

**FIFTH DIVISION
BROWN, C. J.,
MERCIER, P. J., and EPPS, J.**

NOTICE: Motions for reconsideration must be
received no later than 4:30pm on the 10th day after the
decision was issued to be deemed timely filed.
<https://www.gaappeals.gov/rules>

August 18, 2026

In the Court of Appeals of Georgia

A26A1000. CLARK et al. v. NORTHEAST GEORGIA MEDICAL
CENTER, INC. et al.

MERCIER, Judge.

Brenda Clark, individually, as the surviving spouse of Travis Clark (“Travis”), and as the administrator of Travis’s estate, appeals from the trial court’s order dismissing her claims against Northeast Georgia Medical Center, Inc., and Northeast Georgia Health System, Inc. (collectively, “defendants”). In granting defendants’ motion to dismiss, the trial court found that Clark’s complaint failed to state a claim because she did not comply with the expert affidavit requirement in OCGA § 9-11-9.1. For reasons that follow, we reverse.

A complaint is not subject to dismissal for failure to state a claim upon which relief can be granted unless

(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. If, within the framework of the complaint, evidence may be introduced which will sustain a grant of the relief sought by the claimant, the complaint is sufficient and a motion to dismiss should be denied.

Griffin v. Emory Clinic, 371 Ga. App. 633, 633 (901 SE2d 761) (2024). See also *Williams v. Murrell*, 348 Ga. App. 754, 757(1)(b) (824 SE2d 638) (2019) (“noncompliance with OCGA § 9-11-9.1 (a) is properly challenged in a defensive pleading seeking dismissal of the complaint for failure to state a claim” (punctuation omitted)).

A trial court considering dismissal on this ground must construe the allegations in the complaint favorably to the plaintiff and resolve all doubts in the plaintiff’s favor. See *Griffin*, 371 Ga. App. at 633. On appeal, we review the trial court’s ruling de novo. See *id.* “Our role is to determine whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and with all doubts resolved in the plaintiff’s favor, disclose with certainty that the plaintiff would not be entitled to

relief under any state of provable facts.” *Kerr v. OB/GYN Assocs.*, 314 Ga. App. 40, 41 (723 SE2d 302) (2012).

Viewed in this manner, the original complaint (and a subsequently filed amended complaint) allege as follows. Travis was treated at Northeast Georgia Medical Center from May 3, 2023, to June 3, 2023. On May 8, 2023, a hospital employee dropped Travis onto the floor while transferring him from one bed to another, causing Travis serious injuries that ultimately led to his death. Based on these allegations, Clark sued defendants for the “ordinary negligence” and lack of care that resulted in Travis’s fall and subsequent death.

Defendants moved to dismiss the original complaint, arguing that, despite Clark’s characterization, her allegations sounded in medical malpractice, and she failed to file with the complaint an expert affidavit supporting the allegations. Clark responded that no expert affidavit was required because “[t]he dropping of Travis Clark was ordinary negligence,” not professional negligence. Clark also filed an amended complaint, adding an alternative count for professional negligence “if any [d]efendant’s conduct is deemed professional in nature” and attaching an expert affidavit supporting that alternative count.

The trial court granted defendants' motion to dismiss. It found that "[t]he transfer of a patient is an exercise of expert medical judgment[,]” bringing Clark's claims within the realm of professional negligence. It further concluded that Clark's failure to attach an expert affidavit to the original complaint was a fatal defect that could not be cured through the amended complaint, which Clark filed after the two-year statute of limitation governing medical malpractice actions had expired. See OCGA § 9-3-71(a). This appeal followed.

1. Pursuant to OCGA § 9-11-9.1(a), a plaintiff alleging a claim for professional malpractice must file with the complaint an expert affidavit that sets forth “at least one negligent act or omission claimed to exist and the factual basis for each such claim.” Clark did not file an affidavit with her initial complaint. But she argues on appeal — as she did below — that her original allegations sounded in ordinary negligence or, at a minimum, do not foreclose a claim for ordinary negligence. We agree.

A claim does not implicate medical malpractice simply because the alleged injury occurred in a hospital setting or involved the conduct of a medical professional. See *Brown v. Tift County Hosp. Auth.*, 280 Ga. App. 847, 849 (635 SE2d 184) (2006).

“We must look to the substance of an action against a medical professional in determining whether the action is one for professional or simple negligence.” *Id.* (punctuation omitted). Professional medical negligence involves an act or omission involving a medical question. See *Kerr*, 314 Ga. App. at 41(1). We have defined “medical questions” as “those concerning highly specialized expert knowledge with respect to which a layman can have no knowledge at all, and the court and jury must be dependent on expert evidence.” *Id.* (quotation marks omitted).

When a person falls while in the care of medical professionals, “it can be difficult to distinguish professional negligence from ordinary negligence.” *Brown*, 280 Ga. App. at 849. This distinction presents a question of law for the court. See *id.* Ultimately, however, “if the specific information known to the defendant was such that a jury could determine without the help of expert testimony whether the defendant exercised due care in failing to prevent the patient’s fall, the claim sounds in ordinary negligence and no expert affidavit is required.” *Id.* at 849–50.

The original complaint alleges that an unidentified hospital employee dropped Travis while moving him into a bed. These allegations do not necessarily implicate medical judgment. Certainly, a patient’s fall in a medical setting *can* involve such

judgment. See *Pomerantz v. Atlanta Dermatology & Surgery*, 255 Ga. App. 698, 699 (566 SE2d 425) (2002) (claim regarding patient who fell from an examination table after losing consciousness during stitch removal procedure sounded in medical malpractice “because a lay person is not expected to know when such a procedure could cause a patient to lose consciousness”). But a fall can also result from “a merely physical act requiring no exercise of expert medical judgment[.]” *Kerr*, 314 Ga. App. at 42(1). See also *Candler Gen. Hosp. v. McNorrill*, 182 Ga. App. 107, 110(2) (354 SE2d 872) (1987) (“[T]he safe movement of appellee from the stretcher or casting table to the wheelchair was merely an act of relative physical strength and dexterity rather than an act requiring the exercise of expert medical judgment.”).

Viewing the allegations in the complaint favorably to Clark, as we must, “we cannot say that the claim is necessarily one of medical malpractice.” *Ambrose v. Saint Joseph’s Hosp. of Atlanta*, 325 Ga. App. 557, 559(1) (754 SE2d 135) (2014). This is particularly true given that we do not know whether the unidentified hospital employee who dropped Travis was a medical professional subject to the affidavit requirement in OCGA § 9-11-9.1(a). See OCGA § 9-11-9.1(g) (listing professions to which the affidavit requirement applies); *Griffin*, 371 Ga. App. at 636-637 (dismissal

for failure to file expert affidavit improper where complaint, construed favorably to plaintiff, stated a claim against a medical assistant who did not fall within the expert affidavit requirement and her employer); *Sembler Atlanta Dev. I v. URS/Dames & Moore*, 268 Ga. App. 7, 9 (601 SE2d 397) (2004) (expert affidavit requirement only applies to claims against professionals enumerated in OCGA § 9-11-9.1 and certain employers where liability is predicated on a professional employee's malpractice).

Clark may be able to introduce evidence to support her claim that Travis's injuries and subsequent death resulted from ordinary negligence. The trial court, therefore, erred in dismissing the complaint for failure to comply with OCGA § 9-11-9.1. See *Griffin*, 371 Ga. App. at 637 (“If, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient.”); *Kerr*, 314 Ga. App. at 42(1) (because plaintiff succeeded in stating a claim for ordinary negligence against a medical assistant who allowed plaintiff to fall from an examination table, the trial court erred in dismissing her complaint for not complying with OCGA § 9-11-9.1).

2. Clark also argues that the trial court erred in dismissing her amended complaint, which added an alternative claim for medical malpractice. Again, we agree.

The trial court found that Clark's effort to amend her complaint failed because the amendment was filed after the statute of limitation expired and did not relate back to the original complaint. As discussed above, however, the original complaint stated a claim for ordinary negligence. Clark was authorized to amend that complaint with an alternative claim for medical malpractice, which she supported with an expert affidavit filed pursuant to OCGA § 9-11-9.1. See *Jensen v. Engler*, 317 Ga. App. 879, 882(1)(a) (733 SE2d 52) (2012) (where original complaint sounded in ordinary negligence, plaintiff was authorized to file an amended complaint and accompanying expert affidavit adding a claim for professional malpractice); OCGA § 9-11-15(a) ("A party may amend his pleading as a matter of course and without leave of court at any time before the entry of a pretrial order."). Furthermore, although Clark filed the amendment after the statute of limitation governing her medical malpractice claim had expired, the claim related back to the date of the timely-filed original complaint. See OCGA § 9-11-15(c) ("Whenever the claim or defense asserted in the amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.").

Because the professional negligence claim in Clark's amended complaint related back to the original complaint, it was not barred by the two-year statute of limitation. See *Jensen*, 317 Ga. App. at 882(2)(b). The trial court, therefore, also erred in dismissing the amended complaint. See *id.*

Judgment reversed. Brown, C. J., and Epps, J., concur.