

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 131013-U

NO. 4-13-1013

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 29, 2014

Carla Bender

4th District Appellate

Court, IL

BRANDY HOUSTON, as Administrator of the Estate)	Appeal from
of Truvonte Edwards, Deceased,)	Circuit Court of
Plaintiff-Appellant,)	Sangamon County
and)	No. 09L105
MATTHEW LAMONT EDWARDS, as Father and)	
Next of Kin of Truvonte Edwards, Deceased,)	
Plaintiff,)	
v.)	
PETER CADIGAN; and MEDICS FIRST, INC., a)	Honorable
Corporation, f/k/a SPRINGFIELD AREA AMBU-)	John Schmidt,
LANCE,)	Judge Presiding.
Defendants-Appellees.		

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not abuse its discretion by denying the plaintiff's motion for leave to amend her complaint to add allegations of willful and wanton misconduct.

¶ 2 In February 2010, plaintiff, Brandy Houston, as administrator of the estate of her deceased son, Truvonte Edwards, filed a wrongful death action against defendants, Peter Cadigan and Medics First, Inc. (Medics). The complaint alleged that in April 2008, Cadigan, while driving an ambulance owned by Medics, negligently collided with and killed the decedent, who was riding his bicycle at the time.

¶ 3 In September 2013, defendants filed a motion for summary judgment based upon the supreme court's June 2013 decision in *Wilkins v. Williams*, 2013 IL 114310, ¶ 59, 991 N.E.2d

308, which held that under the Emergency Medical Services Systems Act (EMS Act) (210 ILCS 50/3.150(a) (West 2006)), "any person who in good faith provides nonemergency medical services in the normal course of conducting their duties shall not be civilly liable as a result of their acts or omissions in providing such services, unless such acts or omissions constitute willful and wanton misconduct." At a hearing that same month, the trial court granted defendants' motion for summary judgment. Plaintiff then orally moved for leave to amend her complaint to add counts of willful and wanton misconduct. The court denied that motion.

¶ 4 Plaintiff appeals, arguing that the trial court abused its discretion by denying her oral motion for leave to amend her complaint. We affirm.

¶ 5 I. BACKGROUND

¶ 6 The following facts were gleaned from the parties' pleadings, exhibits, and other supporting documents filed in the trial court. We review only the facts pertinent to the issues presented in this appeal.

¶ 7 According to the allegations in plaintiff's February 2010 first amended complaint, at approximately 8:30 p.m. on April 19, 2008, the decedent (born January 4, 2001) was riding his bicycle near 11th Street and Phillips Street in Springfield, Illinois. At the same time, Cadigan was driving an ambulance owned by Medics south on 11th Street. Cadigan collided with the decedent, resulting in injuries that caused the decedent's death on April 20, 2008. In April 2009, the trial court appointed plaintiff as the administrator of decedent's estate.

¶ 8 Plaintiff's first amended complaint alleged that Cadigan negligently:

- "[1] failed to keep his motor vehicle under proper control;
- [2] failed to keep a proper lookout for pedestrians and bicycles traveling on the roadway;

[3] failed to keep a proper lookout for pedestrians and bicycles traveling on the roadway, with knowledge the area had poor lighting;

[4] *** failed to decrease his speed as was necessary to avoid colliding with the bicycle operated by the plaintiff's decedent[, in violation of section 11-601 of the Illinois Vehicle Code (625 ILCS 5/11-601 (West 2008))];

[5] failed to yield to the pedestrian on a bicycle;

[6] failed to drive within the range of his headlights;

[7] *** failed to drive with an unobstructed windshield[, in violation of section 12-503 of the Illinois Vehicle Code (625 ILCS 5/12-503 (West 2008))];

[8] operated his vehicle with an obstructed view; and ***

[9] [was] otherwise careless and/or negligent in the operation of his vehicle."

¶ 9 In August 2012, following the close of discovery, defendants filed a motion for summary judgment. In March 2013, the trial court denied defendants' motion, finding that the deposition testimony of Antonio Dyson was contrary to the testimony of Cadigan and the passengers in the ambulance. If a jury were to believe Dyson's testimony, the court explained, it could conclude that Cadigan had time to stop the ambulance before striking the decedent. The court noted that although Dyson—a 16-year-old—had contradicted himself, Dyson's credibility was an issue for a jury to decide.

¶ 10 In June 2013, the supreme court issued its decision in *Wilkins*, 2013 IL 114310, 991 N.E.2d 308, which all parties agree construed the EMS Act to completely foreclose plaintiff's negligence claims against defendants. In September 2013, based upon *Wilkins*, defendants filed a renewed motion for summary judgment.

¶ 11 At a September 2013 hearing, after the trial court granted defendants' motion for summary judgment based upon *Wilkins*, plaintiff orally moved for leave to amend her complaint to add allegations of willful and wanton misconduct against defendants. Plaintiff did not present the court with a proposed amended complaint, and the record contains no transcript of the September 2013 hearing at which plaintiff made her oral motion. However, plaintiff asserts in her brief to this court that she intended to simply swap the word "negligent" with "willful and wanton" throughout her complaint. The trial court denied plaintiff's motion.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff argues that the trial court abused its discretion by denying her oral motion for leave to amend her complaint. We disagree.

¶ 15 The decision of whether to grant a party leave to amend its pleadings lies within the sound discretion of the trial court, and the reviewing court will not reverse that decision absent an abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69, 955 N.E.2d 1110. The court abuses its discretion when its rulings are arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court. *Pister v. Matrix Service Industrial Contractors, Inc.*, 2013 IL App (4th) 120781, ¶ 55, 998 N.E.2d 123.

¶ 16 The supreme court has instructed reviewing courts to consider the following factors in determining whether the trial court abused its discretion by denying a party leave to

amend its pleadings: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 1215-16 (1992). The paramount consideration, however, is " 'whether allowance of the amendment furthers the ends of justice.' " *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶ 41, 975 N.E.2d 1189 (quoting *Trans World Airlines, Inc. v. Martin Automatic, Inc.*, 215 Ill. App. 3d 622, 628, 575 N.E.2d 592, 595 (1991)).

¶ 17 Turning to the first *Loyola Academy* factor—whether the proposed amendment would cure the defective pleading—we agree with defendants that this factor supports our affirming the trial court's ruling. Specifically, plaintiff's failure to present the court with a proposed amended complaint, or provide this court with a transcript of the hearing at which she made her oral motion, requires this court to speculate—or at least rely upon plaintiff's word—as to what exactly the amendment would have been, or whether it would have cured the defective pleading. We are not persuaded by plaintiff's assertion in her brief that she would have simply replaced the word "negligent" with "willful and wanton" throughout her complaint. The record before us provides no basis to conclude that plaintiff's representation in her brief is the same representation she made to the court at the hearing. "[T]o support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001).

¶ 18 Even if the record corroborated plaintiff's representation to this court that she would have simply swapped the word "negligent" with "willful and wanton" throughout her complaint, we are far from convinced that such an amendment would have cured the defective

pleading. As already noted, plaintiff's first amended complaint listed nine specific acts or omissions on the part of Cadigan that allegedly contributed to the decedent's death. None of those acts or omissions suggest willful and wanton misconduct. In her brief to this court, plaintiff latches onto the trial court's finding that if a jury were to believe Dyson's testimony, it could conclude that Cadigan "had time to stop." Plaintiff asserts that "[t]his evidence, in and of itself, is evidence of willful and wanton [mis]conduct." However, without deciding whether plaintiff is accurately characterizing the court's statement, we note that the court's statement is not part of the *pleadings*. Even assuming *arguendo* that evidence existed in the record to support an allegation of willful and wanton misconduct, the specific factual allegations in the first amended complaint do not establish willful and wanton misconduct. Simply swapping the word "negligent" with "willful and wanton," while keeping the rest of the complaint the same, would not have cured the defective pleading. See *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 735, 910 N.E.2d 1134, 1148 (2009) ("[A]bsent the necessary allegations, even the general policy favoring the liberal construction of pleadings will not satisfy the requirement that a complaint set forth facts necessary for recovery under the theory asserted.").

¶ 19 The second *Loyola Academy* factor—whether other parties would sustain prejudice or surprise by virtue of the proposed amendment—also favors affirming the trial court's ruling. All parties agree that plaintiff moved for leave to amend her complaint after discovery had concluded, when the case was on the eve of trial. As defendants note in their brief, the parties pursued discovery and prepared for trial based upon a complaint alleging only negligent conduct. Plaintiff's proposed amendment would have completely changed the nature of the case from one essentially involving an accident to one involving an act "done " "with actual intention or with a conscious disregard or indifference for the consequences when the known safety of other persons

was involved." ' ' " *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 451, 593 N.E.2d 522, 532 (1992) (quoting *Lynch v. Board of Education of Collinsville Community Unit District No. 10*, 82 Ill. 2d 415, 430, 412 N.E.2d 447, 457 (1980), quoting act *Myers v. Krajefska*, 8 Ill. 2d 322, 328-29, 134 N.E.2d 277, 280 (1956) (defining "willful and wanton" misconduct)).

¶ 20 Although willful and wanton misconduct would have been more difficult for plaintiff to prove at trial than simple negligence, this does not mean the amendment would not have caused prejudice or surprise to defendants. Allegations of willful and wanton misconduct would have placed at issue a variety of factors that would have otherwise been irrelevant in a negligence case, such as Cadigan's character, motive, and intent. Defendants were afforded no opportunity to pursue discovery targeted at such evidence.

¶ 21 As to the third and fourth *Loyola Academy* factors—whether the proposed amendment is timely and whether previous opportunities to amend the pleading could be identified—we agree with defendants that plaintiff's proposed amendment could have, and should have, been brought earlier. "When facts sought to be alleged on the eve of or during trial are known to the party at the time of original pleading and no good reason is offered for their not having been filed at that time, leave to amend is properly denied. [Citation.] This is particularly true where the amendment would alter the nature and quality of proof required to defend." *Jarka v. Yellow Cab Co.*, 265 Ill. App. 3d 366, 371, 637 N.E.2d 1096, 1100 (1994).

¶ 22 If the evidence obtained through discovery had indeed revealed to plaintiff that defendants committed willful and wanton misconduct, nothing prevented plaintiff from earlier moving to amend her complaint to so allege. Because proof of willful and wanton misconduct would have likely resulted in a larger award of damages for plaintiff, it is difficult to imagine why plaintiff failed to move for leave to amend her complaint as soon as such evidence came to

light. Indeed, plaintiff candidly admits on appeal that the only reason she moved to amend her complaint was because the supreme court's decision in *Wilkins* foreclosed her claims of negligence. After *Wilkins*, it was willful and wanton, or bust.

¶ 23 Plaintiff asserts that, in light of the court's decision in *Wilkins*, the only way to further the ends of justice was to allow plaintiff to replace the word "negligent" in her complaint with the words "willful and wanton." Justice—as plaintiff seems to argue in her brief—can only be accomplished by ensuring that the decedent's minor siblings (who are potential beneficiaries of his estate) are provided some compensation for decedent's death. Plaintiff asserts in her reply brief that this court should "see through defendant[s]-appellees['] distractions and games and further justice by ensur[ing] that the rights of the minor beneficiaries of [the decedent's] estate are protected and allowed to proceed to trial."

¶ 24 We fundamentally disagree with plaintiff that furthering the ends of justice requires ensuring that the case proceeds to a trial. Indeed, the opposite is often true. The law in Illinois does not allocate justice based upon the personal sympathy that a certain party might evoke vis-à-vis his or her opponent. In this case, plaintiff makes no secret that she sought to amend her complaint to avoid the effects of the trial court's grant of summary judgment in favor of defendants. Contrary to plaintiff's position on appeal, a grant of summary judgment often does further the ends of justice. See *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004) ("The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit.").

¶ 25 In this case, the parties agree that the case was ready for trial at the time plaintiff moved for leave to amend her complaint. Notably, plaintiff did not respond to defendants' September 2013 motion for summary judgment by filing a written motion for leave to amend her

