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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-785

Filed 21 March 2023

Guilford County, No. 17 CVS 4138

JOYCE WILLIAMS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
RUTH HEDGECK-JONES, Plaintiff,

v.

MARYFIELD, INC. d/b/a PENNYBYRN AT MARYFIELD, Defendant.

Appeal by plaintiff from order entered 13 April 2022 by Judge Susan E. Bray
in Guilford County Superior Court. Heard in the Court of Appeals 21 February 2023.

Pangia Law Group, by Amanda C. Dure and Joseph L. Anderson, for plaintiff-appellant.

Teague, Rotenstreich, Stanaland, Fox & Holt, PLLC, by Stephen G. Teague and Kara V. Bordman; and Pinto Coates Kyre & Bowers PLLC, by Lyn K. Broom, for defendant-appellee.

ARROWOOD, Judge.

This case comes before us for the second time on appeal. Joyce Williams (“plaintiff”) appeals the denial of her motion to amend her amended complaint. She also seeks to raise additional issues that were decided in the first appeal of this matter.

I. Background

Ruth Hedgecock-Jones (“decendent”) was a resident of Pennybyrn at Maryfield (“defendant”), an assisted-living facility in High Point, North Carolina. When decendent moved into the facility in October 2015, she was assessed as a high risk for falls and her plan of care was crafted accordingly. Decendent suffered several falls in January and February of 2016. On 10 February 2016, decendent fell again and passed away several days later due to a subdural hematoma.

Plaintiff, as representative of decendent’s estate, filed a complaint for medical malpractice, ordinary negligence, and other claims on 17 March 2017. Plaintiff amended her complaint as a matter of course on 11 May 2017.

On 12 December 2018, defendant filed a motion to strike, motion to dismiss for failure to state a claim upon which relief can be granted, motion for summary judgment and judgment on the pleadings. Among other arguments, defendant asserted they were entitled to judgment as a matter of law due to plaintiff’s failure to abide by the strict pleading requirements of Rule 9(j) of the North Carolina Rules of Civil Procedure. The motions came on for hearing in Guilford County Superior Court on 7 January 2019, Judge Bray presiding.

During the hearing, plaintiff moved to amend her amended complaint in order to correct her Rule 9(j) certification. Per orders entered 14 January 2019, without expressly denying plaintiff’s motion to amend, the court granted defendant’s motions

and dismissed plaintiff's claims with prejudice. The court entered an order on 11 March 2019 taxing costs to plaintiff.

Plaintiff's first appeal was heard before this Court on 12 August 2020. After finding the trial court granted the motion for judgment on the pleadings due to the clerical error in the Rule 9(j) certification, we vacated the dismissal of the medical malpractice claim and the corresponding order of costs and remanded for further proceedings as we were unable to conduct appropriate appellate review of the motion to amend. The trial court's grant of defendant's motions served as an implicit denial of plaintiff's motion to amend, thus without an express denial, we were unable to determine if the trial court acted within its discretion. *Williams v. Maryfield, Inc.*, 274 N.C. App. 512, *4, 850 S.E.2d 623 (2020) (unpublished). The rehearing on the motion to amend was conducted on 28 March 2022.

Following arguments from counsel, Judge Bray expressly denied plaintiff's motion to amend per order entered 13 April 2022 based on undue delay, undue prejudice, failure to cure by prior amendment, and futility of amendment. Plaintiff timely appealed.

II. Discussion

A. Motion to Limit Plaintiff's Appeal

Pursuant to Rule 37 of the North Carolina Rules of Appellate Procedure, defendant filed a motion to dismiss the portions of plaintiff's appeal not pertaining to the motion to amend. As the only issue before the trial court on remand was the

motion to amend, for the reasons stated herein, we only consider whether the trial court abused its discretion in denying the motion to amend.

Despite our prior opinion in this matter, plaintiff attempts to go beyond the directive of this Court and essentially attempts to reargue issues disposed of in our previous opinion related to the trial court's prior grant of defendant's dispositive motions. However, we were clear that the only issue on remand was plaintiff's motion to amend. We stated:

[w]e vacate and remand the portion of the court's order granting judgment on the pleadings with respect to the medical malpractice claim. This ensures that the trial court has the opportunity, in the exercise of its sound discretion, to rule on the motion to amend and, in turn, permits this Court to engage in meaningful appellate review of that discretionary decision.

Williams, 274 N.C. App. at *3.

Moreover, we also stated, “[w]e leave it to the trial court on remand, should the court permit [plaintiff] to amend the complaint, to determine whether there are other grounds on which to rule in this case as a matter of law, or whether the case must proceed to trial.” *Id.* at *4 (citation and internal quotation marks omitted). Outside of the issue on the motion to amend and the medical malpractice claim, we specifically affirmed the remainder of the trial court's orders as plaintiff's appeal “focuse[d] entirely on the dismissal of the medical malpractice claim[.]” *Id.* at *1. We stated “the two orders that are the subject of the notice of appeal resolved a number of other

legal claims not challenged in [plaintiff]’s appellate briefing[.] We affirm those portions of the trial court’s orders.” *Id.* at *4.

Accordingly, the only question before this Court is whether the trial court abused its discretion in denying plaintiff’s motion to amend.

B. Motion to Amend

“When reviewing the denial of a motion to amend, the standard of review is whether the trial court’s denial amounted to a manifest abuse of discretion.” *Pruett v. Bingham*, 238 N.C. App. 78, 86, 767 S.E.2d 357, 363 (2014) (citation omitted), *disc. review denied*, 368 N.C. 278, 775 S.E.2d 863 (Mem) (2015), *aff’d per curiam*, 368 N.C. 709, 782 S.E.2d 510 (Mem) (2016). Upon a denial of a motion to amend, reversal is warranted only “upon proof by a litigant that the challenged actions are manifestly unsupported by reason.” *Id.* (citation and internal quotation marks omitted).

“Rule 9(j) serves as a gatekeeper, enacted by the legislature, to prevent frivolous malpractice claims by requiring expert review[.]” *Vaughan v. Mashburn*, 371 N.C. 428, 434, 817 S.E.2d 370, 375 (2018) (citation and internal quotation marks omitted). “Because the legislature has required strict compliance with [Rule 9(j)], our courts have ruled that if a pleader fails to properly plead his case in his complaint, it is subject to dismissal without the opportunity for the plaintiff to amend his complaint under Rule 15(a).” *Alston v. Hueske*, 244 N.C. App. 546, 553, 781 S.E.2d 305, 310 (2016). However, our Supreme Court has established an exception which allows “a plaintiff in a medical malpractice action [to] file an amended complaint

under Rule 15(a) to cure a defect in a Rule 9(j) certification when the expert review . . . occurred before the filing of the original complaint.” *Vaughan*, 371 N.C. at 441, 817 S.E.2d at 379.

Here, the relevant portion of Rule 9(j) states that a medical malpractice claim “shall be dismissed unless” the complaint “specifically asserts that the medical care and all medical records *pertaining to the alleged negligence* . . . have been reviewed” by an expert willing to testify that the medical care fell below “the applicable standard of care.” N.C. Gen. Stat. § 1A-1, Rule 9(j), (j)(2) (emphasis added). Plaintiff omitted the key phrase “pertaining to the alleged negligence” from her complaint and relied upon the proposition set forth in *Vaughan*, that one may amend their Rule 9(j) certification if expert review occurred prior to filing the complaint, to argue she was entitled to leave from court to amend her complaint and add the missing language.

To be clear, our Supreme Court in *Vaughan* did not establish that leave to amend a defective Rule 9(j) certification is mandatory when the expert review occurred prior to filing the complaint. In *Vaughan*, the plaintiff moved to amend her complaint ten weeks after filing the initial complaint and after the statute of limitations had passed. *Vaughan*, 371 N.C. at 431-32, 817 S.E.2d at 372-73. The trial court denied the plaintiff’s motion to amend as futile due to the passing of the statute of limitations as “the proposed amendment to [plaintiff’s original complaint] does not relate back to the filing date . . . and the statute of limitations [has expired].” *Id.* at 431, 817 S.E.2d at 373.

Acting to “harmonize[] the provisions of Rule 9(j) and Rule 15” our Supreme Court reversed the trial court’s order denying the plaintiff’s motion to amend as the trial court’s denial “was based on a misapprehension of law.” *Id.* at 442, 817 S.E.2d at 379-80 (citation and internal quotation marks omitted). Our Supreme Court’s reversal was meant to establish that “an amended complaint may relate back under Rule 15(c)” if the “expert review and certification occurred before the filing of the original complaint.” *Id.* at 441, 817 S.E.2d at 379. However, the decision to grant a motion to amend remained “addressed to the discretion of the trial court.” *Id.*, at 433, 817 S.E.2d at 374 (citation and internal quotation marks omitted).

Here, defendant filed dispositive motions in December 2018 arguing in part that plaintiff’s amended complaint filed in May 2017 “failed to comply with the requisites of Rule 9(j)[.]” The motions hearing occurred in January 2019, plaintiff did not file a motion to amend prior to the motions hearing but made an oral motion during the hearing to add the missing language. Thus, plaintiff’s case is distinguishable from *Vaughan* due to the approximate twenty-month gap in requesting leave to amend her amended complaint.

“ ‘Reasons justifying denial of [a motion to amend] are (a) undue delay, (b) bad faith, (c) undue prejudice, (d) futility of amendment, and (e) repeated failure to cure defects by previous amendments.’ ” *Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679, 748 S.E.2d 154, 161 (2013) (citation omitted).

This Court has held that a trial court may appropriately

deny a motion for leave to amend on the basis of undue delay where a party seeks to amend its pleading after a significant period of time has passed since filing the pleading and where the record or party offers no explanation for the delay.

Rabon v. Hopkins, 208 N.C. App. 351, 354, 703 S.E.2d 181, 184 (2010) (citation omitted), *disc. review denied*, 365 N.C. 195, 710 S.E.2d 22 (Mem) (2011).

Here, plaintiff offers no justification for the delay in filing her motion to amend. The only justification offered by plaintiff is that she was unaware of the clerical error in her amended complaint, and upon learning of it, “immediately moved to amend” in January 2019. This reasoning is insufficient, especially in light of the fact that the deficient pleading had been brought to the attention of plaintiff in the month prior to the hearing and no motion was made until an oral motion at the time of the hearing.

In *Wilkerson v. Duke University*, we held the trial court’s denial of a motion to amend due to undue delay was warranted where the motion was made thirteen months after the initial complaint was filed and five days before the hearing on the defendant’s motion for summary judgment. *Wilkerson*, 229 N.C. App. at 679, 748 S.E.2d at 161. Similarly, in *Crawford v. Town of Summerfield*, we affirmed the denial of a plaintiff’s motion to amend finding it “untimely, prejudicial, and futile” as the motion was not filed until hours before the hearing on the defendant’s motion to dismiss. *Crawford v. Town of Summerfield*, 276 N.C. App. 275, *3-*4, 855 S.E.2d 301 (2021) (unpublished). In *Crawford*, the plaintiff’s original complaint failed to properly allege standing and their amended complaint did not correct the failure. *Id.*

at *3. We stated, “the filing of [p]laintiff’s motion to amend for a second time mere hours before the hearing was prejudicial to [defendant]’s readiness to argue its case.” *Id.* Accordingly, we found the trial court did not abuse its discretion in denying the motion to amend and in granting the defendant’s motion to dismiss for failing to allege proper standing. *Id.* at *4.

Likewise, in medical malpractice actions an error in a plaintiff’s Rule 9(j) certification acts as a similar justification for dismissal. In the instant case, plaintiff may have been seeking to amend a mere technical error, but our courts are bound by the legislature’s intent in enacting Rule 9(j). “The legislature passed Rule 9(j) to require a more stringent procedure to file a medical malpractice claim. Although pleadings are generally construed liberally, legislative intent as well as the strict interpretation given to Rule 9(j) by the North Carolina Supreme Court” require courts to ensure plaintiffs “meet the high standard of Rule 9(j).” *Alston*, 244 N.C. App. at 553, 781 S.E.2d at 310.

Accordingly, we conclude that the trial court did not commit a “manifest abuse of discretion” in denying plaintiff’s motion to amend. *Pruett*, 238 N.C. App. at 86, 767 S.E.2d at 363. Plaintiff’s motion to amend was made twenty months after amending her first complaint and was not requested until the dispositive motions hearing was already in progress. Moreover, “[o]ur courts have strictly enforced Rule 9(j)’s clear and unambiguous language as requiring dismissal of a medical malpractice action when the plaintiff’s pleading is not in compliance with the Rule’s requirements.”

Fairfield v. WakeMed, 261 N.C. App. 569, 572, 821 S.E.2d 277, 280 (2018) (citation and internal quotation marks omitted). Because one ground is sufficient to support a dismissal, we need not address the other reasons set forth in the trial court's order. We note, however, that in the initial hearing defendant also moved for summary judgment on the grounds of contributory negligence and plaintiff has not contested summary judgment on those grounds in either appeal, which would render any amendment futile.

III. Conclusion

The trial's court order denying plaintiff's motion to amend is affirmed.

AFFIRMED.

Chief Judge STROUD and Judge TYSON concur.

Report per Rule 30(e).