THIRD DIVISION
BARNES, P. J.,
DOYLE, P. J., and PADGETT, J.

January 30, 2026

In the Court of Appeals of Georgia

A25A2019. PAUL et al. v. URBAN FAMILY PRACTICE ASSOCIATES, P.C. et al.

BARNES, Presiding Judge.

Mitchell L. Paul and his wife, Patricia Paul, brought this action alleging medical malpractice, vicarious liability, and loss of consortium against Urban Family Practice Associates, P. C. ("UFPA") and one of its primary care physicians, Godfrey J. Mark, M. D. The defendants filed a motion to dismiss the complaint on the ground that the plaintiffs' claims were barred by the applicable two-year statute of limitation. The trial court granted the defendants' motion and dismissed the complaint, resulting in this appeal. The plaintiffs contend that the trial court erred in dismissing their complaint because their claims fell within the limitation period based on the "new injury"

exception applicable in medical misdiagnosis cases. For the reasons discuss below, we reverse.

"A statute of limitation defense goes to the merits of the claim, and is therefore subject to a motion to dismiss under OCGA § 9-11-12(b)(6) for failure to state a claim upon which relief may be granted." *Corkren v. Maynard*, 374 Ga. App. 777, 780(1)(a) (913 SE2d 876) (2025) (quotation marks omitted). "When considering a motion to dismiss for failure to state a claim, a trial court may consider the complaint, the answer, and any exhibits attached to and incorporated into the complaint and answer." *Mark A. Schneider Revocable Trust v. Hardy*, 362 Ga. App. 149, 150(1) (867 SE2d 153) (2021). While our review of a trial court's grant of a motion to dismiss is de novo, "we accept the allegations of fact that appear in the complaint and view those allegations in the light most favorable to the plaintiff." *McLeod v. Costco Wholesale Corp.*, 369 Ga. App. 717, 718 (894 SE2d 442) (2023) (quotation marks omitted). Any doubts regarding the complaint must be resolved in favor of the plaintiff. *Norman v. Xytex Corp.*, 310 Ga. 127, 128(1) (848 SE2d 835) (2020). So viewed, the plaintiffs' complaint and expert affidavit attached thereto allege the following.

Mitchell Paul was an established patient of UFPA from October 2010 until he transferred his medical care to an alternative practice over a decade later. Paul was seen by several different primary care physicians at UFPA over his time there as a patient. In December 2011, an UFPA physician saw Paul (then age 59) for an office visit and ordered lab work, including a "Prostate Specific Antigen" ("PSA") test. The PSA test result was 2.5 ng/ml. A contemporaneous digital prostate exam was "unremarkable."

At office visits in November 2012 and November 2014, Paul complained that his medications for erectile dysfunction ("ED") did not work. During the November 2014 office visit, the UFPA physician ordered a second PSA test for Paul (then age 62) and the result was 2.52 ng/ml. Paul continued receiving medical care at UFPA over the ensuing years, but no further PSA tests were ordered and his prostate was not examined.

Dr. Mark became Paul's treating physician at UFPA in February 2019 and conducted his last office visit with Paul on August 3, 2022. Paul complained of urologic symptoms at several of his office visits with Dr. Mark, who in August 2019

diagnosed Paul with benign prostatic hypertrophy and prescribed medication for it.[1] However, Dr. Mark did not order any PSA tests or perform any prostate exams over his years of treating Paul. At the last visit, Dr. Mark for the first time wrote instructions for Paul to return for a PSA test and other lab work.

On August 17 or 18, 2022, Paul underwent PSA testing and received test results showing that his PSA level had risen to 18.05 ng/ml. A PSA test had not been performed since November 2014. Paul transferred his medical care from UFPA to a new medical practice in September 2022, and on or about November 7-9, 2022, he was admitted to the Mayo Clinic — Jacksonville for a prostate biopsy. The biopsy showed that Paul had developed advanced prostate cancer requiring aggressive treatment.

On August 15, 2024, Paul and his wife commenced the present suit against UFPA and Dr. Mark, alleging that Dr. Mark and the other physicians who evaluated and treated Paul at UFPA committed medical malpractice, that UFPA was vicariously liable for their negligent acts and omissions, and that Paul's wife had suffered a loss

[1] The plaintiffs do not allege that Paul was misdiagnosed with benign prostatic hypertrophy, but rather that Dr. Mark should have implemented a plan to regularly monitor Paul's PSA levels and routinely perform prostate exams in light of that condition and other risk factors, as discussed infra.

of consortium as a result of the negligence. The complaint and attached expert affidavit alleged that in light of Paul's age, his PSA level of 2.5 ng/ml, and his associated urologic symptoms and comorbidities, the applicable professional standard of care required Paul's UFPA treating physicians, including Dr. Mark, to regularly monitor his PSA levels and routinely perform prostate exams so as to timely identify any malignancy requiring treatment. The complaint and affidavit further alleged that the physicians' breach of that standard of care "caused a critical delay in the identification of the malignant prostate cells until November 7-9, 2022, eliminated . . . Paul's potential for local cancer control/cure, facilitated metastasis, and increased [his] morbidity and mortality."

The defendants filed a motion to dismiss the plaintiffs' complaint, contending that the medical malpractice claims were barred by the applicable two-year statute of limitation, OCGA § 9-3-71(a), and that the derivative loss-of-consortium claim likewise was time-barred. The trial court granted the motion, concluding that the plaintiffs' claims were "most closely analogous to a misdiagnosis case as the negligence that [the plaintiffs are] seeking compensation for is a failure to diagnos[e]." The trial court noted that in most misdiagnosis cases, the two-year limitation period

begins to run on the date when the physician failed to properly diagnose the patient, and the court reasoned that because Paul was last treated at UFPA on August 3, 2022, the plaintiffs were required to file their lawsuit by August 3, 2024. Because the plaintiffs missed that deadline by 11 days, the trial court dismissed their complaint as time-barred under OCGA § 9-3-71(a). The plaintiffs now appeal.[2]

The plaintiffs contend that the trial court erred in dismissing their complaint on the ground that the two-year limitation period began to run on August 3, 2022 and thus expired on August 3, 2024. According to the plaintiffs, the trial court failed to take into account the "new injury" exception to the general rule for calculating the limitation period in misdiagnosis cases, under which the limitation period commences only when symptoms of the new injury manifest themselves to the plaintiff. The plaintiffs argue that the allegations of their complaint did not foreclose the possibility that they could present evidence that fit within the "new injury" exception, and that, as a result, their claims were not subject to dismissal. Our review of the complaint and attached expert affidavit leads us to agree with the plaintiffs.

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[2] The plaintiffs filed a motion for reconsideration in the court below, but the trial court did not rule on that motion before the plaintiffs filed their notice of appeal from the dismissal order.

Under OCGA § 9-3-71(a), "an action for medical malpractice shall be brought within two years after the date on which an injury or death arising from a negligent or wrongful act or omission occurred." In cases where the alleged malpractice is the failure to correctly diagnose a patient's medical condition, the general rule is that

> the injury begins immediately upon the misdiagnosis due to the pain, suffering, or economic loss sustained by the patient from the time of the misdiagnosis until the medical problem is properly diagnosed and treated. The misdiagnosis itself is the injury and not the subsequent discovery of the proper diagnosis. Thus, in most misdiagnosis cases, the two-year statute of limitations . . . begin[s] to run simultaneously on the date that the doctor negligently failed to diagnose the condition and, thereby, injured the patient.

Kaminer v. Canas, 282 Ga. 830, 831–32(1) (653 SE2d 691) (2007) (citation modified). In other words, "in cases asserting a failure to diagnose, the general rule is that the limitation period runs from the misdiagnosis date." *Adams v. McDonald*, 346 Ga. App. 464, 468 (816 SE2d 454) (2018).

"Georgia's appellate courts, however, have carved out a limited exception in cases where a misdiagnosis and failure to provide proper treatment results in the development of a new and different injury than that which existed at the time of the

misdiagnosis." *Ward v. Bergen*, 277 Ga. App. 256, 258 (626 SE2d 224) (2006). See *Cleaveland v. Gannon*, 284 Ga. 376, 377(1) (667 SE2d 366) (2008); *Amu v. Barnes*, 283 Ga. 549, 552 (662 SE2d 113) (2008). This "new injury" exception "applies in cases in which the patient's injury arising from the misdiagnosis occurs subsequently, generally when a relatively benign or treatable precursor condition, which is left untreated because of the misdiagnosis, leads to the development of a more debilitating or less treatable condition." *Cleaveland*, 284 Ga. at 377(1). In contrast, the exception is inapplicable where a plaintiff suffers from the same medical condition as at the time of the original misdiagnosis and thereafter "did not develop a new condition and experienced only symptoms otherwise attributable to the worsening of that condition." *Amu*, 283 Ga. at 552 (citation omitted). See *Cleaveland*, 284 Ga. at 378(1). When the plaintiff suffers a "new injury," the limitation period "runs from the date symptoms attributable to the new injury [were first] manifest to the plaintiff" after an asymptomatic period. *Amu*, 283 Ga. at 553 (quotation marks omitted).

In addressing the potential application of the "new injury" exception in the present case, we are mindful that "a motion to dismiss should not be granted unless 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." *Perry v. Emory Healthcare Svcs. Mgmt.*, 374 Ga. App. 41, 43 (911 SE2d 229) (2025). Moreover, "[t]he defense of statute of limitation is an affirmative defense under OCGA § 9-11-8(c), and so the burden was on [the] [d]efendants to show that the two-year statute of limitation barred [the plaintiffs'] suit." Id. (quotation marks omitted). And "[a]s a general rule, a plaintiff has no obligation to anticipate and plead away any defenses in his complaint." *Roberts v. DuPont Pine Products*, 352 Ga. App. 659, 663(2) (835 SE2d 661) (2019) (quotation marks omitted). Consequently, "a motion to dismiss for failure to state a claim can properly be granted upon an affirmative defense only when the elements of the defense are admitted by the plaintiff or completely disclosed on the face of the pleadings." *Perry*, 374 Ga. App. at 43 (quotation marks omitted). Put another way, "if the facts alleged in the complaint affirmatively prove a defense, a court may dismiss the complaint based upon the defense, but if the facts alleged in the complaint merely fail to affirmatively disprove a defense, no dismissal is warranted." *Roberts*, 352 Ga. App. at 663(2) (quotation marks omitted).

Here, the plaintiffs' complaint and attached expert affidavit alleged that by negligently failing to regularly monitor Paul's PSA levels and routinely perform prostate examinations on him, the defendants "caused a critical delay in the identification of the malignant prostate cells until November 7-9, 2022, eliminated . . . Paul's potential for local cancer control/cure, facilitated metastasis, and increased [his] morbidity and mortality." Construed in the light most favorable to the plaintiffs, the complaint and affidavit allege that Paul developed metastatic prostate cancer after the defendants failed to identify his malignant prostate cells at an earlier, localized, and more treatable stage through regular testing and examinations. Such a claim falls within the statute-of-limitation framework applicable to medical misdiagnosis cases. See *Tarver v. Sigouin*, 360 Ga. App. 627, 631–32(1)(a), 633–34(1)(c) (860 SE2d 179) (2021) (failure to detect and diagnose plaintiff's early-stage cervical cancer as a result of the failure to conduct necessary physical examinations and screening analyzed as misdiagnosis case); *Adams*, 346 Ga. App. at 468 (referring to "failure to diagnose" and "misdiagnosis" interchangeably); *Brown v. Coast Dental of Ga.*, 275 Ga. App. 761,

765(1) (622 SE2d 34) (2005) (failure to evaluate and detect the true condition of plaintiff's teeth and jaw analyzed as misdiagnosis case).[3]

Furthermore, Georgia precedent addressing medical misdiagnosis claims establishes that when a localized cancer is not properly diagnosed and treated, and, as a result, metastasizes and spreads to other organs, the metastatic cancer can constitute a "new injury." See *Cleaveland*, 284 Ga. at 378–79(1); *Amu*, 283 Ga. at 552–53; *Tarver*, 360 Ga. App. at 634(1)(c); *Whitaker v. Zirkle*, 188 Ga. App. 706, 707(1) (374 SE2d 106) (1988), disapproved in part on other grounds by *Cleaveland*, 284 Ga. at 380(1); *Staples v. Bhatti*, 220 Ga. App. 404, 405–06(1) (469 SE2d 490) (1996). There is nothing in the plaintiffs' complaint and expert affidavit affirmatively showing when Paul's localized prostate cancer first could have been diagnosed and treated, when his cancer metastasized, or when he first manifested symptoms specifically attributable

[3] The defendants assert that the plaintiffs made an admission that this is not a misdiagnosis case in their briefing in the court below. However, although the plaintiffs noted in their trial court brief that this is not a case involving a misdiagnosis by the defendants, they went on to state that this "is a case of a failure to diagnose" due to the defendants' failure to properly monitor Paul's PSA levels and perform prostate examinations. And, as noted above, failure-to-diagnose cases fall within the statute-of-limitation framework that applies to misdiagnosis cases. See *Tarver*, 360 Ga. App. at 631–32(1)(a), 633–34(1)(c); *Adams*, 346 Ga. at App. 468; *Brown*, 275 Ga. App. at 765(1). Additionally, the plaintiffs expressly relied on the "new injury" exception that applies in misdiagnosis cases in opposing the defendants' motion to dismiss.

to the metastatic cancer. Nor does the complaint and affidavit affirmatively show whether Paul experienced a period when he was asymptomatic for the metastatic cancer following the failure to diagnose his localized cancer.[4] And, as previously noted, in reviewing a motion to dismiss we must "resolve all doubts in favor of the [plaintiffs]." *Norman*, 310 Ga. at 128(1). Because the allegations of the complaint do not affirmatively prove that the "new injury" exception is inapplicable, the trial court erred in concluding that the plaintiffs' claims were time-barred at this stage of the proceedings.[5] See *Perry*, 374 Ga. App. at 43; *Roberts*, 352 Ga. App. at 663(2); *Corkren*, 374 Ga. App. at 782(1)(b). Accordingly, we reverse the judgment.

Judgment reversed. Doyle, P. J., and Padgett, J., concur.

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[4] See *Cleaveland*, 284 Ga. at 380(2) (explaining that when the "new injury" is metastatic cancer, the question is not whether the plaintiff was asymptomatic for the localized cancer present at the time of the failure to diagnose, but whether the plaintiff was asymptomatic for the *metastatic* cancer).

[5] "[T]he discovery process bears the burden of filling in details," *Collins v. Athens Orthopedic Clinic*, 307 Ga. 555, 565(4) (837 SE2d 310) (2019) (quotation marks omitted), and a motion for summary judgment is the "appropriate vehicle" for determining whether there is an evidentiary basis for the "new injury" exception. *Perry*, 374 Ga. App. at 43, n. 2.