

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

**MARGARET PADILLA, Individually
and as Personal Representative of
the ESTATE OF BETTY J. PADILLA,**

Court of Appeals of New Mexico
Filed 9/28/2023 11:02 AM



Mark Reynolds

Plaintiff-Appellant,

v.

No. A-1-CA-40620

**PRESBYTERIAN HEALTHCARE SERVICES
d/b/a PLAINS REGIONAL MEDICAL CENTER;
DR. EDWARD JOSEPH PIENKOS; DR. LESLIE
DONALDSON; and SARAH NEAL, RN,
as employees and/or contractors of PLAINS
REGIONAL MEDICAL CENTER, and in their
individual capacity,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
Fred T. Van Soelen, District Court Judge**

The Law Office of Ross R. Bettis
Ross R. Bettis
Hobbs, NM

for Appellant

Atwood, Malone, Turner & Sabin, P.A.
Carla Neusch Williams
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for Appellee Presbyterian Health Care Services

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Ryan Wityak
Albuquerque, NM

for Appellee Leslie Donaldson, M.D.

1 Edward Joseph Pienkos, MD
2 Clovis, NM

3 Pro Se Appellee

4 Sarah Neal, RN
5 Clovis, NM

6 Pro Se Appellee

7 **MEMORANDUM OPINION**

8 **DUFFY, Judge.**

9 {1} Plaintiff is appealing from two district court orders dismissing the complaint.
10 The first order dismissed the complaint against Defendant Donaldson under the
11 applicable three-year statute of limitations for personal injury. [RP 118, 120] *See*
12 NMSA 1978, § 37-1-8 (1880). The second order dismissed the complaint against
13 Defendant Presbyterian under the applicable three-year statute of repose, which
14 applies to qualified healthcare providers. [RP 118, 122] *See* NMSA 1978, § 41-5-13
15 (2021); *Armijo v. Tandysh*, 1981-NMCA-098, ¶ 6, 98 N.M. 181, 646 P.2d 1245
16 (stating that this statute of repose applies, inter alia, to wrongful death actions based
17 on medical malpractice), *overruled on other grounds by Roberts v. Southwest Cmty.*
18 *Health Servs.*, 1992-NMSC-042, ¶ 19, 114 N.M. 248, 837 P.2d 442. Because the
19 district court considered matters outside of the pleadings, we construe the court’s
20 order as one of summary judgment. *See Tunis v. Country Club Estates Homeowners*
21 *Ass’n*, 2014-NMCA-025, ¶ 17, 318 P.3d 713.

1 {2} “Summary judgment is appropriate where there are no genuine issues of
2 material fact and the movant is entitled to judgment as a matter of law.” *Self v. United*
3 *Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. “We review
4 these legal questions de novo.” *Id.*

5 {3} Here, Plaintiff’s complaint was filed on September 28, 2021, alleging
6 malpractice for care received by Decedent on September 20, 2018. [RP 1] The
7 motions to dismiss were based on the fact that the complaint was filed past the three-
8 year statutory deadlines. [RP 14, 90] This was sufficient to establish a prima facie
9 ground for barring the complaint under the applicable limitation periods. *See*
10 *generally Blauwkamp v. Univ. of N.M. Hosp.*, 1992-NMCA-048, ¶ 18, 114 N.M.
11 228, 836 P.2d 1249 (discussing summary judgment burden shifting). In response,
12 Plaintiff claimed that she was first told by a family friend that a nurse believed
13 Decedent was given too much medication. [RP 87] Plaintiff’s second amended
14 complaint specifically claimed that a nurse during Decedent’s September 20, 2018,
15 treatment “admitted in front of two witnesses that she must have given [Decedent]
16 too much Fentanyl.” [RP 134] Plaintiff’s fraudulent concealment claim is based on
17 the alleged failure of Defendants to contemporaneously disclose this information.

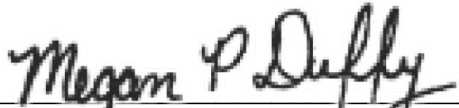
18 {4} As the district court observed in its letter decision, Plaintiff never responded
19 to Defendant Donaldson’s motion to dismiss. [RP 118] Where a nonmovant fails to
20 respond to a motion for summary judgment, the district court may enter summary

1 judgment on the movant’s prima facie case. *Freeman v. Fairchild*, 2018-NMSC-
2 023, ¶ 21, 416 P.3d 264. In that circumstance, “[a]ll material facts set forth in the
3 statement of the moving party shall be deemed admitted.” Rule 1-056(D)(2) NMRA.
4 As such, we conclude that Defendant Donaldson was entitled to summary judgment
5 based on the statute of limitations.

6 {5} With respect to Defendant Presbyterian, the district court relied on Plaintiff’s
7 own claim that the alleged concealment was discovered approximately two months
8 after the incident occurred. [RP 118] As a result, Plaintiff still had practically all of
9 the statutory period left to file her claim, which undermines fraudulent concealment
10 as a basis for extending the limitations period. *See Blea v. Fields*, 2005-NMSC-029,
11 ¶ 28, 138 N.M. 348, 120 P.3d 430 (noting that, in considering whether the statute of
12 limitations should be tolled based on fraudulent concealment, the court considers
13 whether the plaintiff “lacked knowledge of her cause of action and could not have
14 discovered it by exercising reasonable diligence during the statutory period”). Given
15 the undisputed facts with respect to the date of alleged negligence and the asserted
16 date of discovery, we conclude that the district court ruling was not made in error.
17 *See Tomlinson v. George*, 2005-NMSC-020, ¶¶ 13, 15, 138 N.M. 34, 116 P.3d 105
18 (concluding that fraudulent concealment did not preclude the defendant from
19 asserting the limitations period as a defense because the defendant did not prevent
20 the plaintiff from filing suit within the statutory period).

1 {6} For the reasons set forth above, we affirm.

2 {7} **IT IS SO ORDERED.**

3 
4 MEGAN P. DUFFY, Judge

5 **WE CONCUR:**

6 
7 JENNIFER L. ATTREP, Chief Judge

8 
9 SHAMMARA H. HENDERSON, Judge