

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 20-01165

PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, WINSLOW, AND BANNISTER, JJ.

TINA M. DEGENFELDER, AS ADMINISTRATRIX OF THE
ESTATE OF DOROTHY M. CONROW, DECEASED,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

WILLIAMSVILLE SUBURBAN, LLC, GOLDEN LIVING
CENTERS, LLC, KALEIDA HEALTH, DOING BUSINESS
AS MILLARD FILLMORE SUBURBAN HOSPITAL, AND
KALEIDA HEALTH, DEFENDANTS-APPELLANTS.

CAITLIN ROBIN & ASSOCIATES PLLC, BUFFALO (MARK A. LAUGHLIN OF
COUNSEL), FOR DEFENDANTS-APPELLANTS WILLIAMSVILLE SUBURBAN, LLC AND
GOLDEN LIVING CENTERS, LLC.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (AMANDA C. ROSSI OF COUNSEL),
FOR DEFENDANTS-APPELLANTS KALEIDA HEALTH, DOING BUSINESS
AS MILLARD FILLMORE SUBURBAN HOSPITAL AND KALEIDA HEALTH.

BROWN CHIARI LLP, BUFFALO (TIMOTHY M. HUDSON OF COUNSEL), FOR
PLAINTIFF-RESPONDENT.

Appeals from an order of the Supreme Court, Erie County
(Frederick J. Marshall, J.), entered August 4, 2020. The order, among
other things, granted plaintiff's motion to amend her complaint.

Now, upon reading and filing the stipulation of discontinuance
with respect to defendants Kaleida Health, doing business as Millard
Fillmore Suburban Hospital, and Kaleida Health, signed by the
attorneys for the parties on February 2 and 7, 2022,

It is hereby ORDERED that the appeal by defendants Kaleida
Health, doing business as Millard Fillmore Suburban Hospital, and
Kaleida Health is dismissed upon stipulation, and the order is
affirmed without costs.

Memorandum: Plaintiff, in her capacity as power of attorney for
Dorothy M. Conrow (decedent), commenced this personal injury action in
2015 to recover damages for injuries sustained by decedent. Decedent
passed away approximately three weeks after the complaint was filed.
In 2016, plaintiff was appointed administratrix of decedent's estate
and was substituted as the named plaintiff in that capacity. In June
2020, plaintiff moved for leave to amend the complaint to add a claim
for wrongful death. Supreme Court, inter alia, granted plaintiff's

motion, and Williamsville Suburban, LLC and Golden Living Centers, LLC (defendants) appeal.

The decision whether to grant leave to amend a pleading rests within the sound discretion of the trial court and "will not be disturbed absent a clear abuse of that discretion" (*Raymond v Ryken*, 98 AD3d 1265, 1266 [4th Dept 2012]; see *Taylor v Deubell*, 153 AD3d 1662, 1662 [4th Dept 2017]), and we conclude that the court did not abuse its discretion here. The wrongful death cause of action "arose out of the same occurrence[s] set forth in the original pleadings" (*Taylor*, 153 AD3d at 1662; see CPLR 203 [f]; *Caffaro v Trayna*, 35 NY2d 245, 250-251 [1974]), and defendants failed to demonstrate that they would be unduly prejudiced if the motion were granted (see *Caffaro*, 35 NY2d at 250-251; *Wojtalewski v Central Sq. Cent. Sch. Dist.*, 161 AD3d 1560, 1561 [4th Dept 2018]). Finally, defendants failed to demonstrate that the proposed amendment was palpably insufficient or patently devoid of merit (see *Holst v Liberatore*, 105 AD3d 1374, 1374 [4th Dept 2013]).

All concur except CARNI, J., who is not participating.