Date:
June 2nd, 2025

CASE NUMBER: CIVMSC18-00885

Hearing on Demurrer to:

Document prepared for:
Rachel Mary MacNair

CASE NAME

TRUJILLO VS. PLANNED PARENTHOOD

DOCUMENT FILED DATE

Jan. 11th, 2019

CASE FILING DATE

May 1st, 2018

COUNTY

Contra costa county, CA

JUDGE

John William Kennedy

CATEGORY

45: Unlimited Medical Malpractice

STATUS

Stayed

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
DEPARTMENT 12

REPORTER: HEARING DATE: 01/11/19

CLERK: J. ESPY

VALERIE TRUJILLO
PLAINTIFF(S)

VS. CASE NO. MSC18-00885

******* MINUTE ORDER ******

SOPHIA LEIBY
DEFENDANT(S)

****

PROCEEDINGS: HEARING ON DEMURRER TO COMPLAINT of TRUJILLO FILED BY PLANNED PARNENTHOOD: SHASTA-DIABLO, INC., DAWN WEINSTEIN NP

Cause called for hearing before JUDGE CHARLES TREAT.

Clerk: JACKIE ESPY

Not Reported

COUNSEL: ROBERT SHTOFMAN FOR PLTF BY CC present in Court

COUNSEL: LYNNE STOCKER FOR DEF present in Court

TENATIVE RULING IS ARGUED AND SUBMITTED

DEFENSE REQUEST TO STAY DISCOVERY-MOTION DENIED.

TENATIVE RULING STANDS:

Defendants Planned Parenthood: Shasta-Diablo, Inc. and Dawn Weinstein demur to the complaint. The demurrer is sustained with leave to amend. Plaintiff may file and serve an amended complaint within 30 days.

DEMURRER SUSTAINED

30 DAY(S) LEAVE TO FILE AMENDED COMPLAINT TO THE COMPLAINT of TRUJILLO

SEE ATTACHED TENATIVE FOR FURTHER RULINGS

Date: 01/11/19 BY _____
J. ESPY,

7. TIME: 9:00 CASE#: MSC18-00885
CASE NAME: TRUJILLO VS. PLANNED PARENTHOOD
HEARING ON DEMURRER TO COMPLAINT
FILED BY PLANNED PARENTHOOD, et al.
**** TENTATIVE RULING: ****

Defendants Planned Parenthood: Shasta-Diablo, Inc. and Dawn Weinstein demur to the complaint. The demurrer is **sustained with leave to amend.** Plaintiff may file and serve an amended complaint within 30 days.

Plaintiff sued the Defendants for various causes of action, all substantive variations on the general theme of medical malpractice – (1) professional negligence, (2) negligent supervision, (3) negligent misrepresentation, (4) breach of written contract, and (5) breach of oral contract. Planned Parenthood is a defendant in all causes of action, while Weinstein is defendant in causes of action one and three. Defendants have demurred to each plaintiff's claims for the failure to state a cause of action based on the statute of limitations being expired. (Plaintiff does not contest defendants' point that if limitations have run on a malpractice claim, the same result would carry over to all of the causes of action pleaded.)

Plaintiff's complaint is based upon medical treatment that she received from defendants on January 26, 2017. (Comp. ¶¶ 6, 27-29.) During that visit, plaintiff underwent an ultrasound and was told that she an intrauterine pregnancy. (Comp. ¶¶16, 29.) Plaintiff alleges that Weinstein was negligent because she did not consult with a medical doctor when the circumstances required it. (Comp. ¶¶ 30-32.) As it turned out, however, plaintiff had an ectopic pregnancy, which required emergency surgery and hospitalization from January 30 to February 3, 2017. (Comp. ¶¶6, 16, 18.) She was then hospitalized again from February 4 to either the 8 or 11. (Comp. ¶19.) Plaintiff alleges that she "did not know, and had no reason to know, that defendants were negligent prior to January 30, 2017." (Comp. ¶17.)

Before filing her complaint, plaintiff sent a timely notice of intent to sue to defendants, which extended the statute of limitations by 90 days. (Comp. ¶21.)

Plaintiff's allegation that she had no knowledge (or reason to know) "prior to January 30" is critical, because if January 30 is the accrual date, then the math works out that this action was filed one day past the deadline. If January 30, 2017 is used as the accrual date and 90 days is added to that date, the statute of limitations ran out on April 30, 2018. Plaintiff filed her complaint on May 1, 2018. Thus, based on the allegations in the complaint, defendants have shown that the statute of limitations has expired.

Anticipating this difficulty, plaintiff's complaint attempts to articulate several bases why limitations had not yet run. She argues that the delayed-discovery date was not January 30. She also argues that tolling applies. As currently alleged, the tolling theory is legally defective, and the complaint does not include sufficient facts to support the delayed discovery theory. The demurrer is therefore sustained, though with leave to amend.

Delayed Discovery

In medical malpractice cases, the general rule is that "a cause of action accrues when the plaintiff is aware, or reasonably should be aware, of 'injury,' a term of art which means 'both the negligent cause and the damaging effect of the alleged wrongful act.' [Citations.]" (*Arroyo v. Plosay* (2014) 225 Cal.App.4th 279, 290; see also *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-11.)

Although not cited by the parties, *Drexler v. Petersen* (2016) 4 Cal.App.5th 1181, is instructive as it involved a delayed discovery question based on a claim for a failure to diagnose. There the court explained that when a plaintiff's case is based on a failure to diagnose or treat a preexisting condition, "the plaintiff ... may discover the injury when the undiagnosed condition develops into a more serious condition, but before it causes the ultimate harm. [Citation.] With the worsening of the plaintiff's condition, or an increase in or appearance of significant new symptoms, the plaintiff with a preexisting condition either actually (subjectively) discovers, or reasonably (objectively) should be aware of, the physical manifestation of his or her injury. [Citations.]" (4 Cal.App.5th at 1194.)

Here, the complaint alleges that plaintiff went to the hospital on January 30, 2017 and that she did not know defendants were negligent *prior to* January 30. (Comp. ¶¶ 15, 16.) That implies that plaintiff did learn (or have reason to know) of defendants' negligence *as of* January 30 – but it does not actually admit that to be the case. Neither, however, is there any allegation that plaintiff came to learn of the negligence *after* January 30 – let alone any explanation of when and how she claims that to have occurred. On the present state of the complaint, then, the allegations point to a January 30 accrual date, but do not entirely foreclose the possibility that plaintiff may be able to allege a later date with additional factual allegations. For that reason, the Court grants leave to amend.

Plaintiff correctly notes that the statute of limitations does not ordinarily run while the physician-patient relationship is ongoing. (*Hundley v. St. Francis Hospital* (1958) 161 Cal.App.2d 800, 806.) Plaintiff does not, however, allege facts to support such an argument in this case. If she has such facts, she may include them when she amends her complaint.

Tolling

Plaintiff argues that her claims should be tolled while she was in the hospital. She relies on see *Lewis v. Superior Court (Perret)* (1985) 175 Cal.App.3d 366, 376-77, and Code of Civil Procedure § 353.1. (See Comp. ¶¶ 18, 19.) These citations are clearly inapplicable. *Lewis* involved a situation where the attorney was unable to timely file a complaint because of debilitating accident. In other words, the disability to file was current *at the time the limitations period would have run.* Here, the asserted disability occurred nearly a year before the deadline. Assuming without deciding that plaintiff could not practically have filed this action in February 2017, then, there is no reason why she was disabled from filing it during the rest of 2017 or the first four months of 2018. Section 353.1 is even further afield, applying when a law practice is taken over by the courts.

In addition to *Lewis*, plaintiff cites to three cases to support her tolling argument in her opposition. None is on point. Two cases involved courts finding that a statute of limitations would not bar a claim based on equitable principles. (*Bollinger v. National Fire Ins. Co.* (1944) 25 Cal.2d 399; *Kleinecke v. Montecito Water Dist.* (1983) 147 Cal.App.3d 240.) Plaintiff has

made no attempt to show how either case would apply here. The third involved a question of tolling related to the requirement that a case be brought to trial within five years – not a relevant consideration here. (*Ferk v. County of Lake* (1988) 205 Cal.App.3d 268, 273.)