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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-876

Filed 4 November 2026

Wake County, No. 24CV014687-910

BROOKE DOSS, Plaintiff,

v.

WILLIAM JAMES MAXWELL, III, d/b/a SUMMIT EQUINE HOSPITAL, Defendant.

Appeal by plaintiff from order entered 28 April 2025 by Judge George Robert Hicks, III, in Wake County Superior Court. Heard in the Court of Appeals 25 February 2026.

McDonald Wright, LLP, by David W. McDonald, for plaintiff-appellant.

Brown, Crump, Vanore & Tierney, L.L.P., by O. Craig Tierney, Jr. and Aurora Esposito, for defendant-appellee

FREEMAN, Judge.

Plaintiff appeals from the trial court's order granting defendant's Rule 12(b)(6) motion to dismiss. On appeal, plaintiff argues that the trial court erred by granting the motion to dismiss because it decided that her complaint was time barred by the statute of limitations. After careful review, we affirm.

I. Factual and Procedural Background

Plaintiff's complaint alleged the following. Plaintiff owned a dressage horse, Rolando. Defendant was a veterinarian who treated horses. On 21 April 2021, defendant came to the farm where Rolando was boarded to examine Rolando's spine. After taking x-ray images of Rolando's back, defendant recommended administering injections into Rolando's spine. The injections were administered at defendant's office. Defendant instructed his assistant to scrub the part of Rolando's back where defendant intended to administer the injections. The assistant was the property manager and "had no formal training as a vet tech or assistant[.]" Defendant made the injections into Rolando's spine.

On 7 May 2021, plaintiff noticed swelling on Rolando's back at the injection site. Plaintiff contacted defendant, who scheduled a follow-up appointment for 14 May 2021. At the follow-up appointment, defendant examined Rolando but told plaintiff that he would return the next day to complete the examination and confirm the diagnosis because defendant did not have his x-ray machine. Defendant returned on the next day to complete the examination and "reported that bony resorption was noted at the site of the injections which was indicative of a bone infection." Defendant recommended that plaintiff take Rolando to the North Carolina State Veterinary Hospital.

That same day, the veterinary hospital performed a surgical procedure, which ultimately led to Rolando's permanent retirement because he could not sustain the

weight of a rider on his back, "thus completely ruining his value as a dressage horse and sales horse."

Plaintiff filed a complaint on 13 May 2024, alleging defendant "was negligent by failing to properly supervise the disinfection process of the injection site for Rolando and then proceeding to administer injections in a dangerous setting which caused Rolando's spine to become infected."[1] In his answer, defendant moved to dismiss the action for failure to state a claim under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and asserted that the action was time barred by the statute of limitations.

On 5 March 2025, the trial court heard defendant's motion to dismiss. At the hearing, the parties disputed whether the complaint was barred by the statute of limitations. Plaintiff contended that because this was a professional malpractice action, the "professional malpractice statute of limitations" governed, and the continuing course of treatment doctrine applied to toll the limitations period. The trial court stated that a previous appellate opinion "did not allow the doctrine to apply to another form of professional care," so it "ha[d] to allow the motion to dismiss." *See generally Delta Env't Consultants of N.C., Inc. v. Wysong & Miles Co.*, 132 N.C. App. 160 (1999).

Plaintiff filed a request for findings on 10 April 2025, which defendant opposed.

[1] Plaintiff also named VCA Animal Hospitals, Inc. as a defendant in her complaint but voluntarily dismissed the action with respect to VCA on 15 July 2024.

By written order filed 28 April 2025, the trial court entered its written order granting defendant's motion to dismiss under Rule 12(b)(6) and dismissed the action with prejudice. The order did not include written findings. Plaintiff timely appealed.

II. Jurisdiction

Appeal lies of right to the Court of Appeals from any final judgment of a superior court in a civil action. N.C.G.S. § 7A-27(b)(1) (2025). Accordingly, we have jurisdiction to hear plaintiff's appeal.

III. Standard of Review

"Appellate courts review de novo an order granting a 12(b)(6) motion to dismiss." *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679 (2022). "The appellate court, just like the trial court below, considers 'whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory.' " *Id.* (quoting *Bridges v. Parrish*, 366 N.C. 539, 541 (2013)). Trial courts may properly dismiss a complaint if: "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Newberne v. Dep't of Crime Control & Pub. Safety*, 359 N.C. 782, 784 (2005) (quoting *Wood v. Guilford Cty.*, 355 N.C. 161, 166 (2002)). "A motion to dismiss under Rule 12(b)(6) is an appropriate method of determining whether the statutes of limitation bar plaintiff's claims if the bar is disclosed in the complaint." *Carlisle v. Keith*, 169 N.C. App. 674, 681 (2005) (citing

Horton v. Carolina Medicorp, 344 N.C. 133, 136 (1996)).

IV. Discussion

Plaintiff argues that the trial court erred in granting defendant's motion to dismiss because the action is not time barred for two reasons: (1) the continuing course of treatment tolled the statute of limitations and (2) veterinary malpractice claims accrue upon the last act giving rise to the claim under N.C.G.S. § 1-15(c).

A. Continuing Course of Treatment Doctrine

Plaintiff contends that the trial court erred by not applying the continuing course of treatment doctrine. Specifically, plaintiff argues that veterinary medicine qualifies as a professional engagement under the doctrine; consequently, because defendant continued to treat Rolando until 15 May 2021, the complaint was timely filed "within three years of the continuing course of treatment."

The continuing course of treatment rule is an exception to the rule that the action accrues at the time of the defendant's negligence. *Glover v. Charlotte-Mecklenburg Hospital Authority*, 261 N.C. App. 345, 354 (2018).

> The continued course of treatment rule . . . applies to situations in which the doctor continues a particular course of treatment over a period of time. The theory is that "so long as the relationship of [doctor] and patient continued, the [doctor] was guilty of malpractice during that entire relationship for not repairing the damage he had done and, therefore, the cause of action against him arose at the conclusion of his contractual relationship."

Ballenger v. Crowell, 38 N.C. App. 50, 58 (1978).

"Where the injurious consequences arise from a continuing course of negligent treatment the statute does not ordinarily begin to run until the injurious treatment is terminated." *Id.* (cleaned up).

The continuing course of treatment doctrine "tolls the running of the statute for the period between the original negligent act and the ensuing discovery and correction of its consequences; the claim still accrues at the time of the original negligent act or omission." *Horton*, 344 N.C. at 137. "To benefit from this doctrine, a plaintiff must show both a continuous relationship with a physician and subsequent treatment from that physician." *Id.* "The subsequent treatment must consist of an affirmative act or omission related to the original act, omission, or failure which gave rise to the claim." *Id.*

In the context of a Rule 12(b)(6) motion to dismiss, "to take advantage of the doctrine, a patient must allege the physician 'could have taken further action to remedy the damage occasioned by its original negligence.' " *Webb v. Hardy*, 182 N.C. App. 324, 328 (2007) (emphasis omitted) (quoting *Horton*, 344 N.C. at 140)); *see State ex rel. Long v. Petree Stockton, L.L.P.*, 129 N.C. App. 432, 442 (1998).

The doctrine has only been applied in physician-patient settings, and our appellate courts have not yet considered whether it applies to instances of alleged veterinary malpractice. We decline to expand this doctrine to the treatment of animals.

Even if the doctrine applied to veterinarians, plaintiff's argument is without

merit. Plaintiff's complaint details the chronology of events and alleges that defendant "was negligent by failing to properly supervise the disinfection process of the injection site for Rolando and then proceeding to administer injections in a dangerous setting which caused Rolando's spine to become infected." However, plaintiff's complaint contains no allegation about what defendant could have done to remedy the original alleged negligence while treating Rolando. Accordingly, even if there were a continuing relationship for treatment related to the original negligence, plaintiff's pleading is insufficient for the doctrine to apply.

B. Professional Malpractice Statute of Limitations

Plaintiff argues the trial court erred in granting defendant's motion to dismiss because under the professional malpractice statute of limitations, N.C.G.S. § 1-15(c), the last act giving rise to the claim determines when the statute of limitations begins running. Plaintiff maintains that due to the nature of the professional engagement, defendant's last act giving rise to the claim occurred on 15 May 2021—the date defendant last treated Rolando—so the complaint was timely filed.

Claims for "personal injury or physical damage to the claimant's property" generally must be brought within three years of the injury or damage, and these claims accrue once the injury or damage "becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs." N.C.G.S. § 1-52(16) (2025). A dressage horse is property. *Phillips v. N.C. State. Univ.*, 206 N.C. App. 258, 266 (2010) (stating horses raised for home use or for profit are

considered livestock, which is personal property).

Subsection 1-15(c) of our General Statutes provides that in professional malpractice actions:

> Except where otherwise provided by statute, a cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the cause of action: Provided that whenever there is bodily injury to the person, economic or monetary loss, or a defect in or damage to property which originates under circumstances making the injury, loss, defect or damage not readily apparent to the claimant at the time of its origin, and the injury, loss, defect or damage is discovered or should reasonably be discovered by the claimant two or more years after the occurrence of the last act of the defendant giving rise to the cause of action, suit must be commenced within one year from the date discovery is made: Provided nothing herein shall be construed to reduce the statute of limitation in any such case below three years.

N.C.G.S. § 1-15(c) (2025). This statute "provides for a minimum three-year period from occurrence of the last act; [and] an additional one-year-from-discovery period for injuries 'not readily apparent' subject to a four-year period of repose commencing with defendant's last act giving rise to the cause of action . . . ." *Black v. Littlejohn*, 312 N.C. 626, 634 (1985).

The statute of limitations begins running upon accrual of the claim. *Id.* "A cause of action for malpractice is deemed to accrue with the time of occurrence of the last act of the defendant giving rise to the cause of action." *Stallings v. Gunter*, 99 N.C. App. 710, 714 (1990) (cleaned up). "The cause of action accrues at the time of

the commission of the negligent act or omission complained of, not at the time of infliction of injuries resulting therefrom." *Land v. Neill Pontiac, Inc.*, 6 N.C. App. 197, 199 (1969); *see also Fulton v. Vickery*, 73 N.C. App. 382, 389 (1985) ("In a negligence claim, the statute of limitations begins to run when the plaintiff's right to maintain a cause of action accrues, and the cause of action accrues when the wrong is complete."). "[R]egardless of when legal injury or damages arise, the occurrence of the negligent act by [the] defendant triggers accrual of the statute of limitations." *Black*, 312 N.C. 626, 634 n.3.

Plaintiff relies on *Hargett v. Holland*, 337 N.C. 651 (1994) to support that the last act giving rise to the claim was when defendant last treated Rolando. In *Hargett*, the plaintiffs' father contracted with an attorney to prepare and execute a will. *Id.* at 653. Our Supreme Court concluded that the last act giving rise to the claim was the supervision of the execution of the will, as the allegations in the complaint included a contractual relationship to prepare and execute a will. *Id.* The Court declined to hold that the defendant was under a "continuing duty thereafter to review or correct the will or prepare another will." *Id.* at 655. In other words, the last act giving rise to the claim was determined by the nature of the services that the employee agreed to perform. *Id.* at 656.

Similarly, in *Babb v. Hoskins*, we determined the last act giving rise to the action was based on the nature of the services the parties agreed to perform at the outset, as set forth in the complaint. 223 N.C. App. 103, 108 (2012). In *Babb*, the

nature of the services was determined by the duties agreed upon at the beginning of their relationship, and there was no allegation of a further contractual relationship in the complaint. *Id.* Accordingly, the "nature of the services" that the defendant agreed to perform was "solely limited to" the contracted duties, the last act giving rise to the claim occurred when he completed the agreed upon duties. *Id.*

Here, unlike *Hargett* and *Babb*, where the last date giving rise to the claim was determined by the agreed upon services at the outset of the contractual relationship, here, plaintiff's complaint contains no allegation of such relationship. Rather, the parties agreed that defendant inspect Rolando's back and administer the injections on 21 April 2021. There was no agreement for any further appointments or treatment. Further, plaintiff did not allege that defendant acted negligently in treatment that was later agreed to by the parties. As pleaded in the complaint, the scope of the professional duties as agreed to by the parties at the outset was limited to the treatment on 21 April 2021. Therefore, this is the operative time for determining when the last act giving rise to the claim occurred and we decline to hold that defendant was under a "continuing duty thereafter" to treat Rolando.

Plaintiff's complaint[2] provides that she discovered defendant's alleged negligence on 7 May 2021, when she noticed swelling on Rolando's back at the

[2] We note that if the trial court considered the affirmative defenses in defendant's answer in deciding the motion to dismiss, the trial court should have considered this matter under Rule 12(c) of the North Carolina Rules of Civil Procedure.

injection site. Accordingly, plaintiff's claim accrued on 7 May 2021 at the latest. Because plaintiff filed her complaint on 13 May 2024, her complaint is time barred by the statute of limitations provided by N.C.G.S. § 1-15(c).

V. Conclusion

For the foregoing reasons, plaintiff's complaint is time barred by the statute of limitations, and we affirm the trial court's decision to grant the motion to dismiss.

AFFIRMED.

Judge COLLINS concurs.

Judge CARPENTER concurs by separate opinion.

CARPENTER, Judge, concurring.

On the merits, I agree that the trial court properly dismissed Plaintiff's complaint as time-barred by the statute of limitations. This case presents an opportunity, however, to highlight a matter of procedure.

A Rule 12(b)(6) dismissal based on the statute of limitations is proper only when all the facts necessary to establish the defense are either alleged or admitted in the plaintiff's pleadings, construing plaintiff's pleadings liberally in favor of the plaintiff. *See Fox v. Sara Lee Corp.*, 210 N.C. App. 706, 708–09, 709 S.E.2d 496, 498 (2011). "Because the statute of limitations is an affirmative defense, a defendant who fails to plead it at the appropriate procedural stage waives its protections." *McKinney v. Goins*, 387 N.C. 35, 49, 911 S.E.2d 1, 12 (2025).

In his answer, Defendant requested dismissal under Rule 12(b)(6) and raised various affirmative defenses, including the expiration of the statute of limitations. In a separate motion to dismiss filed two months later, Defendant requested dismissal under Rule 12(b)(6), or alternatively, judgment on the pleadings under Rule 12(c). Once the trial court considers matters outside the four corners of the complaint, like an affirmative defense raised in an answer, the court's task moves beyond testing the legal sufficiency of the complaint.

"The purpose of a motion for judgment on the pleadings . . . 'is to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit,' with

the entry of judgment on the pleadings being appropriate when 'all the material allegations of fact are admitted in the pleadings and only questions of law remain.' " *Anderson Creek Partners, L.P. v. Cnty. of Harnett*, 382 N.C. 1, 11–12, 876 S.E.2d 476, 485 (2022) (quoting *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974)). "In deciding whether to grant or deny a motion for judgment on the pleadings, the trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party, with all well pleaded factual allegations in the nonmoving party's pleadings being taken as true and all contravening assertions in the movant's pleadings being taken as false." *Id.* at 12, 876 S.E.2d at 485 (cleaned up).

Here, under a liberal construction, Plaintiff's complaint was not necessarily self-defeating. As evidenced by the transcript, the trial court considered an affirmative defense raised in Defendant's answer and properly dismissed the complaint based on the inapplicability of the continuing course of treatment doctrine. Although Rule 12(c), not Rule 12(b)(6), was the more appropriate procedural basis, the trial court did not err by dismissing Plaintiff's complaint. *See Shore v. Brown*, 324 N.C. 427, 428, 378 S.E.2d 778, 779 (1989) ("If the correct result has been reached, the judgment will not be disturbed even though the trial court may not have assigned the correct reason for the judgment entered." (citations omitted)). I concur.