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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YOUNG KI KIM,

Plaintiff and Appellant,

v.

DON SON, M.D. INC., et al.,

Defendants and Respondents.

G066332

(Super. Ct. No. 30-2024-
01423705)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Deborah C. Servino, Judge. Affirmed.

Young Ki Kim, in pro. per.

Schmid & Voiles, Michael C. Ting, Nazanin Houshyar, and
Denise H. Greer, for Defendants and Respondents.

Young Ki Kim appeals from a judgment of dismissal following the trial court's order sustaining a demurrer to his first amended complaint (FAC) against respondents Don Son, M.D., and Don Son, M.D., Inc. (collectively defendants). The court concluded Kim's claims were barred by the statute of limitations set forth in Code of Civil Procedure section 340.5 (section 340.5).¹ On appeal, Kim contends the statute of limitations was tolled because of defendants' alleged concealment of his medical records. As discussed below, we conclude Kim was on notice of his claims more than one year before he filed his complaint and the lack of medical records did not entitle him to tolling of the statute of limitations. His complaint was untimely. Kim also contends the court abused its discretion in failing to provide him leave to amend. We reject this contention because Kim does not suggest any facts which would render his complaint timely. Accordingly, we affirm.

STATEMENT OF THE CASE

On September 9, 2024, Kim filed a complaint for medical negligence against defendants. The complaint is not in the appellate record.

Defendants demurred to the complaint on the basis of the statute of limitations. The demurrer and all related pleadings, including Kim's opposition, are not in the record.

On April 18, 2025, the trial court sustained the demurrer with leave to amend. In its written ruling, the court summarized the complaint as follows: In his September 9, 2024 complaint, Kim "alleges he was injured by Defendants' malpractice during a colonoscopy on September 12, 2022, at

¹ All further statutory references are to the Code of Civil Procedure.

which time he was immediately made aware of Defendants' actions and his own injury by . . . Son's statements and [his] own pain. That same day, [Kim] continued to be in great pain while waiting at the ER due to Defendants' failure to [request] an ambulance The [c]omplaint further alleges . . . Son gave [Kim] antibiotics, prescribed to someone else, that gave him an allergic reaction, and [Kim] was aware of all this no later than September 24, 2022. [¶] In October 2022, . . . Son failed to return [Kim's] calls seeking medical help. . . . And by March 2, 2023, [Kim] learned he had developed a hernia and underwent further surgery . . . All of this took place more than a year before [Kim] filed the [c]omplaint."

The trial court noted defendants demurred on the ground that the complaint was barred by the statute of limitations set forth in section 340.5. The statute provides the limitations period for a medical malpractice claim is three years from the date of injury or one year after the plaintiff discovers or should have discovered the injury, whichever comes first. (§ 340.5.) The court determined the complaint alleges Kim "discovered his injuries and had, at least, a suspicion of wrongdoing immediately or within days of Defendants' [negligent] actions." It concluded that given those allegations, "his claims are barred by the statute of limitations." The court, however, granted Kim 15 days to amend the complaint to cure the defect.

In response, on April 30, 2025, Kim filed the FAC. The FAC alleged that Kim "did not discover the permanent nature and disabling extent of his injuries until March 2024, and he filed this action within one year thereafter, satisfying the applicable limitations period."

Defendants demurred to the FAC. The demurrer and all related pleadings are not in the record. Additionally, the record does not contain any hearing transcript.

On November 19, 2025, a judgment of dismissal in favor of defendants was entered. The judgment stated that on October 31, 2025, the trial court sustained the demurrer to the FAC pursuant to the one-year statute of limitations in section 340.5. The court's order sustaining this demurrer is not in the record.

On December 15, 2025, Kim timely noticed an appeal from the November 19, 2025 judgment.

DISCUSSION

“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Here, the demurrer to the FAC was sustained on the basis of the statute of limitations set forth in section 340.5. The statute provides that “[i]n an action for injury or death against a health care provider based upon such person’s alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have

discovered, the injury, whichever occurs first.” (§ 340.5.) “The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.” (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) “Resolution of the statute of limitations issue is normally a question of fact.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810.) “However, whenever reasonable minds can draw only one conclusion from the evidence, the question becomes one of law.” (*Snow v. A.H. Robins Co.* (1985) 165 Cal.App.3d 120, 128.)

Kim contends the trial court erroneously applied section 340.5 because it failed to consider delayed discovery, equitable tolling, and Son’s concealment of critical medical records. He argues that Son’s failure to provide “complete medical records, including the video recording,” tolled the statute of limitations because those records were “necessary to determine how the injury occurred.” As an initial matter, Kim has not shown he raised this issue in his opposition to the demurrer. He does not reference any record citation, including any allegations in the FAC supporting this contention. Accordingly, it is forfeited. (See *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1192 [appellant “did not raise any of these arguments below in opposition to [the] demurrer; as such, she forfeited them”].)

Even if not forfeited, we would reject the contention. Under section 340.5, “regardless of extenuating circumstances, the patient must bring his suit within one year after he discovers, or should have discovered, his ‘injury.’” (*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896 (*Gutierrez*).) “[T]he term ‘injury,’ as used in section 340.5, means both ‘a person’s physical condition and its ‘negligent cause.’” [Citation.] The word ‘injury’ for purposes of section 340.5 is a term of art that ‘refer[s] to the damaging effect of the

alleged wrongful act and not to the act itself.’ [Citation.] The injury is not necessarily the ultimate harm suffered, but instead occurs at ‘the point at which “appreciable harm” [is] first manifested.’” (*Brewer v. Remington* (2020) 46 Cal.App.5th 14, 24.) “Possession of ‘presumptive’ as well as ‘actual’ knowledge will commence the running of the statute. The applicable principle has been expressed as follows: ‘when the plaintiff has notice or information of circumstances to put a reasonable person *on inquiry*, or *has the opportunity to obtain knowledge* from sources open to his investigation . . . the statute commences to run.’” (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101.) Therefore, “when the patient’s ‘reasonably founded suspicions [have been aroused],’ and [he] has actually ‘become alerted to the necessity for investigation and pursuit of [his] remedies,’ the one-year period for suit begins.” (*Gutierrez*, at p. 897.)

Here, the FAC alleges Kim “felt excruciating pain” during the colonoscopy. Son immediately told Kim that “something went wrong.” The FAC further alleged that on September 16, 2022, Son came to Kim’s house and admitted his mistake. Kim began suffering symptoms such as involuntary bowels and urinary incontinence, and in December 2022, was diagnosed with a hernia, “allegedly arising from the perforation and/or subsequent surgery.” Based on these allegations, Kim was aware of his injury and Son’s conduct more than a year before he filed his complaint. The fact Kim did not have his complete medical records is irrelevant. (See *Massey v. Mercy Medical Center Redding* (2009) 180 Cal.App.4th 690, 699 “[T]he limitations period begins to run, not when medical records are obtained, but when one suspects, or reasonably should suspect, that he has been injured in some wrongful way”].) Moreover, defendants’ alleged intentional concealment of Kim’s medical records would not toll the one-year discovery provision in

section 340.5. (See *Dolan v. Borelli* (1993) 13 Cal.App.4th 816, 824 [“concealment is an exception to the three-year, not one-year, limitations period in section 340.5”]; cf. *Barber v. Superior Court* (1991) 234 Cal.App.3d 1076, 1083 [“fraudulent concealment tolling provision ““does not come into play, whatever the lengths to which a defendant has gone to conceal his wrongs, if a plaintiff is on notice of a potential claim””].) Thus, the FAC is untimely pursuant to section 340.5.

Kim faults the trial court for failing to provide him leave to amend the FAC. However, he does not identify any additional facts he can allege to refute the conclusion his claims are time-barred as a matter of law. As discussed above, allegations that defendants concealed his complete medical records are insufficient. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [“The plaintiff has the burden of proving that an amendment would cure the defect”].) Accordingly, defendants’ demurrer to the FAC was properly sustained without leave to amend.

DISPOSITION

The judgment is affirmed.

DELANEY, J.

WE CONCUR:

MOORE, ACTING P. J.

GOODING, J.