

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11623
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00526-TCB

SANJAY K. ARORA,

Plaintiff-Appellant,

versus

TRAVIS PAIGE,
BUCKHEAD FAMILY DENTISTRY,
CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(May 17, 2021)

Before JORDAN, GRANT, and LAGOA, Circuit Judges.

PER CURIAM:

Sanjay Arora, proceeding *pro se*, appeals the dismissal of his medical malpractice complaint against his dentist—Dr. Travis Paige—Dr. Paige’s dental practice—Buckhead Family Dentistry—and his dental insurance provider—Cigna Health and Life Insurance Company. Arora’s claims stem from an installed permanent crown that was allegedly composed of lower quality metal than was advertised to him and charged. For the following reasons, we affirm the district court’s dismissal of the claims against Cigna and the medical malpractice claims against Dr. Paige and Buckhead Family Dentistry. We also affirm the district court’s decision related to Arora’s discovery request.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Arora saw Dr. Paige, who informed him that he had a cracked tooth that required a permanent crown. After the procedure was done, Arora experienced severe pain and discomfort at and around the site of the crown. In March 2014, Arora contacted Buckhead Family Dentistry on multiple occasions to report the pain but was told that the discomfort was normal. In April 2014, because the pain had not subsided, Arora saw a second dentist, who acknowledged the irritation and suggested replacing the crown. Arora contacted Cigna about this option and was

told that his insurance policy allowed for such a procedure only once every couple of years.

On April 28, 2014, Arora saw Dr. Paige again. Dr. Paige attempted to alleviate the pain by filing down the crown. But this provided Arora no relief, so he sought additional opinions from various other medical professionals. In May 2014, Arora saw a periodontist, who determined that the crown installed was composed of a lower quality of metal that contained nickel—an irritant that causes the type of reaction that Arora was experiencing. Arora also saw an endodontist, who determined the same thing. Following these consultations, Arora initiated an appeal with Cigna to refund the original cost of the crown and allow him to seek a replacement crown. In July 2014, Cigna opened an investigation into Arora's claims, which ultimately found that Buckhead Family Dentistry had overcharged Arora but found nothing related to the crown's metal composition. In August 2014, after receiving the findings of the investigation, Arora demanded copies of his medical records and all billing information from Buckhead Family Dentistry. The invoice that he received related to his crown showed that it was in fact made of lower quality metal.

On September 9, 2016, Arora filed a complaint in federal court in the District of Columbia alleging fraud negligent misrepresentation, breach of fiduciary duty, negligence, and unjust enrichment against Dr. Paige and Buckhead Family

Dentistry, breach of fiduciary duty and negligent misrepresentation against Cigna, and fraud and unjust enrichment against the manufacturer of the crown. In his first amended complaint, he added a conspiracy claim against Dr. Paige, Buckhead Family Dentistry, and Cigna.

All defendants filed motions to dismiss. The district court dismissed all claims against Cigna for failure to state a claim. It also found that it lacked personal jurisdiction over Dr. Paige, Buckhead Family Dentistry, and the crown manufacturer, and transferred the case to the Northern District of Georgia.

After the case was transferred, Arora moved for additional time to file a motion for reconsideration, which the district court denied since any motion for reconsideration would be futile. Arora then filed a second amended complaint that repeated his prior claims and added the allegation that he received the invoice indicating that the crown was composed of the lower quality of metal on September 17, 2014. Following some discovery and motions practice, the district court dismissed all claims against Dr. Paige and Buckhead Family Dentistry. The district court found that the negligence and breach of fiduciary duty claims were merely duplications of a medical malpractice claim and as such were subject to Georgia's two-year statute of limitations. The district court determined that the injury occurred within days after the crown was installed on February 25, 2014, thereby beginning the limitations clock no later than early March 2014.

The district court then assumed, without deciding, that Dr. Paige's knowing installation of a lower quality crown amounted to fraud, but because Arora sought the opinions of outside medical specialists, the limitations period would be tolled to no later than May 13, 2014—the date that he saw a periodontist who put him on notice of the lower quality of metal of the crown. Because Arora filed his complaint almost four months after the statute of limitations period expired, even accounting for potential tolling related to Dr. Paige and Buckhead Family Dentistry's alleged fraud, his medical malpractice claims were time barred. And because the other claims against Dr. Paige and Buckhead Family Dentistry—fraud, negligent misrepresentation, and unjust enrichment—arose from that medical malpractice claim, they are likewise barred by the same statute of limitations.

When the district court dismissed the claims against Dr. Paige and Buckhead Family Dentistry, it found moot Arora's earlier filed discovery motion seeking to extend the discovery period. Arora moved for reconsideration, which the court denied. The district court then granted summary judgment in favor of the crown manufacturer. Arora timely appealed the order granting summary judgment in favor of the crown manufacturer, the order dismissing the claims against Dr. Paige and Buckhead Family Dentistry, the order denying Arora's motion for reconsideration of that dismissal, the order related to Arora's request for an extension of discovery, and the order from the district court dismissing all claims against Cigna for failure

to state a viable claim. Following a settlement agreement with the crown manufacturer, Arora dismissed his appeal as to it. The present appeal therefore only involves Dr. Paige, Buckhead Family Dentistry, and Cigna.

II. STANDARD OF REVIEW

We review a district court's grant of a motion to dismiss under Rule 12(b)(6) *de novo*, accepting the allegations in the complaint as true while construing them in the light most favorable to the non-movant. *Bourff v. Rubin Lublin, LLC*, 674 F.3d 1238, 1240 (11th Cir. 2012). A Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate if it is apparent from the face of the complaint that the claim is time barred. *Gonsalvez v. Celebrity Cruises Inc.*, 750 F.3d 1195, 1197 (11th Cir. 2013).

We review for abuse of discretion a district court's discovery decisions. *Bradley v. King*, 556 F.3d 1225, 1229 (11th Cir. 2009). "A court abuses its discretion if it makes a 'clear error of judgment' or applies an incorrect legal standard." *Id.* (quoting *Carpenter v. Mohawk Indus., Inc.*, 541 F.3d 1048, 1055 (11th Cir. 2008)).

III. ANALYSIS

On appeal, Arora argues that his claims were not time barred because Dr. Paige and Buckhead Family Dentistry concealed their misconduct, so the limitations period should have been tolled. He further argues that the district court erred by not

ruling on his motion to extend all discovery. Finally, he argues that the dismissal of Cigna from the action was premature. We address each argument in turn.

A. Statute of Limitations and Tolling

Arora first argues that the district court erred in finding his claims against Dr. Paige and Buckhead Family Dentistry time barred. Under Georgia law, an action for medical malpractice generally must be brought within two years after the date on which an injury arising from a negligent or wrongful act occurred. O.C.G.A. § 9-3-71(a); *see Deen v. Egleston*, 597 F.3d 1223, 1228 (11th Cir. 2010). The limitation period is tolled where the defendant is guilty of a fraud “by which the plaintiff has been debarred or deterred from bringing an action,” and it runs “only from the time of the plaintiff’s discovery of the fraud.” *Gallant v. MacDowell*, 759 S.E.2d 818, 820 (Ga. 2014) (citing O.C.G.A. § 9-3-96). Once a plaintiff seeks the care of another doctor, though, he is “no longer deterred from learning the true facts by any conduct of a defendant ‘even if the other doctor consulted does not diagnose the medical problem as arising from the defendant's improper treatment.’” *See id.* at 820 (quoting *Witherspoon v. Aranas*, 562 S.E.2d 853, 858 (Ga. Ct. App. 2002), *overruled on other grounds by Chandler v. Opensided MRI of Atlanta, LLC*, 682 S.E.2d 165 (Ga. Ct. App. 2009)).

The “medical malpractice statute of limitation applies to both tort and contract theories of liability when the claim ‘calls into question the conduct of a professional

in his area of expertise.” *Robinson v. Williamson*, 537 S.E.2d 159, 161 (Ga. 2000) (quoting *Knight v. Sturm*, 442 S.E.2d 255, 256–57 (Ga. Ct. App. 1994)). And it applies to all claims arising out of a medical malpractice action. *Knight*, 442 S.E.2d at 256.

Here, Arora’s claims—all of which arose out of the same alleged medical malpractice—were time barred. Arora stated in his complaint that he felt pain from his injury beginning in March 2014 and sought care from other dental professionals in April and May of 2014. Even though those other dentists and specialists did not specifically provide a diagnosis to account for the pain, two of them did indicate that the crown was composed of lower quality metal that was the cause of Arora’s irritation. Arora was therefore no longer deterred from learning the truth of his condition after he met with the outside specialists. As such, his malpractice claims accrued at that time—no later than May 2014—and expired two years later in May 2016, almost four months before he filed his complaint. *See* O.C.G.A. § 9-3-71(a); *Gallant*, 759 S.E.2d at 820. Accordingly, we affirm the dismissal of all claims against Dr. Paige and Buckhead Family Dentistry on statute of limitation grounds.

B. Motion to Extend Discovery

Arora next argues that the district court abused its discretion by not ruling on his motion to extend all discovery because the Dr. Paige and Buckhead Family Dentistry provided incomplete discovery and waited to produce useful information,

including disclosing witnesses, only five days before written discovery ended. To constitute an abuse of discretion, “a district court’s denial of additional discovery must result in substantial harm to a party’s case in order to establish an abuse of discretion.” *Bradley*, 556 F.3d at 1229.

Here, denying Arora’s request for an extension of time to conduct discovery did not result in substantial harm to Arora’s case because, as discussed above, his case was properly dismissed on statute of limitation grounds. Arora does not contend that discovery was needed on the limitations issue. And there is nothing that would be produced during extended discovery that would have altered the statute of limitations determination. *See id.* We therefore affirm.

C. Dismissal of Cigna

Finally, Arora argues that the district court erred in dismissing all claims against Cigna for failure to state a claim. Specifically, he argues that the dismissal was premature because later-produced documents showed that Dr. Paige installed a lower quality metal crown than was paid for by Cigna.

Arora misunderstands the procedural significance of a dismissal based on a failure to state a viable claim. “Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins. Such a dispute always presents a purely legal question; there are no issues of fact because the allegations contained in

the pleading are presumed to be true.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). The complaint when filed must allege sufficient facts to raise a right to relief above the speculative level or merely creates a suspicion of a legally cognizable right of action. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As such, discovery “follow[s] the filing of a well-pleaded complaint. It is not a device to enable a plaintiff to make a case when his complaint has failed to state a claim.” *Chudasama*, 123 F.3d at 1367 (quoting *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir.1981)). Arora’s argument that discovery would bolster his claims against Cigna is therefore without merit. He failed to plausibly allege facts sufficient to raise viable claims against Cigna in both his initial complaint and his first amended complaint—a purely legal question that does not require discovery.

Because Arora makes no argument on appeal that his complaint actually contained sufficient factual content to survive a motion to dismiss, he has abandoned any argument that would save his claims against Cigna. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (although we read briefs filed by *pro se* litigants liberally, issues not briefed in the initial brief are considered abandoned); *see also Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (a party fails to adequately brief an issue when he raises it in a perfunctory manner, without supporting arguments and authority). We therefore affirm the district court’s dismissal of Arora’s claims against Cigna.

IV. CONCLUSION

For the foregoing reasons, the district court did not err in dismissing Arora's complaint against Dr. Paige, Buckhead Family Dentistry, or Cigna, nor did it abuse its discretion in denying Arora's discovery motion. We therefore affirm.

AFFIRMED.