

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

Civil Action No.: 1:24-cv-00253

JOHN DOE M.D.Y.,

Plaintiffs,

vs.

**TRAILS ACADEMY, LLC., TRAILS
CAROLINA, LLC., TRAILS MOMENTUM
A/K/A TRAILS CAROLINA,
WILDERNESS TRAINING &
CONSULTING, LLC D/B/A FAMILY HELP
& WELLNESS, WTC HOLDCO, LLC,
WTC SL, LLC AND UNNAMED ENTITIES
1-10**

Defendants.

**PLAINTIFF’S REPLY TO DEFENDANTS’ OPPOSITION TO PLAINTIFF’S
MOTION FOR EXTENSION OF TIME UNDER RULE 9(j)**

Plaintiff respectfully submits this reply in support of the Amended Motion for Extension of the statute of limitations pursuant to Rule 9(j). First, Defendants ignore that the Court initially entered an order “granting 5 MOTION for Extension of Time to comply with Rule 9(j),” but went on to rule “The Motion does not state the current deadline date or the requested extended deadline date. The Motion is denied without prejudice to Plaintiff submitting an amended Motion containing that information.” Plaintiff’s Amended Motion for an Extension of time Under Rule 9(j) was filed to comply with this order of the Court and Defendants fail to set forth any valid reason to allow such an extension. Further, Defendants failed to timely file an opposition to Plaintiff’s instant motion which was filed on October 11, 2024, thereby waiving any defenses raised in opposition to this motion for an extension.

Instead of addressing the standard that applies to whether a Rule 9(j) extension should be granted, Defendants' instead, and inappropriately, attempt to raise issues related to the statute of limitations that are not relevant to the analysis as to whether an extension of time to provide expert certification should be granted. Therefore, while not appropriately before the Court, Plaintiffs must address these issues that were not previously anticipated in the original amended motion in the event the Court considers the allegations raised by Defendants.

The Plaintiff contends that there is good cause for the extension due to the tolling of the statute of limitations, as the Plaintiff did not discover his injury until after October 11, 2023, by reason of "insanity," "incompetence" and the concealment and unfair practices of Defendants. Consequently, the Plaintiff has made reasonable efforts to obtain the necessary medical records in the time he was reasonably aware of his injuries and no longer inhibited by "insanity," "incompetence" and Defendants' concealment from him pursuing his legal rights. Furthermore, the analysis of whether a statute of limitation is expired or not, particularly regarding factual disputes like those raised by Defendants, is a factual question for a jury and not appropriate at this early stage. *See Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App. 635, 644 (2007); *Hatem v. Bryan*, 117 N.C. App. 722, 725 (1995).

As a threshold matter, Defendants' negligence is ordinary negligence, not medical malpractice – that question is not at issue here. Moreover, Plaintiff complied with Rule 9(j) by retaining an expert witness to review Plaintiff's information and records and who provided the requisite certification. (Corrected/Amended Complaint ("Complaint") at 33).

A. Plaintiff's Motion for an Extension of Time Under Rule 9(j) was timely filed

Plaintiff timely filed his Motion for an Extension of Time Under Rule 9(j) before the expiration of the statute of limitations. N.C. Gen. Stat. 1A-1, Rule 9(j) requires a complaint for medical malpractice to include a certification by a person who is reasonably expected to qualify

as an expert witness to have certified a breach of the standard of care after reviewing the care and all medical records pertaining to the alleged negligence that are available to a plaintiff. The purpose of requiring such certification is to prevent the filing of frivolous medical malpractice claims. The emotional, physical, and sexual abuse endured by Plaintiff and perpetrated by Defendants is not frivolous.

As such, prior to filing the complaint, Plaintiff and the undersigned counsel retained an expert to review the abuse and neglect that Plaintiff was subjected to who concluded that “the care rendered by defendants and all medical records pertaining to the alleged negligence that are available to plaintiff after reasonable inquiry have been reviewed before the filing of this complaint by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the North Carolina Rules of Evidence and who is willing to testify that the care provided by defendants did not comply with the applicable standard of care.” (Complaint at 33); *see also* Exhibit 1 to Defendants’ Opposition [doc. 29-1]. N.C. Gen. Stat. 1A-1, Rule 9(j)(3) specifies that the motion must be filed “prior to the expiration of the applicable statute of limitations.” Plaintiff complied with Rule 9(j) by obtaining an expert witness’s review and certification, yet because all records were not privy to the expert given the hurricane, the motion for an extension was filed in an abundance of caution. Moreover, Plaintiff’s motion for an extension was submitted prior to the expiration of the statute of limitations for the reasons set forth herein.

B. Plaintiff’s statute of limitations was not expired at the time the Motion for Extension of Time was filed due to tolling on the basis of delayed discovery

Plaintiff’s statute of limitations for medical malpractice was not expired at the time the Motion for Extension of Time was filed on October 11, 2024, as Plaintiff’s time for bringing suit is tolled by the discovery rule, by reason of “insanity” and “incompetence,” and equitable tolling. Under North Carolina law, a cause of action for medical malpractice is generally

deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the cause of action. However, there are several tolling provisions which apply here to extend the limitations period beyond the date the motion was filed—1) the discovery rule pursuant to N.C. Gen. Stat. 1-15(c), (2) tolling on the basis of “insanity” or “incompetence,” and (3) equitable tolling.

First, when the injury is not readily apparent to the claimant at the time of its origin and is discovered or should reasonably be discovered by the claimant two or more years after the occurrence of the last act of the defendant, the statute of limitations is tolled and the suit must be commenced within one year from the date discovery is made. N.C. Gen. Stat. 1-15(c). In this case, the Plaintiff’s injury was not readily apparent, nor did he actually discover his injury until after October 11, 2023, which falls within the one-year-from-discovery provision of N.C. Gen. Stat. 1-15(c).

The Plaintiff did plead sufficient facts asserting that there were latent injuries and that the injuries were not readily apparent. Plaintiff plead that he struggled with debilitating depression and suicidal ideation prior to attending Trails. Complaint at ¶93. The Complaint further explains that “Defendants’ staff focused particularly on coercing young people in the program to blame themselves for health conditions and events outside of their control and to feel shame for their health and experiences.” Complaint at ¶137. Systematically, Defendants manipulated John and told him that the emotional distress he was experiencing was his own fault. “Staff would manipulate students into compliance by telling them they deserved the abuse, neglect, and mental health symptomology they experienced.” Complaint at ¶137. “During this time, John was so traumatized that he was unable to process or understand his experiences at Trails.” Complaint at ¶167. “At that time, John did not understand that the steep decline in his mental health was an injury resulting from Defendants’ misconduct.” Complaint

at ¶167.

As a result of Defendants’ manipulation and abuse he endured, John was forced to believe that any and all mental health symptoms he was experiencing were due to his pre-existing conditions and his own shortcomings. Subjected to such abuses, gaslighting, and coercion, with a myriad of similar pre-existing symptoms, these signs of injury would not be readily apparent to any reasonable individual. In fact, “[i]t was not until recently that John was reasonably able to identify and understand and discover that what he experienced was abuse and neglect which caused him significant injury.” Complaint at ¶169.

On October 11, 2023, Plaintiff’s mother attended a talk about the dangers and abuses of Troubled Teen Industry programs by Paris Hilton at a conference. Attending this presentation, John Doe’s mother Jane Doe was shocked and horrified to learn that private wilderness programs bearing descriptions like Trails where she had sent her son John, were frequently abusive, harmful, and misrepresented the nature and impacts of their programming. Jane Doe learned about the misrepresentations, manipulation and gaslighting that these programs frequently engaged in, blaming any distress a resident might experience on them and their mental health which acts to prohibit survivors from understanding the abusive nature of these programs. Fearing that Trails Momentum was one such program, this talk sparked conversations within the Does’ family which lead them to uncover John Doe’s injuries after October 11, 2023.

Since the date of this speech was October 11, 2023, after which triggered the discussion with John’s mother, the reasonable awareness of John’s injuries and the limitations period, based upon the discovery rule, was not expired as of October 11, 2024, when the instant motion was filed.¹ Therefore, the motion for an extension of time pursuant to 9(j) is timely and should

¹ Plaintiff pled recent discovery of injuries in his complaint, however, if the Court requires further details of the

be granted.

C. Plaintiff's statute of limitations was not expired at the time the Motion for Extension of Time was filed due to tolling on the basis of "insanity" and "incompetence"

Further, the statute of limitations is tolled on the basis of "insanity" and "incompetence." Where an individual does not have mental competence to manage his own affairs, the statute of limitations will be tolled until removal of such disability. *Cox v. Jefferson-Pilot Fire & Cas. Co.*, 80 N.C. App. 122 (1986), *cert denied*, 317 N.C. 702); *Leonard v. England*, 115 N.C. App. 103, 445 S.E.2d 50 (1994); *Soderlund v. North Carolina Sch. of Arts*, 125 N.C. App. 386 (1997). Plaintiff struggled with debilitating depression and suicidal ideation. Complaint at ¶93. Trails subjected John to isolation, emotional abuse, sexual abuse, excessive exercise, forced labor, and neglect. This caused "immense trauma and harm to his mental health." Complaint at ¶159. As a result of his mental health and trauma, John was not able to manage the affairs necessary to attend college during this time and he was hospitalized soon after for a suicide attempt. Complaint at ¶161. As a result of his suicide attempt and exacerbated mental health symptoms, John dropped out of college. Complaint at ¶162. The Complaint explains that from the time he departed Defendants' program, "...John was not able to manage his own affairs, his family arranged for him to take a year off of school and provided him with housing." Complaint at ¶ 168. The complaint expressly alleges that "John was prevented from filing his claims due to mental disability, "insanity," and "incompetence." Complaint at ¶ 168.

The statute of limitations was not expired as of the date the Motion for Extension of Time Pursuant to 9(j) was filed, October 11, 2024, given the "incompetence" that he suffered as a result of the Defendants' wrongful acts. Therefore, the motion for an extension of time pursuant to 9(j) is timely and should be granted.

discovery, Plaintiff requests leave to amend his complaint to plead additional facts.

D. Plaintiff's efforts to obtain medical records was reasonable given his delayed discovery and disability and Defendants concealment and unfair practices

Plaintiff's efforts to gather his medical records and motion for an extension is timely and justified under Rule 9(j) given the Defendants' active concealment and unfair practices. *See Town of Pineville v. Atkinson/Dyer/Watson Architects, P.A.*, 442 S.E.2d 73, 74–75 (N.C. 1994). As set forth in extensive detail in the Complaint, Defendant's acts, representations and misconduct regarding the program prohibited Plaintiff from understanding what happened to him and Defendants' acts and omissions were actionable, therefore tolling the statute of limitations. *See Town of Pineville v. Atkinson/Dyer/Watson Architects, P.A.*, 442 S.E.2d 73, 74–75 (N.C. 1994)(holding that equitable tolling applies when a plaintiff can demonstrate that he or she delayed bringing an action because of the defendant's acts, representations, or conduct). As set forth in the Complaint, "Defendants' staff focused particularly on coercing young people in the program to blame themselves for health conditions and events outside of their control and to feel shame for their health and experiences. Staff would manipulate students into compliance by telling them they deserved the abuse, neglect, and mental health symptomology they experienced." Complaint at ¶137; *see also* ¶¶ 6, 7, 78-79, 89, 99, 103, 11 – 113, 136-38, 142, 146-150, 167, 211-213. Indeed, Defendants to today continue to defend their misconduct and claim that have done nothing wrong to John and other survivors.

Moreover, the Plaintiff has diligently worked to obtain the necessary medical records, despite delays caused by external factors such as hurricanes and the Defendants' failure to provide records promptly. For the same reasons that the statute of limitations is tolled, Defendant's assertion that Plaintiff should have collected his records prior to the time he did is unreasonable. Plaintiff had not discovered his injury, nor would a reasonable person in his position have done so, at the time he exited the extremely traumatic experience of attending

Trails Momentum. Plaintiff, through counsel, timely requested medical records from Defendants once he was in a position to understand he was injured and was able to exercise his legal rights vis-à-vis his mental health disability and symptoms, and Defendant's concealment and unfair practices.

E. Good Cause Exists and Justice Would Be Served Such That The Court Should Grant Plaintiff's Motion for Extension of Time Pursuant to 9(j)

N.C. Gen. Stat. 1A-1, Rule 9(j) allows for an extension of the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action, provided that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The Plaintiff has demonstrated good cause by showing that the expert witness has reviewed the available records and is prepared to testify, and that the Plaintiff's counsel has diligently worked to obtain the necessary records.

The Defendants' argument that the motion should be denied due to the expiration of the statute of limitations and non-compliance with Rule 9(j) requirements is unfounded. The Plaintiff has complied with the requirements of Rule 9(j) by having the medical records reviewed by a qualified expert witness prior to filing the complaint. Additionally, the delays in obtaining records were beyond Plaintiff's control and were caused by external factors such as hurricanes and the Defendants' failure to provide records promptly.

In conclusion, the Plaintiff has shown that there is good cause for the extension of the statute of limitations due to the tolling of the statute and the reasonable efforts made to obtain the necessary medical records. The Plaintiff respectfully requests that the Court grant the Amended Motion for Extension to ensure that the case proceeds fairly and that justice is served.

Dated: December 4, 2024

RESPECTFULLY SUBMITTED,

/s/ Kimberly Dougherty

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CERTIFICATE OF SERVICE

I hereby certify that on this the 4th day of December, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of this electronic filing to all parties and or counsel of record in this action.

/s/ Kimberly Dougherty

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