one who meets all of the following requirements:

"(1) Is licensed by the appropriate regulatory board or agency of this or some other state.

"(2) Is trained and experienced in the same specialty.

"(3) Is certified by an appropriate American board in the same specialty.

"(4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred.

"....

"(e) ... It is the intent of the Legislature that in the event that the defendant health care provider is certified by an appropriate American board or in a particular specialty and is practicing that specialty at the time of the alleged breach of the standard of care, a health care provider may testify as an expert witness with respect to an alleged breach of the standard of care ... against another health care provider only if he or she is

> certified by the same American board in the same specialty."

Section 6-5-542(2), Ala. Code 1975, defines the term "standard of care" as

> "that level of such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice, ordinarily have and exercise in like cases. A breach of the standard of care is the failure by a health care provider to comply with the standard of care, which failure proximately causes personal injury or wrongful death whether in contract or tort and whether based on intentional or unintentional conduct."

A plaintiff in a medical-malpractice action

> "ordinarily must present expert testimony from a 'similarly situated health-care provider' as to (1) 'the appropriate standard of care,' (2) a 'deviation from that standard [of care],' and (3) 'a proximate causal connection between the [defendant's] act or omission constituting the breach and the injury sustained by the plaintiff.' Pruitt v. Zeiger, 590 So. 2d 236, 238 (Ala. 1991) (quoting Bradford v. McGee, 534 so. 2d 1076, 1079 (Ala. 1988)). The reason for the rule that proximate causation must be established through expert testimony is that the issue of causation in a medical-malpractice case is ordinarily 'beyond "the ken of the average layman."' Golden v. Stein, 670 So. 2d 904, 907 (Ala. 1995), quoting Charles W. Gamble, McElroy's Alabama Evidence § 127.01(5)(c), p. 333 (4th ed. 1991). The plaintiff must prove through expert testimony 'that the alleged negligence "probably caused the injury."' McAfee v. Baptist Med. Ctr., 641 So. 2d 265, 267 (Ala. 1994)."

Lyons v. Walker Reg'l Med. Ctr., 791 So. 2d 937, 942 (Ala. 2000). See also Youngblood v. Martin, [Ms. 1171037, January 10, 2020] __ So. 3d __ (Ala. 2020).

Dr. Brickman is a graduate of the medical school at the University of Brussels in Belgium. He completed his surgical residency in 1976 and became a board-certified surgeon in 1978. Dr. Brickman was recertified in 1988 and again in 1996. Dr. Brickman has worked as a clinical associate professor at New York Medical College and State University of New York at Stonybrook. Dr. Brickman served as the chief of general surgery at Huntington Hospital. At the time Dr. Brickman gave his deposition testimony in this case, he was the clinical associate professor of surgery at Florida Atlantic University, Charles E. Schmidt College of Medicine. Dr. Brickman also served as the director of the clinical-surgical clerkship and director of clinical education and surgery at the medical school. Dr. Brickman was performing general surgery in 2005, the year the defendants treated Hannah. Although Dr. Brickman continued to maintain his fellowship in the American College of Surgeons, he was no longer performing any primary surgery at the time he gave his deposition. Dr. Brickman testified

that he last performed a hysterectomy in 1974. It is undisputed that he was not board certified in general surgery at the time of the deposition.

Hannah argues that the decision in Chapman v. Smith, 893 So. 2d 293 (Ala. 2004), does not require disqualifying Dr. Brickman as an expert in this case on the basis that he was not board certified in general surgery at the time he testified in his deposition. In Chapman, the plaintiffs sued Dr. Chapman alleging medical malpractice based on Dr. Chapman's alleged negligent administration of a cervical epidural injection. The plaintiffs sought to present the testimony of their two experts, Dr. Pawan Grover and Dr. William Kendall. Dr. Chapman objected to their testimony on the basis that neither Dr. Grover nor Dr. Kendall was qualified to testify at trial. The trial court granted the objection as to Dr. Grover, stating that he was not "qualified to testify as an expert in this case because he was not board-certified in anesthesiology in the year preceding the event which gives rise to the cause of action in this case." 893 So. 2d at 294. The trial court granted the objection as to Dr. Kendall because Dr. Kendall had "not established the

standard of care as to the use of fluoroscopy in cervical epidural injections." 893 So. 2d at 295. Subsequently, the trial court entered a judgment as a matter of law in favor of Dr. Chapman.

The plaintiffs moved the trial court to alter, amend, or vacate the trial court's judgment. The trial court entered an order granting the postjudgment motion, stating that Dr. Grover met the criteria of § 6-5-548(c) and that, therefore, he was a similarly situated health-care provider competent to give expert testimony. The trial court ordered that its prior order striking the testimony of Dr. Grover and Dr. Kendall be vacated.

Dr. Chapman argued on appeal that Dr. Grover was not a board-certified specialist during the year preceding Dr. Chapman's alleged breach of the standard of care, that he was not similarly situated to Dr. Chapman, who was board certified in anesthesiology and in pain management, and thus that he could not testify concerning the appropriate standard of care Dr. Chapman should have exercised in administering the cervical epidural injection. The plaintiffs argued that Dr. Chapman misconstrued the meaning of § 6-5-548(c), because

that section did not require that Dr. Grover be board certified during the year preceding the alleged malpractice to testify as an expert in a medical-malpractice action.

Dr. Chapman argued that Dr. Grover was not similarly situated to Dr. Chapman because Dr. Grover was not board certified in anesthesiology or in pain management during the year preceding Dr. Chapman's alleged breach of the standard of care in this case. According to Dr. Chapman, although § 6-5-548(c)(3) does not explicitly require that a proffered expert witness be board certified in a specialty during the year preceding the alleged breach in a case, a doctor cannot practice in a specialty as required by § 6-5-548(c)(4), Ala. Code 1975, unless he or she is certified by an appropriate American board as a specialist as required in subsection (3). Thus, Dr. Chapman contended that this Court should construe § 6-5-548(c)(3) to require that a proffered expert witness be certified by an appropriate American board in the same specialty as the defendant during the year preceding the date on which the alleged breach of the standard of care occurred.

The plaintiffs asserted that the plain language of § 6-5-548(c) did not require that, before he could qualify as a

similarly situated health-care provider, Dr. Grover be board certified in anesthesiology and in pain management during the year preceding Dr. Chapman's alleged breach of the standard of care. Thus, the plaintiffs argued that this Court should not construe § 6-5-548(c)(3) to require that a proffered expert be board certified during the year preceding the alleged breach.

Construing § 6-5-548(c) according to its plain language to ascertain and give effect to the legislature's intent in enacting the statute, this Court stated, with regard to Dr. Grover's status as a similarly situated health-care provider:

> "The controlling statute in this case, § 6-5-548(c), states in subsection (3) that a proffered expert witness must be 'certified by an appropriate American board in the same specialty' as the specialist charged with medical malpractice in order to testify against a specialist concerning the applicable standard of care. There are no qualifications in subsection (3) as to the period of time the proffered expert must be board-certified before he or she can testify against a specialist. Section 6-5-548(c) further mandates in subsection (4) that the proffered expert must only have practiced in the specialty 'during the year preceding the date that the alleged breach of the standard of care occurred.' According to the plain language of § 6-5-548(c), the only qualifications as to length of time the Legislature has placed on a proffered expert witness is that the witness have practiced the necessary specialty during the year preceding the alleged breach. Construing the plain language of § 6-5-548(c), we must conclude that the Legislature chose not to require that a proffered

> expert witness testifying against a specialist be board-certified in the same specialty during the year preceding the alleged breach of the standard of care. Thus, the appellants' argument that Dr. Grover is not qualified to testify concerning the applicable standard of care in this case because he was not board-certified in anesthesiology or in pain management during the year preceding the alleged breach in this case must fail."

Chapman, 893 So. 2d at 297-98. Accordingly, this Court concluded that Dr. Grover was qualified to testify against Dr. Chapman.

As for Dr. Kendall, Dr. Chapman argued on appeal that Dr. Kendall was not a similarly situated health-care provider because Dr. Kendall had never been board certified as a pain-management specialist. This Court noted that § 6-5-548(c)(3) and (e) required that any proffered expert witness testifying against Dr. Chapman must be certified by an appropriate American board in the same speciality and that Dr. Kendall had never been board certified in pain management as indicated by his deposition testimony. Accordingly, this Court concluded that Dr. Kendall was not qualified to testify against Dr. Chapman.

Hannah points to this Court's language in Chapman that "there are no qualifications in subsection (3) as to the

period of time the proffered expert must be board-certified before he or she can testify against a specialist," 893 So. 2d at 298, to argue that there is no requirement that a proffered expert be board certified at the time he or she gives testimony against a specialist. This argument completely misconstrues this Court's holding in Chapman. In Chapman, Dr. Chapman raised the specific argument that § 6-5-548(c)(3) should be construed as requiring a proffered expert witness be board certified during the year preceding the date on which the alleged breach of the standard of care occurred. Considering the plain and unambiguous nature of the language in § 6-5-548(c)(3), this Court simply held that there were no qualifications in that section as to the period a proffered expert must be board certified before he or she can testify against a specialist. Nothing in this Court's holding in Chapman can reasonably be construed as holding that a proffered expert need not be board certified at the time the proffered expert gives his or her testimony.

Hannah also points to this Court's language in Chapman in which it held that Dr. Kendall was not qualified to testify as a similarly situated health-care provider against Dr. Chapman

under § 6-5-548(c) because he has "never been board-certified" in pain management. Chapman, 893 So. 2d at 298. Hannah contends that this language supports the finding that, if a proffered expert has ever been board certified in a specialty, the proffered expert would qualify as a similarly situated health-care provider in that specialty under § 6-5-548(c). Thus, Hannah contends that, because Dr. Brickman had previously been board certified in general surgery, he qualifies as a similarly situated health-care provider under § 6-5-548(c). Again, Hannah's argument misconstrues the clear holding in Chapman on this point. This Court stated simply that, because Dr. Kendall had never been board certified in pain management, he was not qualified as a similarly situated health-care provider under § 6-5-548(c)(3), which expressly states that a similarly situated health-care provider is one that "[i]s certified by an appropriate American board in the same specialty." This Court's holding in Chapman that Dr. Kendall was not a qualified expert because he had "never been board-certified" in pain management is completely consistent with the requirement in § 6-5-548(c)(3) that a similarly situated health-care provider "[i]s certified by an

appropriate American board in the same specialty." Again, nothing can be reasonably extrapolated from this Court's holding in Chapman, based on this contention of Hannah's, that does not require that a proffered expert be currently board certified at the time he or she gives his or her testimony.

This Court has stated:

> "'"'The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'"'
>
> "Ex parte Alabama Dep't of Mental Health & Mental Retardation, 840 So. 2d 863, 867 (Ala. 2002) (quoting Ex parte Master Boat Builders, Inc., 779 So. 2d 192, 196 (Ala. 2000), quoting in turn IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992))."

Douglas v. King, 889 So. 2d 534, 538 (Ala. 2004).

Section 6-5-548(c)(3) expressly states that a similarly situated health-care provider is one who "[i]s certified by an appropriate American board in the same specialty." Section 6-5-548(e) expressly states that a proffered expert may testify

against a defendant health-care provider "only if he or she is certified by the same American board in the same specialty." Subsections 6-5-548(c)(3) and (e) are plain and unambiguous, and under no reasonable reading could those subsections be interpreted to allow testimony from a proffered expert who "was" once board certified in the same specialty as the defendant health-care provider but who was no longer so certified at the time the proffered expert provided his or her testimony. Subsections 6-5-548(c)(3) and (e) clearly require a similarly situated health-care provider who is proffered as an expert to be board certified in the same specialty as the defendant heath-care provider at the time the proffered expert testifies. Had the legislature intended to require the proffered expert to simply be board certified at any time in the past it could have easily so provided in the statute. Section 6-5-548(c)(4) requires that a similarly situated health-care provider proffered as an expert be one who "[h]as practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred." The fact that the legislature chose to tie, in subsection (c)(4), the action to a specific point in time

and chose to so qualify § 6-5-548(c)(3) and (e) evidences its intention that a proffered expert may not testify as a similarly situated health-care provider against a defendant health-care provider unless the proffered expert is board certified in the same specialty as the defendant health-care provider at the time the proffered expert gives his or her testimony.

Accordingly, because Dr. Brickman was not board certified in general surgery at the time he offered his testimony in this case, he was not a similarly situated health-care provider under § 6-5-548(c)(3) and (e), and the trial court properly refused to consider his testimony.

Hannah next argues that expert medical testimony is not required in this case because, she says, her claims that Dr. Thomas and Dr. Naughton falsely told her that she had cervical cancer and that she had no option but to have a full hysterectomy are not beyond the understanding of the average layperson.

As mentioned above, the plaintiff in a medical-malpractice case generally must present expert medical testimony to establish (1) the applicable standard of care,

(2) a breach of that standard of care, and (3) a proximate causal connection between the defendant's breach of the standard of care and the injury sustained by the plaintiff. Lyons, supra. However, it is well settled that there is an exception to the rule requiring expert testimony "'in a case where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it.'" Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984)(quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)); see also Anderson v. Alabama Reference Labs., 778 So. 2d 806 (Ala. 2000). The following situations have been recognized as exceptions to the general rule that the plaintiff in a medical-malpractice action must proffer independent expert medical testimony:

> "'(1) where a foreign instrumentality is found in the plaintiff's body following surgery; 2) where the injury complained of is in no way connected to the condition for which the plaintiff sought treatment; 3) where the plaintiff employs a recognized standard or authoritative medical text or treatise to prove what is or is not proper practice; and 4) where the plaintiff is himself or herself a medical expert qualified to evaluate the doctor's allegedly negligent conduct.'"

Allred v. Shirley, 598 So. 2d 1347, 1350 (Ala. 1992)(quoting Holt v. Godsil, 447 So. 2d 191, 192-93 (Ala. 1984)(citations omitted in Allred)); see also Anderson v. Alabama Reference Labs., supra.

In Ex parte HealthSouth Corp., 851 So. 2d 33 (Ala. 2002), this Court explained that the list of exceptions in Allred to the general rule requiring expert testimony was illustrative only and not exclusive. In HealthSouth, this Court went on to reformulate the exceptions to the general rule requiring expert medical testimony in medical-malpractice actions

> "[t]o recognize first, a class of cases '"where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it,"' [Tuscaloosa Orthopedic Appliance Co. v.] Wyatt, 460 So. 2d [156] at 161 [(Ala. 1984)](quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)), such as when a sponge is left in, where, for example, the wrong leg is operated on, or, as here, where a call for assistance is completely ignored for an unreasonable period of time. A second exception to the rule requiring expert testimony applies when a plaintiff relies on '"'a recognized standard or authoritative medical text or treatise,'"' Anderson [v. Alabama Reference Labs., 778 So. 2d [806] at 811 [(Ala. 2000)], or is himself or herself a qualified medical expert."

851 So. 2d at 39.

In Collins v. Herring Chiropractic Center, LLC, 237 So. 3d 867, 871 (Ala. 2017), this Court explained the reformulation of the exceptions as follows:

> "The Court's reformulation of categories in HealthSouth essentially clarifies the exceptions to the general rule requiring expert testimony in medical-malpractice actions by emphasizing in the first exception as reformulated that there are situations where the lack of skill is so apparent as to be understood by a layperson, thereby requiring only common knowledge and experience to understand it, and that further the list of examples of such situations was not exhaustive but merely set out examples of possible situations. In the second exception as reformulated, the Court simply combines the use of an authoritative treatise and the plaintiff's own testimony as a medical expert as the second exception to the general rule."

As for the issue of causation in a medical-malpractice action, this Court explained in Sorrell v. King, 946 So. 2d 854, 862-63 (Ala. 2006):

> "A plaintiff in a medical-malpractice action must also present expert testimony establishing a causal connection between the defendant's act or omission constituting the alleged breach and the injury suffered by the plaintiff. Pruitt v. Zeiger, 590 So. 2d 236, 238 (Ala. 1991). See also Bradley v. Miller, 878 So. 2d 262, 266 (Ala. 2003); University of Alabama Health Servs. Found., P.C. v. Bush, 638 So. 2d 794, 802 (Ala. 1994); and Bradford v. McGee, 534 So. 2d 1076, 1079 (Ala. 1988). To prove causation in a medical-malpractice case, the plaintiff must demonstrate '"that the alleged negligence probably caused, rather than only possibly caused the plaintiff's injury."' Bradley,

> 878 So. 2d at 266 (quoting University of Alabama Health Servs., 638 So. 2d at 802). ... In Cain v. Howorth, 877 So. 2d 566 (Ala. 2003), this Court stated:
>
> > "'"'To present a jury question, the plaintiff [in a medical-malpractice action] must adduce some evidence indicating that the alleged negligence (the breach of the appropriate standard of care) probably caused the injury. A mere possibility is insufficient. The evidence produced by the plaintiff must have "selective application" to one theory of causation.'"'
>
> "877 So. 2d at 576 (quoting Rivard v. University of Alabama Health Servs. Found., P.C., 835 So. 2d 987, 988 (Ala. 2002)). However, the plaintiff in a medical-malpractice case is not required to present expert testimony to establish the element of proximate causation in cases where 'the issue of proximate cause is not ... "beyond the ken of the average layman."' Golden v. Stein, 670 So. 2d 904, 908 (Ala. 1995). Therefore, '[u]nless "the cause and effect relationship between the breach of the standard of care and the subsequent complication or injury is so readily understood that a layperson can reliably determine the issue of causation," causation in a medical-malpractice case must be established through expert testimony.' DCH Healthcare Auth., 883 So. 2d at 1217-18 (quoting Cain, 877 So.2d at 576)."

Hannah claims that Dr. Thomas and Dr. Naughton falsely told her that she had cervical cancer based on the results of an abnormal Pap smear, claims that she had no other treatment options but to have a complete hysterectomy based on that diagnosis, and claims that the hysterectomy was performed

because Dr. Thomas and Dr. Naughton falsely represented to her the presence of cancer as determined from the abnormal Pap smear.

Hannah relies upon Ex parte Sonnier, 707 So. 2d 635 (Ala. 1997), in support of her argument that the nature of her claims does not require expert medical testimony to establish. In Ex parte Sonnier, the plaintiff claimed that she was informed by the defendant physician in March 1991 that she had cervical cancer and that a hysterectomy was necessary. On April 1, 1991, the defendant doctor performed the recommended hysterectomy. Subsequently, a postoperative pathology report indicated that the plaintiff did not have cancer. The plaintiff returned to the defendant doctor on at least three occasions between April 1991 and October 1991, and on each visit the defendant doctor represented to the plaintiff that she had had cervical cancer. The plaintiff sued the defendant doctor, alleging, among other things, that the doctor had committed medical malpractice by continuing to falsely misrepresent to her that she had had cervical cancer after the pathology report confirmed that she did not.

The plaintiff offered the affidavit testimony of a board-certified physician in support of her claims. The defendant doctor objected to the affidavit testimony, arguing that the proffered expert was not board certified in obstetrics and gynecology as was the defendant doctor and that, therefore, the proffered expert was not a similarly situated health-care expert. In determining that the affidavit testimony was admissible, the Court stated:

> "The alleged malpractice here was the doctors' continuing to tell [one of the plaintiffs] that she had cancer, even after the results of the hysterectomy showed that she did not have cancer. From all that appears in the record, we conclude that Dr. Bruck was qualified to testify as a similarly situated health care provider as to this alleged breach of the standard of care. In opposition to the defendants' summary judgment motion, the [plaintiffs] submitted substantial evidence indicating that the alleged breach is not relevant to the specialty of obstetrics or gynecology. Instead, the [plaintiffs] allege a breach that virtually requires no expert testimony: after the issuance of a tissue report showing no evidence of cancer, the defendant doctors continued to tell [one of the plaintiffs] that she had had cancer of the uterus. This is substantial evidence that the defendant doctors made material false representations to [one of the plaintiffs] as their patient. The circuit court's judgment should not be affirmed based on any conclusion that, to give the pertinent opinions in his affidavit, Dr. Bruck would have to be certified in obstetrics and gynecology. At least absent any countervailing evidence by the

> defendants, Dr. Bruck's testimony is substantial evidence of a breach of the standard of care."

Ex parte Sonnier, 707 So. 2d at 640.

Ex parte Sonnier is distinguishable from the case currently before the Court. In Ex parte Sonnier one of the plaintiffs was told that she had cervical cancer before the results of the pathology report was known and continued to be told by the defendant doctor that she had cervical cancer after the pathology report indicated that she did not have cancer. The basis of the plaintiffs' misrepresentation claim was the defendant doctor's knowing and continued misrepresentation to one of the plaintiffs that she had cervical cancer even though the pathology report indicated that she did not. The understanding that the defendant doctor breached the standard of care by continuing to represent to that plaintiff that she had had cervical cancer when the pathology report indicated that she had not is within the common knowledge and general understanding of a layperson without regard to a particular medical specialty. In other words, a layperson is capable of understanding the inherent wrong in a doctor's continuing to misrepresent a patient's diagnosis without the testimony of a medical expert.

However, in this case the basis of Hannah's claim is the alleged false representation that she had cervical cancer made to her by Dr. Thomas and Dr. Naughton based on their interpretation of the abnormal Pap smear. The allegation here is not as simple as an ongoing misrepresentation made to a patient by a doctor in the face of medical evidence contrary to the ongoing misrepresentation. To the extent Dr. Thomas and Dr. Naughton made an alleged false representation to Hannah that she had cervical cancer, that representation was made based on their interpretation of the abnormal Pap smear and the treatment protocol dictated by that interpretation. Dr. Thomas and Dr. Naughton's interpretation of the abnormal Pap smear and resulting treatment recommendations based on that interpretation require a knowledge and understanding that is beyond the common knowledge, understanding, and experience of a layperson, and this case is thus distinguishable from the facts of Ex parte Sonnier.

Accordingly, we conclude that Hannah's claims do not fall within the layperson exception to the rule that a plaintiff must support his or her medical-malpractice claim with expert

testimony from a "similarly situated health-care provider" in relation to the defendant medical professional.

Hannah next argues that the trial court erred in ruling that she failed to present substantial evidence through a similarly situated health-care provider that the defendants' alleged negligence probably caused her alleged injury.

As discussed above, the plaintiff in a medical-malpractice case must generally prove by expert medical testimony that the defendant's alleged negligence "probably caused, rather than only possibly caused," the plaintiff's injury in order to establish proximate causation in a medical-malpractice case. Sorrell, 946 So. 2d at 862-63. With this Court having determined that Dr. Brickman's testimony was properly excluded because he was not a "similarly situated health-care provider" in relation to Dr. Thomas and Dr. Naughton in this case and that Hannah's claim does not fall within the recognized exception to the general rule that requires a medical-malpractice claim to be supported by expert medical testimony from a similarly situated health-care provider, Hannah cannot prove any of the elements necessary to establish a medical-malpractice claim.

Accordingly, we conclude that the trial court did not err in determining that Hannah failed to present substantial evidence to establish the element of proximate causation in this case.

Finally, Hannah argues that the trial court erred in failing to grant her Rule 56(f), Ala. R. Civ. P., motion requesting the opportunity to procure an additional medical expert to oppose the defendants' summary-judgment motion in the event the trial court precluded Dr. Brickman's testimony, which it did.

Rule 56(f) provides:

> "Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the court may deny the motion for summary 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."

This Court has stated:

> "As we noted in Scrushy v. Tucker, 955 So. 2d 988, 1007 (Ala. 2006), '"[s]uch an affidavit should state with specificity why the opposing evidence is not presently available and should state, as specifically as possible, what future actions are contemplated to discover and present the opposing evidence."' (Citing Committee Comments to August 1, 1992, Amendment to Rule 56(c) and Rule 56(f).) As the rule indicates, whether to deny a motion for

> summary judgment or to grant a continuance to allow discovery to proceed is discretionary with the trial court."

Fogarty v. Southworth, 953 So. 2d 1225, 1129 (Ala. 2006).

From the time the complaint in this case was filed in July 2007 until the trial court entered an order granting the defendants' summary-judgment motion in September 2019, approximately 12 years had elapsed. During that time Hannah proffered the expert testimony of Dr. Duboe, which the trial court precluded. However, the trial court granted Hannah a continuance to procure and depose an additional expert. Hannah then filed a notice identifying Dr. Brickman as her medical expert. Thereafter, the trial court set the case for trial on May 6, 2019, and ordered Hannah to disclose any additional experts 90 days before trial. The trial court stated in that order that no continuances would be granted except for "extraordinary reasons."

On March 6, 2019, the defendants moved the trial court to preclude the testimony of Dr. Brickman and renewed their motion for a summary judgment. On August 16, 2019, Hannah filed her response in opposition to the motion for a summary judgment. In addition to the response in opposition to the

motion for a summary judgment, Hannah also sought, pursuant to Rule 56(f), an opportunity and reasonable period within which to find a substitute expert to respond to the defendants' summary-judgment motion should Dr. Brickman's testimony be precluded. On September 17, 2019, the trial court entered an order granting the defendants' motion for a summary judgment, finding that Hannah had failed to present substantial evidence through a similarly situated health-care provider that the alleged negligence on the part of the defendants probably caused her alleged injury. Because the trial court entered a summary judgment in favor of the defendants, it determined that Hannah's request for additional time to obtain a medical expert was moot.

We note that the trial court initially did not preclude and strike Dr. Brickman's affidavit testimony. The trial court simply found that Hannah failed to support her claims with substantial evidence from a similarly situated health-care provider, which thereby rendered her request pursuant to Rule 56(f) moot. Further, we note that Hannah failed to file the necessary affidavits required by Rule 56(f). Although she did not file the necessary affidavits, she did file a written

request in which she asked for the opportunity to obtain an additional medical expert because the motion filed by the defendants to preclude Dr. Brickman's testimony was "unexpected," was filed more than four years after his deposition, and, if his testimony was precluded, would leave her without an expert to oppose the defendants' motion for a summary judgment. The trial court had entered an order when it set the trial date stating that there would be no continuances except for "extraordinary reasons." We cannot say that the reasons given by Hannah were extraordinary. Accordingly, we cannot say that the trial court exceeded its discretion in failing to grant Hannah's Rule 56(f) motion.

Conclusion

We affirm the summary judgment entered in favor of the defendants.

AFFIRMED.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.