

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

DENISE D. COBB,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION FILE
) NO. 21EV002370H
 NINA DASHON JACKSON and)
 CHANDA LYNN COBB,)
)
 Defendants.)

ORDER ON DEFENDANT COBB’S MOTION TO DISMISS

This matter comes before the court on the motion to dismiss filed by Defendant Chanda Cobb. Having considered the entire record, the court finds as follows:

Plaintiff Denise Cobb filed this action on April 20, 2021, alleging that she was injured in a motor vehicle collision occurring on April 7, 2019. Denise Cobb was a passenger in a vehicle driven by Chanda Cobb, which was struck by a vehicle driven by Defendant Nina Jackson.¹ Chanda Cobb was served with process on July 21, 2021 and filed an answer on September 2, 2021.²

Chanda Cobb filed her motion to dismiss on September 2, 2021. Denise Cobb opposes Chanda Cobb’s motion. Chanda Cobb contends that Denise Cobb’s claims are barred by the statute of limitations and that Denise Cobb failed to exercise the requisite level of diligence in having Chanda Cobb served with process.

When a complaint is filed within the statute of limitation, but service is not made within five days or within the period of limitation, the plaintiff must establish that service was made in a reasonable and diligent manner in an attempt to ensure that proper service is made as quickly as possible.

Akuoko v. Martin, 298 Ga. App. 364, 364-65 (2009) (affirming trial court’s finding of laches and dismissing suit where plaintiff did not serve defendant until 13 days after the running of the statute of limitations (citations and punctuation omitted)); *accord Van Omen v. Lopresti*, 357 Ga. App. 9, 11 (2020) (“When service is made outside the limitation period, the plaintiff has the burden of showing that due diligence was exercised.”).

¹ There is no evidence in the record that Jackson has been served with process, and Jackson has not answered or otherwise appeared in this action.

² Chanda Cobb paid costs in order to open default as a matter of right. See O.C.G.A. 9-11-55(a).

The limitations period pertaining to a personal injury claim is two years running from the date of accrual of the cause of action. *See* O.C.G.A. § 9-11-33. Denise Cobb alleges that her injuries arose on April 7, 2019. Ordinarily, the limitations period would have expired on April 7, 2021. Denise Cobb filed this action on April 20, 2021, outside of the normal limitations period.

However, the Supreme Court of Georgia tolled the running of statutes of limitation by its March 14, 2020 Order Declaring Statewide Judicial Emergency and that Court's various Orders extending the Statewide Judicial Emergency. At issue here is whether that tolling applies to the limitations period governing Denise Cobb's claims.

The March 14, 2020 Order provides as follows:

Pursuant to O.C.G.A. § 38-3-62, during the period of this Order, the undersigned hereby suspends, tolls, extends, and otherwise grants relief from any deadlines or other time schedules or filing requirements imposed by otherwise applicable statutes, rules, regulations, or court orders, whether in civil or criminal cases or administrative matters, including, but not limited to any: (1) statute of limitation.

On April 6, 2020, the Georgia Supreme Court issued further guidance for tolling statutes of limitation under its emergency Orders. In that pronouncement, the Court stated that

Simply put, the tolling of a statute of limitation suspends the running of the period of limitation, but it does not reset the period of limitation. If the period of limitation for a particular cause of action commenced prior to March 14, 2020 [as is here the case] – that is, if the “clock” had started to run before the entry of the Chief Justice’s order – the running of the period of limitation was suspended on March 14, and the running of the period will resume when the tolling provision of the March 14 declaration has expired or is otherwise terminated.... [W]hatever time remained in the period of limitation as of March 14 will still remain when the tolling provision of the March 14 declaration has expired or is otherwise terminated.

The Georgia Supreme Court's Order of July 10, 2020 mandates that “all other deadlines imposed on litigants shall be reimposed effective as of July 14, 2020.” That Order further specifies that “[t]he 122 days between March 14 and July 14, 2020, or any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation.”

Focusing solely on the subordinate clause “or any portion of that period in which a statute of limitation would have run,” Chanda Cobb argues that no part of the 122-day tolling period should be added to the limitations period here because the limitations period would not have “run” – that is, expired – anytime between March 14 and July 14, 2020. As indicated, the statute of limitations ordinarily would have expired on Denise Cobb's claims on April 7, 2021, which is

outside of the March 14 to July 14, 2020 time period. In support of her argument, Chanda Cobb cites the slip opinion in *Owens v. Perdue Farms, Inc.*, No. 5:20-cv-00307-TES (M.D. Ga. April 29, 2021), in which the judge interprets the Georgia Supreme Court’s July 10, 2020 Order as meaning that the 122-day exclusion period does not apply unless the limitations period would have expired sometime between March 14 and July 14, 2020.

But there is another possible meaning for the phrase “would have run” rather than meaning “expired.” That phrase reasonably can indicate duration or the on-going running of the limitations period – *i.e.*, the period during which the statute of limitations would have continued to run, but for the tolling.

The court finds that Chanda Cobb’s interpretation of the Supreme Court’s tolling provisions is untenable. It is commonplace that the meaning of “toll” in this context is “[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant’s absence from the jurisdiction and during the plaintiff’s minority.” Black’s Law Dictionary, 1334 (5th ed. 1979).

Notably, the Georgia Supreme Court’s March 14, 2020 Order does not just toll the limitations period, but “*suspends, tolls, extends, and otherwise grants relief* from any ... statute of limitation.” This is in keeping with Georgia law under which tolling statutes do not simply forestall the necessity of filing suit while the tolling period persists. Instead, tolling both suspends and *extends* the applicable statute of limitations. *See, e.g., Forbes v. Smith*, 338 Ga. App. 546, 548 (2016) (noting that tolling during the pendency of criminal prosecution pursuant to O.C.G.A. § 9-3-99 provides a tort plaintiff with a two-year limitations period once the prosecution has terminated). Moreover, the March 14, 2020 Order extends broadly to “*any*” statute of limitation, not just those that would otherwise expire during the tolling period.

In its April 6, 2020 clarification, the Supreme Court explained that for any “period of limitation” that “commenced prior to March 14, 2020 ... the running of the period of limitation was suspended on March 14, and the running of the period will resume when the tolling provision of the March 14 declaration has expired.” Were that not clear enough that all limitations periods were tolled or suspended, the Court further explained that “whatever time remained in the period of limitation as of March 14 will still remain when the tolling provision of the March 14 declaration has expired.” Nowhere in that pronouncement does the Georgia Supreme Court predicate the application of its 122-day exclusion period on whether the limitations period would otherwise “expire” during the March 14 to July 14, 2020 period.

There is further textual evidence that the Georgia Supreme Court did not intend to limit its tolling provision solely to those limitation periods that would expire during the tolling period. The Court considered this example: “If the event that triggers the running of a period of limitation occurred on or after March 14—that is, if the “clock” had not started to run before a statewide judicial emergency was declared—the period of limitation will not begin to run until the tolling provision of the March 14 declaration has expired.” And in this circumstance also the Court assured that “whatever time remained in the period of limitation ... will still remain when the tolling provision of the March 14 declaration has expired.” In such a case, there is no

question that tolling applies even though the limitations period could not have expired between March 14 and July 14, 2020.

Accordingly, pursuant to the Georgia Supreme Court's emergency tolling Orders, the limitations period on Denise Cobb's claims was extended from April 7, 2021 by 122 days to August 7, 2021. Denise Cobb filed this suit, on April 20, 2021, within the extended statute of limitations. Chanda Cobb was served with process on July 21, 2021, also within the limitations period.

For these reasons, the court hereby **DENIES** Chanda Cobb's motion to dismiss.

SO ORDERED, this 5th day of October, 2021.

/s/ Wesley B. Tailor

Wesley B. Tailor, Judge
State Court of Fulton County