

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

MARK M. ZLOJUTRO,	:	
	:	
Plaintiff-Appellant,	:	No. 115998
	:	
v.	:	
	:	
NICKEY DUCKWORTH, ET AL.,	:	
	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 8, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-25-115208

Appearances:

Mark M. Zlojutro, *pro se*.

Reminger Co., L.P.A., Brian D. Sullivan, Nicholas J.
Siciliano, and Brianna M. Prislipski, *for appellees*.

LISA B. FORBES, P.J.:

{¶ 1} Mark M. Zlojutro (“Zlojutro”) appeals from the trial court’s journal entry granting the motion for judgment on the pleadings filed by Nickey Duckworth (“Duckworth”) and the Cleveland Institute of Medical Massage (“CIMM”)

(collectively, “Appellees”). After a thorough review of the record and the law, we reverse and remand for further proceedings consistent with this opinion.

I. Procedural History

{¶ 2} On April 4, 2025, Zlojutro sued Appellees in the Cuyahoga County Common Pleas Court. The complaint, in its entirety, alleged the following:

On April 6th 2023 I came to the Cleveland Institute of Medical Massage for a session. My therapist was Nickey Duckworth a student [sic] She started at my head , [sic] and before you know it she was squeezing my earlobes with all her might. It was very painful. I thought that she knew something that I didn’t so I tolerated it for minute finally I had to tell her to stop. Finally after all that I suffered excruciating pain woke up in sweat and couldn’t sleep on either side of my face and as time went on [r]ealized that my ears were permanently damaged. The Institute refused to make an incident report they just threw me out.

{¶ 3} Attached to Zlojutro’s complaint was a court form titled “Designation Form To Be Used To Indicate The Classification Of The Cause” (the “designation form”) on which Zlojutro selected from a list of types of causes of action. He classified his case as a professional tort, specifically, medical malpractice. On May 15, 2025, Appellees filed an answer, denying all allegations in the complaint.

{¶ 4} On June 17, 2025, Appellees filed a motion for judgment on the pleadings under Civ.R. 12(C), asserting that Zlojutro’s complaint was not filed within the one-year statute-of-limitations period for medical claims as required by R.C. 2305.113. Appellees also asserted that Zlojutro did not file an affidavit of merit in support of his medical claim, as required under Civ.R. 10(D).

{¶ 5} Zlojutro opposed Appellees’ motion for judgment on the pleadings, arguing that he had not asserted a medical claim under R.C. 2305.113. He argued

that, consequently, he had not been required to file an affidavit of merit with his complaint. He further argued that Ohio's two-year personal-injury limitations period under R.C. 2305.10(A) applied to this case and that he had filed his complaint within two years of the events giving rise to his cause of action.

{¶ 6} The trial court granted Appellees' motion for judgment on the pleadings via a journal entry issued on December 15, 2025. The trial court found

that the plaintiff can prove no set of facts in support of the claims that would entitle them to relief. Therefore, judgment is rendered in favor of defendant and against plaintiff as plaintiff's complaint failed to comply with the one year limitations period and affidavit of merit requirements under Ohio law.

{¶ 7} From this order, Zlojutro appealed, raising the following assignments of error:

1. The Court erred when they ruled the Statute of Limitations on this case is only (1) one year instead of (2) years.
2. The Court erred in their evaluation and type of case. This is a classic case of Negligence resulting in personal injury.
3. The Court erred when they failed to recognize this case as a failure to exercise a standard duty of care. The standard of care is a legal benchmark requiring individuals to act with the same level of caution, skill and diligence that a reasonable prudent person would exercise under similar circumstances to avoid foreseeable harm.
4. The court erred when they failed to compel the opposition (Reminger Attorney) to answer my discovery requests (interrogatories).

II. Law and Analysis

{¶ 8} For ease of analysis, we address Zlojutro's first three assignments of error together, which are dispositive of this appeal, and which each relate to whether

the trial court erred in granting Appellees' motion for judgment on the pleadings based on its conclusion that Zlojutro had asserted a medical claim.

A. Motion for Judgment on the Pleadings

{¶ 9} Under Civ.R. 12(C), “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Grant of such a motion is appropriate when, “after construing all material factual allegations in the pleadings as true and all reasonable inferences that can be drawn therefrom in favor of the plaintiff, the court finds, beyond doubt, that the plaintiff could prove no set of facts in support of his or her claims that would entitle the plaintiff to relief.” *Crenshaw v. Howard*, 2022-Ohio-3914 ¶ 13 (8th Dist.), citing *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng., Inc.*, 2019-Ohio-2851, ¶ 8. “A motion for judgment on the pleadings raises only questions of law, testing the legal sufficiency of the claims asserted.” *Id.*

{¶ 10} We review de novo a trial court's ruling on a motion for judgment on the pleadings. *Pincus v. Pincus*, 2025-Ohio-1826, ¶ 16 (8th Dist.). “De novo review encompasses an independent examination of the record and law without deference to the underlying decision.” *Torres v. Concrete Designs, Inc.*, 2019-Ohio-1342, ¶ 48 (8th Dist.), quoting *Gateway Consultants Group, Inc. v. Premier Physicians Ctrs., Inc.*, 2017-Ohio-1443, ¶ 22 (8th Dist.). Where, as here, the relevant pleadings are a complaint and answer, our review is limited “to the allegations in the complaint and

answer, as well as any documents properly attached as exhibits to those pleadings.”¹
Crenshaw at ¶ 13.

{¶ 11} This court has recognized that “Ohio is a notice-pleading state that does not require a plaintiff to plead operative facts with particularity.” *Carroll v. Cuyahoga Community College*, 2023-Ohio-3628, ¶ 17 (8th Dist.). “Notice pleading requires the plaintiff to set forth claims that ‘concisely set forth only those operative facts sufficient to give “fair notice of the nature of the action”’” *Id.*, quoting *Diaz v. Cuyahoga Metro. Hous. Auth.*, 2010-Ohio-13, ¶ 15 (8th Dist.), quoting *DeVore v. Mut. Of Omaha Ins. Co.*, 32 Ohio App.2d 36 (7th Dist. 1972).

B. Statute of Limitations and Civ.R. 10(D)

{¶ 12} R.C. 2305.113 sets forth Ohio’s limitations period for medical-malpractice actions. “Except as otherwise provided in this section, an action upon a medical . . . claim shall be commenced within one year after the cause of action accrued.” R.C. 2305.113(A). Pertinent to this appeal, R.C. 2305.113(E)(3) establishes:

“Medical claim” means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice registered nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care or treatment of any person.

¹ No documents are referenced in or attached to either the complaint or answer in this case.

{¶ 13} Generally, a claim for bodily injury other than a medical claim must be brought within two years of when the claim accrues. R.C. 2305.10(A).

{¶ 14} Pursuant to Civ.R. 10(D), “a complaint that contains a medical claim . . . as defined in section 2305.113 of the Revised Code, shall include one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability.”

C. Application

{¶ 15} We find that the allegations in the complaint, if proven, could give rise to a set of facts showing that Zlojutro did not assert a medical claim. As an initial matter, we do not find that Zlojutro’s designation form, in which he initially classified this case as concerning medical malpractice, is dispositive. Courts routinely look at the substance of a plaintiff’s claim rather than relying on any label attached to it. *See Allen v. Priozzoli*, 2016-Ohio-2645, ¶ 7 (8th Dist.) (“To determine the applicable statute of limitations for a particular claim, courts must look to the actual nature or subject matter of the acts giving rise to the complaint rather than the form in which the action is pleaded.”).

{¶ 16} After reviewing the substance of the complaint, we find that Zlojutro did not allege that his claim for harm caused by a massage arose out of medical diagnosis, care, or treatment, as required for the one-year limitations period for medical claims to apply. Nowhere in the complaint does Zlojutro indicate why he sought a massage; Zlojutro does not allege he had been diagnosed with any injury, condition, or ailment. Neither does Zlojutro allege anything about the type of

massage he received. *See Gifford v. Freeman*, Franklin C.P. No. 10 CVC-6359, 2011 Ohio Misc. LEXIS 20002, *5 (Apr. 12, 2011) (“‘Massage therapy’ . . . could mean anything from a mere comforting massage to a massage intended to treat a medical condition performed by someone with specialized medical massage therapy training, a license, and a massage therapy practice overseen by the Ohio Medical Board.”).

{¶ 17} Below, Appellees argued that allegations arising from medical-massage therapy always constitute a medical claim to which the one-year limitations period in R.C. 2305.113(A) applies. In support of this assertion, Appellees argued that “medical massage therapy is considered a limited branch of medicine and regulated by the Ohio State Medical Board” under R.C. 4731.15. Notwithstanding Appellees’ assertions, the pleadings provide no information about the type of facility that CIMM is, whether it is licensed by the state medical board, what services it provides, or the qualifications or training of defendant Duckworth (other than to call her his “therapist” and to identify her as a “student”).

{¶ 18} As noted, to qualify as a medical claim under R.C. 2305.113(E)(3), the claim must be asserted against certain enumerated parties. R.C. 2305.113(E)(3) makes no reference to medical massage therapists or to medical massage facilities. “Under the statutory-construction maxim *expressio unius est exclusio alterius* . . . the express inclusion of one thing implies the exclusion of the other.” *Clay v. Galita*, 2024-Ohio-833, ¶ 16 (8th Dist.).

{¶ 19} When viewed in the light most favorable to the plaintiff, we do not find that the allegations in Zlojutro’s complaint demonstrate that he brought a medical claim. The only information in the complaint that supports the conclusion that Zlojutro brought a medical claim is the word “medical” in the name of Appellee CIMM. This is not enough to establish, at this early stage in the proceedings, that Zlojutro could prove no set of facts that would entitle him to relief.

{¶ 20} In light of the foregoing, we find that the trial court erred in granting Appellees’ motion for judgment on the pleadings. Specifically, we find the court erred in concluding that based on the pleadings alone, Zlojutro brought a medical claim that was subject to the one-year statute of limitations in R.C. 2305.113 and the affidavit of merit requirements of Civ.R. 10(D).

{¶ 21} Zlojutro’s first assignment of error is sustained.

{¶ 22} With his second and third assignments of error, Zlojutro asserts that the trial court erred by failing to determine that this case concerned a “classic case of Negligence” to which a “standard duty of care” applied. Based on the allegations in Zlojutro’s complaint, we find only that the trial court erred in dismissing the complaint at this early stage in the proceedings as a medical claim. Consequently, assignments of error Nos. 2 and 3 are overruled.

{¶ 23} Zlojutro’s fourth assignment of error maintains that the trial court erred by failing to compel Appellees to respond to his discovery requests. However, nothing on the docket demonstrates that Zlojutro filed a motion to compel, much

less that the trial court denied one. We, therefore, overrule assignment of error No. 4 as moot, pursuant to App.R. 12(A)(1)(c).

{¶ 24} Judgment reversed. Case remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellees the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LISA B. FORBES, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
EILEEN A. GALLAGHER, J., CONCUR

