

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10120
Non-Argument Calendar

LAQUETTA GORDON,

Plaintiff-Appellant,

versus

DEPARTMENT OF VETERANS AFFAIRS,

Defendant,

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-01148-VMC

Before ROSENBAUM, GRANT, and WILSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant LaQuetta Gordon, proceeding pro se, appeals the district court's grant of summary judgment in favor of the United States and the district court's denial of her motion for reconsideration.¹ Gordon argues that the district court erred in granting summary judgment for the government based on its finding that she did not provide expert testimony in support of her claims alleging medical negligence under the Federal Tort Claims Act (FTCA). Additionally, she argues that the district court abused its discretion in denying her motion for reconsideration under Rule 60(b)(2) and (6). After careful review, we affirm.

I.

We review the district court's summary judgment order de novo. *Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC*, 71 F.4th 894, 904 (11th Cir. 2023) (per curiam). When conducting a review, we construe the facts and draw all inferences in the light most favorable to the nonmoving party. *Harrigan v. Metro Dade Police Dep't*, 977 F.3d 1185, 1192 (11th Cir. 2020). Viewing the evidence in that manner, summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is warranted "against a party who fails to make a showing sufficient to establish the existence of an element essen-

¹ Pro se pleadings "are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam).

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tial to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

We review a district court's application of local rules for an abuse of discretion. *Clark v. Hous. Auth. of Alma*, 971 F.2d 723, 727 (11th Cir. 1992). We also review the denial of a Rule 60 motion for abuse of discretion. *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 934 (11th Cir. 2007). In other words, the district court abuses its discretion "if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014) (quotation marks omitted).

II.

First, Gordon argues that the district court erred in granting summary judgment in favor of the government because the government failed to establish that there was no genuine dispute of material fact. Additionally, Gordon argues that the court erred when it determined that her Statement of Material Facts did not align with Northern District of Georgia Local Rule 56.1 and thus deemed the government's Statement of Material Facts as undisputed.

The FTCA waives the sovereign immunity of the United States for personal injury claims arising from the negligence of government employees acting within the scope of their employment if a private person would be liable to the claimant under "the law of

the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1). Because the medical negligence alleged here occurred in Georgia, Georgia substantive law applies to Gordon’s FTCA claim. *Id.*; *Stone v. United States*, 373 F.3d 1129, 1130 (11th Cir. 2004) (per curiam).

To prevail under Georgia law on a medical malpractice claim, a plaintiff must prove: (1) a duty arising from the doctor-patient relationship, (2) a breach of that duty by failing to exercise the requisite degree of skill and care in providing treatment, and (3) that the failure proximately caused the plaintiff’s injury. *Zwiren v. Thompson*, 578 S.E.2d 862, 864 (Ga. 2003). As to the second element, Georgia law presumes medical services have been provided in an ordinarily skillful manner and the plaintiff has the burden of proving otherwise. *Beach v. Lipham*, 578 S.E.2d 402, 405 (Ga. 2003). Expert testimony is required to meet that burden. *See id.* (“The proof required to rebut [the] presumption [of due care in a medical malpractice case] must come from expert medical witnesses.” (quotation marks omitted)). Likewise, a plaintiff “must use” expert testimony to establish causation in a medical malpractice case, and the proffered expert “is required to express some basis for both the confidence with which his [causation] conclusion is formed, and the probability that his conclusion is accurate.” *Zwiren*, 578 S.E.2d at 865 (quotation marks omitted). A plaintiff may not rely on her own statements and lay opinions to avoid summary judgment. *Parker v. Knight*, 267 S.E.2d 222, 223 (Ga. 1980).

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A Georgia plaintiff is not required to present expert testimony if her claim against a medical professional involves ordinary negligence rather than professional negligence. *Se. Pain Specialists, P.C. v. Brown*, 811 S.E.2d 360, 366 (Ga. 2018). The Georgia Court of Appeals has explained that whether a claim alleges professional or ordinary negligence “depends on whether the . . . alleged negligence required the exercise of professional judgment and skill.” *Giddens v. Med. Ctr. of Cent. Ga.*, 839 S.E.2d 31, 40 (Ga. Ct. App. 2020) (citation modified). A claim that “calls into question the conduct of the professional in his area of expertise” is grounded in professional negligence, whereas a claim based on “[a]dministrative, clerical, or routine acts demanding no special expertise fall[s] in the realm” of ordinary negligence. *Id.* How to diagnose and treat a patient presenting with certain symptoms is a quintessentially medical decision rather than an administrative or clerical act. *James v. Hosp. Auth. of City of Bainbridge*, 629 S.E.2d 472, 475 (Ga. Ct. App. 2006).

Gordon concedes that she did not present expert testimony. She argues instead that her claim is one of ordinary negligence that does not require such testimony. But the facts of her case cut against that conclusion. Gordon argues that the Department of Veterans Affairs failed to correctly diagnose her medical complaints and symptoms over the course of several years. A medical diagnosis claim is grounded in professional negligence because it calls into question the conduct and judgment of the professional in his area of expertise. *Giddens*, 839 S.E.2d at 40. This is distinct from the administrative or clerical acts of ordinary negligence. Indeed,

it is the doctor's expertise and professional judgment that Gordon believes failed her over the course of treatment. As such, her claim requires expert testimony to prove that the failure to properly diagnose was a breach of the applicable standard of care and caused her injuries. *Beach*, 578 S.E.2d at 405; *Zwiren*, 578 S.E.2d at 865.

Gordon further argues that the district court "fixed" the elements of her negligence claim in favor of the government when it treated their Statement of Material Facts as undisputed. Local Rule 56.1 demands that the non-movant's response contain individually numbered, concise, non-argumentative responses corresponding to each of the movant's enumerated material facts. N.D. Ga. R. 56.1(B)(1). If the party responding to a summary judgment motion does not directly refute a material fact set forth in the movant's Statement of Material Facts with specific citations to evidence, or otherwise fails to state a valid objection to the material fact pursuant to Local Rule 56.1(B)(1), such fact is deemed admitted by the respondent. N.D. Ga. R. 56.1(B)(2)(a)(2). Gordon has not shown that the district court abused its discretion in relying on the government's Statement of Material Facts. The district court explained that Gordon's citations to evidence in her Statement of Material Facts did not comply with Local Rule 56.1 and thus deemed the government's statements of undisputed material facts admitted. In granting summary judgment, the district court explained that it relied on facts stemming from the government's Statement of Material Facts and its own review of the record.

Even if the district court clearly erred in applying Local Rule 56.1—a showing that Gordon has not made—its grant of summary judgment relied on Gordon’s failure to present expert testimony. Gordon does not dispute her failure to present an expert, only the necessity of one in the first place. Thus, she failed to establish the elements of breach and proximate causation necessary to prove medical malpractice under Georgia law.

III.

Next, Gordon argues that the district court abused its discretion in denying her motion for reconsideration under Rule 60(b)(2) and (b)(6). Rule 60(b)(2) permits a court to relieve a party from final judgment if the party presents “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).” Fed. R. Civ. P. 60(b)(2). Rule 60(b)(6) is a catch-all provision, authorizing the district court to relieve a party from a final judgment for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). We have explained that Rule 60(b)(6) motions “must demonstrate that the circumstances are sufficiently extraordinary to warrant relief.” *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (per curiam) (quotation marks omitted).

Here, the district court did not abuse its discretion in denying Gordon’s motion for reconsideration. Gordon has not presented any newly discovered evidence. Instead, she points to the opinion report of Dr. Wheeler, the government’s medical expert. But this report cannot be considered new because it was presented

by the government during discovery. Thus, the court did not err in denying her motion under Rule 60(b)(2). *See Sloss*, 488 F.3d at 934. Gordon's argument under Rule 60(b)(6) similarly fails. Gordon argues that the district court misapplied the summary judgment standard. As discussed above, the district court did not use the wrong legal standard, apply the law unreasonably, or incorrectly, follow improper procedures, or make clearly erroneous findings of fact. *See Aycock*, 769 F.3d at 1068.

Gordon has not shown that there are sufficiently extraordinary circumstances to otherwise warrant relief. Thus, there was no abuse of discretion warranting reconsideration under Rule 60(b)(6). Accordingly, we affirm.

AFFIRMED.