

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

DANIEL T. MEEHAN,	:	APPEAL NO. C-140761
and	:	TRIAL NO. A-1303876
MARY MEEHAN,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
MASOUD JALILVAND, M.D.,	:	
and	:	
TRIHEALTH, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiffs-appellants Daniel T. Meehan and Mary Meehan appeal from the trial court's entry of summary judgment in favor of the defendants-appellees, Masoud Jalilvand, M.D., and TriHealth, Inc., the owner and operator of Bethesda Hospital, on their claim for spoliation of evidence. The Meehans also appeal the trial court's ruling on a motion to compel discovery.

In 2010, the Meehans had brought a medical-malpractice action alleging that negligent care at Bethesda Hospital had resulted in Daniel developing serious bed ulcers during his hospital stay. In May 2013, four months before the medical-malpractice action ended with a judgment adverse to the Meehans, they commenced this matter. The

gravamen of their spoliation claim is that the appellees altered Daniel's patient chart to reflect that he had the ulcers when he arrived at the hospital for hip surgery.

The Meehans' first assignment of error, in which they assert that the trial court abused its discretion in denying their motion to compel additional discovery from TriHealth, is overruled. In light of the lengthy discovery carried out in this matter, and the trial court's ultimate decision to grant the Meehans' Civ.R. 56(F) motion for additional discovery, the court's decision was supported by a sound reasoning process and will not be disturbed on appeal. *See AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

In their second assignment of error, the Meehans contend the trial court erred in granting summary judgment for the appellees on their spoliation claim. We review the entry of summary judgment de novo, and without deference to the trial court's decision. *See Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8.

Construing the evidence in a light most favorable to the Meehans, the record reveals that the Meehans knew, no later than August 8, 2010, almost three years before this case was commenced, that Dr. Jalilvand had added comments to Daniel's medical records—the act that they characterize as spoliation. Correspondence from the Meehans' counsel to the appellees' counsel raised the issue and included a draft complaint for spoliation. The underlying medical-malpractice action was then less than three months old. That matter reached a final judgment, adverse to the Meehans, without the spoliation issue being raised, 14 months before the entry of summary judgment in this case.

The appellees moved for summary judgment in this case, arguing, inter alia, that the Meehans' spoliation claim was precluded by the judgment in the underlying action. Claim preclusion prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous

action. *See State ex rel. Schachter v. Ohio Public Emp. Retirement Bd.*, 121 Ohio St.3d 526, 2009-Ohio-1704, 905 N.E.2d 1210, ¶ 27.

Here, the Meehans chose not to litigate the spoliation issue in the underlying medical-malpractice action despite being fully aware of Dr. Jalilvand's chart entry. The previous action is thus conclusive for all claims that could have been litigated, including the spoliation claim. *See State ex rel. Schachter* at ¶ 27. Therefore, the appellees were entitled to judgment as a matter of law. *See Civ.R. 56.*

Moreover, from Dr. Jalilvand's unrebutted affidavit and deposition testimony, in which he agreed with the Meehans that Daniel's ulcers had developed during his hospital stay, and in which he stated that he had made the chart entry simply to reflect that fact, reasonable minds could only come to a conclusion adverse to the Meehans that Dr. Jalilvand had not willfully altered or destroyed medical records so as to disrupt the Meehans' earlier medical-malpractice case—an essential element of a spoliation claim. *See Civ.R. 56; see also Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996); *Smith v. Howard Johnson Co.*, 67 Ohio St.3d 28, 29, 615 N.E.2d 1037 (1993). The second assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., DEWINE and STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 30, 2015

per order of the court \_\_\_\_\_.  
Presiding Judge