

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

**NOTICE: Motions for reconsideration must be
received no later than 4:30 pm on the 10th day after
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October 14, 2026

In the Court of Appeals of Georgia

A26A1203. CHAPPUIS et al. v. REFAI et al.

MERCIER, Presiding Judge.

Following the dismissal of a medical malpractice action seeking contribution from Dr. Daniel Refai and Emory Healthcare, Inc. (sometimes collectively referred to as “Defendants”), Dr. James L. Chappuis and certain affiliated medical companies (sometimes referred to as “the Chappuis parties”)¹ appeal, contending, among other things, that the trial court erred when it determined that the applicable statute of repose had not been tolled by a bankruptcy action. For the reasons set forth below, we affirm.

¹ These companies include James L. Chappuis, M.D., P.C., Atlanta Orthopaedic Surgery Center, LLC, aka Envision Orthopedics and Spine, LLC.

The standard of review for this matter is settled. “In ruling on a motion to dismiss, the trial court must accept as true all well-pled material allegations in the complaint and must resolve any doubts in favor of the plaintiff. We review the trial court’s ruling de novo.” *Cunningham v. Gage*, 301 Ga. App. 306, 307 (686 SE2d 800) (2009).

Viewed in this light, the record shows that, on April 23, 2019, Dr. Chappuis performed spinal surgery on Cindy Davis. Two days later, Davis suffered complications and sought treatment at Emory University Hospital, where Dr. Refai performed emergency surgery on May 9, 2019, and a second surgery on May 13, 2019. Thereafter, on February 11, 2020, Davis filed a medical malpractice action against the Chappuis parties, contending that Dr. Chappuis made errors in the surgery he performed and caused Davis to suffer the complications that led to the subsequent surgeries by Dr. Refai.²

Davis’s action against the Chappuis parties proceeded along the usual course until July 12, 2024; on that date, after hearings regarding Davis’s request for discovery-related sanctions, the trial court struck Dr. Chappuis’s answer to Davis’s

² Davis died on June 4, 2020, and her estate took over the lawsuit, adding a claim for wrongful death.

action, finding that there had been numerous willful failures to produce documents and that Dr. Chappuis gave “false and deliberately misleading sworn testimony about the existence of the evidence[.]” The trial court also entered default judgment against Dr. Chappuis.³

On July 14, 2024, the Chappuis parties filed Chapter 11 bankruptcy petitions. During the pendency of this ensuing bankruptcy action, Davis’s medical malpractice claim, and the damages flowing therefrom, were mediated, and a settlement was reached. Subsequently, on November 21, 2024, the Chappuis parties filed a motion to voluntarily dismiss the bankruptcy petition, and a hearing on that motion was held on December 10, 2024. At this hearing, the Chappuis parties reported that a settlement had been reached with Davis, and, in order to effectuate that settlement, dismissal of the bankruptcy action would be necessary. At the hearing, the bankruptcy court expressed an intention to grant the motion to dismiss, but it raised certain issues that the parties had to work out before it could enter a dismissal. To this end, the bankruptcy court instructed the parties to work together to draft a proposed order for

³ The trial court noted, however: “The issue of Dr. Chappuis’s ability to argue alternate and/or intervening causation of Cindy Davis’s injuries is still before the [c]ourt.”

the court to review. Ultimately, the bankruptcy court entered an order dismissing the bankruptcy action on December 27, 2024.

On the same day as the bankruptcy hearing, December 10, 2024, the Chappuis parties filed the underlying action for contribution against the Defendants, contending that Dr. Refai's own acts of medical malpractice contributed to Davis's injuries and, ultimately, her death.⁴ Subsequently, the Defendants filed a motion to dismiss this lawsuit, contending that it was barred by Georgia's medical malpractice statute of repose. The Chappuis parties countered that the contribution lawsuit was timely, as the statute of repose had been tolled by Section 108(a) of the federal Bankruptcy Code. After consideration, the trial court determined that the statute of repose had not been tolled, and it entered an order dismissing the Chappuis parties' case against the Defendants. This appeal followed.

The pivotal question now before us is whether the Chappuis parties' medical malpractice action against the Defendants was timely filed, and the answer requires

⁴ On December 9, 2024, the Chappuis parties first attempted to file the action against the Defendants, but failed to pay the necessary fees, causing that initial filing to be rejected. See Division 2, *infra*.

analysis of the applicable state statute of repose as well as other potential tolling provisions under both state law and the federal Bankruptcy Code.

Georgia imposes a five-year statute of repose on actions for medical malpractice. OCGA § 9-3-71(b) (“[I]n no event may an action for medical malpractice be brought more than five years after the date on which the negligent or wrongful act or omission occurred.”). In this case, the alleged malpractice committed by Dr. Refai occurred/was completed on May 13, 2019, and, absent tolling, the statute of repose would have run on May 13, 2024, five years later. During the COVID-19 pandemic, however, our Supreme Court issued an “Order Declaring Statewide Judicial Emergency,” which tolled all filing deadlines for a four-month period from March 14, 2020, until July 14, 2020, including deadlines imposed by statutes of repose. See *Golden v. Floyd Healthcare Mgmt.*, 319 Ga. 496, 503(3) (904 SE2d 359) (2024). Therefore, the COVID-19 Emergency Order extended the filing deadline for Chappuis’s action by four months, until September 13, 2024. This four-month tolling, however, would not make Chappuis’s current action against the Defendants timely.

The federal Bankruptcy Code, however, must also be considered in this case. Rule 108 of that Code provides:

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of–

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.^[5]

11 USC § 108. In other words, limitation periods on actions that may be brought by a bankruptcy trustee (on behalf of the debtor) are effectively tolled and extended. See, e. g., *Roach v. Option One Mtg. Corp.*, 598 FSupp2d 741, 755(II)(C)(2) (ED Va. 2009) (extension “is limited to circumstances where ... a claim is both commenced during the pendency of the bankruptcy proceedings and commenced by someone acting as the bankruptcy trustee [or debtor-in-possession]” (emphasis omitted)); *MHI Shipbuilding v. Nat’l Fire Ins. Co. of Hartford*, 286 B.R. 16, 25(III)(B)(2) (D. Mass. 2002) (“[A] debtor in possession generally reverts back to being a mere debtor after the pendency of the bankruptcy proceeding has ended, and once this reversion occurs, the debtor can no longer take advantage of the statute of limitations extension.”)

⁵ In a Chapter 11 case, the “order for relief” is the “commencement of a voluntary case,” which in turn is the filing with the bankruptcy court of the petition by the debtor. 11 USC § 301.

(quotation marks omitted)). In short, “[t]he purpose of Section 108(a) is to extend the amount of time for a trustee or debtor in possession to file suit (regardless of the source of the limitations period)[.]” *Id.* at 26(III)(B)(3).

A federal appellate court tasked with construing this rule has expressly determined that Rule 108(a) applies to and preempts deadlines set forth in state statutes of repose. *Stanley v. Trinchard*, 579 F3d 515 (5th Cir. 2009). That court explained:

The subject of bankruptcy falls within the express constitutional powers of Congress, and bankruptcy law therefore takes precedence over state laws under the Supremacy Clause. U.S. Const., art. VI. Section 108(a) is written broadly to extend any “period [fixed inter alia by ‘applicable nonbankruptcy law’] within which the debtor may commence an action.” The statute’s clear purpose is to afford bankruptcy trustees extra time to assess and pursue potential assets of the debtor’s estate. Congress drew no distinction among the state law vehicles that govern time limits for filing suit, *whether statutes of limitations or prescription, repose or peremption. The language of Section 108(a) compels the conclusion that Congress expressly extended the time for pursuing any action that would otherwise be time-barred under state law.*

Id. at 519(II) (emphasis added).

Importantly, however, another federal court has also opined that, where a bankruptcy petitioner chooses to voluntarily dismiss a bankruptcy action, the petitioner also chooses to relinquish the benefit of tolling.

[T]his result is consistent with the purpose of § 108(a), as “the benefit of the extension granted by § 108(a) is for the benefit of the estate, and is, effectively, personal to the trustee.” *In re Marshall*, 307 B.R. 517, 520 (Bankr.E.D.Va. 2003); see also *In re Ranasinghe*, 341 B.R. 556, 564 (Bankr.E.D.Va. 2006) (observing that the “stated policy behind § 108 ... [is to] allow[] the trustee additional time to discover and evaluate potential causes of action after stepping into the shoes of the debtor” (internal quotation omitted)). Thus, where the bankruptcy proceeding is voluntarily abated, neither a bankruptcy estate, nor a bankruptcy trustee, exist to receive the benefit of a § 108(a) extension. This is sensible, as a contrary rule would lead to an absurd result—namely, any potential plaintiff could obtain an automatic extension of a statute of limitations that expires less than two years from a given date simply by filing a bankruptcy petition and then voluntarily dismissing it immediately thereafter. *Moreover, the result reached here is also consistent with the analogous and well-settled principle that a “‘statute of limitations is not tolled by bringing an action that later is dismissed voluntarily....’”* *Neal v. Xerox Corp.*, 991 F.Supp. 494, 498 (E.D.Va. 1998) (quoting 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2367 (1995)); see also *Braxton v. Va. Folding Box Co.*, 72 F.R.D. 124, 126 (E.D.Va. 1976) (“*Where an action is voluntarily dismissed without prejudice, the parties are left as if the action had never been brought.*”).

Roach, 598 F.Supp2d at 756(II)(C)(2) (emphasis supplied). In short, a “plaintiff [who chooses] to abate [his or] her bankruptcy proceeding [also chooses] to relinquish any benefit pursuant to § 108(a) that filing a bankruptcy proceeding may have given to [his or] her bankruptcy trustee.” *Id.*⁶

⁶ We note that a debtor in possession generally retains the same rights and is subject to the same limitations as a trustee. See 11 USC § 1107. It follows, then, that the benefit of tolling under Rule 108 *and* the limitation discussed in *Roach* would be

In this case, the Chappuis parties filed a Chapter 11 bankruptcy petition on July 14, 2024, prior to the time that the Georgia statute of repose applicable to a medical malpractice claim against the Defendants expired on September 13, 2024. On November 21, 2024, however, the Chappuis parties filed a motion to voluntarily dismiss the bankruptcy petition, and, on December 10, 2024, the bankruptcy court stated its intention to grant the dismissal (and a dismissal order was entered on December 27, 2024). Therefore, well before the time that the medical malpractice contribution action was ultimately filed against the Defendants on December 10, 2024, the Chappuis parties had chosen to voluntarily abate the bankruptcy action and relinquish the benefit of tolling under Rule 108(a). *Roach*, 598 FSupp at 756(II)(C)(2). Under these circumstances, the Chappuis parties' medical malpractice action against the Defendants was untimely, and the trial court properly dismissed it.

2. The Chappuis parties also contend that the trial court erred by denying their motion to revert the filing date of their medical malpractice action against the Defendants. But the grant or denial of a motion to revert a filing date is within a trial court's discretion, and, absent abuse of that discretion, we will not substitute our

equally applicable to both.

judgment for the trial court's, even if we might have reached a different conclusion.

Dannenfelser v. Squires, 365 Ga. App. 819, 822-23(1) (879 SE2d 506) (2022).

The record indicates that, although the Chappuis parties attempted to file the medical malpractice action against the Defendants on December 9, 2024, that filing was rejected for failing to properly pay filing fees. This rejection required the Chappuis parties to refile, which they successfully did on December 10, 2024. When considering the motion to revert, the trial court found that “[t]he fee requirements for filing in Fulton County Superior Court are readily available to the public[,]” and it attributed Dr. Chappuis’s rejected filing to a lack of diligence and a lack of any “effort to confirm the required fees before filing.” The trial court concluded: “Plaintiffs’ failures to exhibit even slight diligence, despite having the knowledge and opportunity to correctly file on time, do not demonstrate a situation warranting reversion.” The Chappuis parties have raised nothing on appeal that would indicate that the trial court abused its broad discretion in this regard, and, as such, we find no error in the trial court’s denial of the motion to revert. See *Dannenfelser*, 365 Ga. App. at 822-823(1) n.14.⁷

⁷ Moreover, we note that, to the extent that the Chappuis parties contend that reversion of the filing date would have any effect on the timeliness of their medical

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

malpractice action against the Defendants, that contention is obviated by Division 1, *supra*.