

Docket Number: _____

In the Supreme Court of the United States

Rebekah Cooper,
as Administratrix of the Estate of Jason Cooper,
Petitioner,

v.

Ehtsham Haq, M.D., Amjed Javaid, M.D., and Amjed Javaid, L.L.C.
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Alabama

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

William T. Johnson III
Counsel of Record
Jeffrey C. Kirby, Esquire
1 Independence Plaza Drive,
Suite 520
Birmingham, AL 35209
(205) 458-3553
bjohnson@kirbyjohnsonlaw.com

Stanley J. Murphy, Esquire
Murphy & Murphy, L.L.C.
Attorneys at Law
P.O. Box 3160
Tuscaloosa, AL 35403-3163
(205) 349-1444
murphyandmurphy@bellsouth.net

Richard Frankowski, Esquire
The Frankowski Firm, L.L.C.
231 22nd Street South, Suite 203
Birmingham, AL 35233
(205) 390-0399
richard@frankowskifirm.com

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Respectfully submitted,

/s/ William T. Johnson, III

William T. Johnson III

Counsel of Record

Jeffrey C. Kirby, Esquire

Kirby Johnson, P.C.

1 Independence Plaza Drive, Suite 520

Birmingham, AL 35209
(205) 458-3553
bjohnson@kirbyjohnsonlaw.com

Stanley J. Murphy, Esquire
Murphy & Murphy, L.L.C.
Attorneys at Law
P.O. Box 316
Tuscaloosa, AL 35403-3163
(205) 394-1444
murphyandmurphy@bellsouth.net

Richard Frankowski, Esquire
The Frankowski Firm, L.L.C.
231 22nd Street South, Suite 203
Birmingham, AL 35233
(205) 390-0399

App. 1a

8.10.2018 *Certificate of Judgment and Notice of Overruling of Application for
Rehearing, Cooper v. Haq*, Ala. Sup. Ct. (1160569)

IN THE SUPREME COURT OF ALABAMA



August 10, 2018

1160569 Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v. Ehtsham Haq, M.D. (Appeal from Morgan Circuit Court: CV-16-900415)

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on August 10, 2018:

Application Overruled. No Opinion. Bolin, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

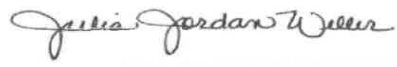
WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on May 11, 2018:

Affirmed. No Opinion. Bolin, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 10th day of August, 2018.

A handwritten signature in cursive script, reading "Julia Jordan Miller". The signature is written in dark ink on a light background.

Clerk, Supreme Court of Alabama

App. 1b

8.10.2018 *Certificate of Judgment and Notice of Overruling of Application for Rehearing, Cooper v. Javaid*, Ala. Sup. Ct. (1161066)

IN THE SUPREME COURT OF ALABAMA



August 10, 2018

1161066 Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v. Amjed Javaid, M.D. (Appeal from Morgan Circuit Court: CV-16-900415)

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on August 10, 2018:

Application Overruled. No Opinion. Bolin, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

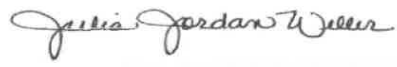
WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on May 11, 2018:

Affirmed. No Opinion. Bolin, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 10th day of August, 2018.

A handwritten signature in cursive script, reading "Julia Jordan Miller". The signature is written in dark ink on a light background.

Clerk, Supreme Court of Alabama

App. 2

2.28.2017 *Order* (and *Amended Order* of 3.23.2017) granting Respondent Dr. Haq's summary-judgment motion, *Cooper v. Haq*, Circuit Court of Morgan County, 52-CV-2016-900415

DOCUMENT 382

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA

REBEKA COOPER, as)
Personal Representative)
of the Estate of Jason)
Cooper, deceased,)

PLAINTIFF)

VS.)

CASE NO. CV 2016-
900415

DECATUR MORGAN)
HOSPITAL, et al.,)

DEFENDANTS)

ORDER

One of the Defendants, Ehtsham Haq, M.D. (“Dr. Haq”), filed a Motion to Dismiss that came before the Court for a hearing on January 26, 2017. Appended to his Motion were two exhibits. The Plaintiff, Rebekah Cooper (“Cooper”), filed a response captioned “Plaintiff’s Brief and Evidentiary Materials in Opposition to Dr. Ehtsham Haq’s Motion for Summary Judgment.” Pursuant to Rule 12(b), *Alabama Rules of Civil Procedure*, the Court will treat Dr. Haq’s Motion to Dismiss as a Motion for Summary Judgment since neither party has objected to the other’s presentation of matters outside the pleadings, and both parties have argued facts that go beyond the allegations set forth in Cooper’s Complaint, as amended.

The material facts are not disputed and are substantially reflected by the following chronology:

| | |
|---------------------|--|
| September 10, 2014: | Jason Cooper died while admitted as a psychiatric patient at Decatur Morgan Hospital. |
| June 8, 2016: | Cooper filed a lawsuit in the United States District Court against Decatur Morgan Hospital, other named corporate defendants, a Dr. Mahaffey and a Mr. Whitaker (an employee of the Hospital). |
| September 10, 2016: | The two year period for filing a wrongful death action in Alabama expired. |

| | |
|---------------------|---|
| September 12, 2016: | Having dismissed Cooper's federal statutory claim, the United States District Court dismissed her remaining state law claims without prejudice. |
| September 16, 2016: | Cooper refilled in this Court her state law claims against the original defendants named in the dismissed federal court lawsuit. |
| October 11, 2016: | Cooper filed her First Amended Complaint in this court to add Dr. Haq as a defendant to her wrongful death claim based on medical negligence or wantonness. |

Dr. Haq's argument is that the two year deadline for wrongful death claims expired before Cooper filed her Complaint in this Court on September 16, 2016 and before she added Dr. Haq for the first time as a party defendant in her First Amended Complaint that was filed on October 11, 2016. Cooper contends, on the other hand, that her claim against Dr. Haq was timely filed and is not barred because (1) she filed her original state court Complaint within the 30-day tolling period provided by 28 U.S.C. §1367(d); (2) she filed her First Amended Complaint within the six-month discovery period provided by the Alabama Medical Liability Act in § 6-5-482 (a), Ala. Code. 1975; and (c) the claims filed in her First Amended Complaint relate back to the filing of her original state court Complaint pursuant to Rules 9(h) and 15(c)(4), *Alabama Rules of Civil Procedure*. For the reasons discussed below, the Court concludes that Dr. Haq's Motion for Summary Judgment is due to granted and that Cooper's wrongful death claim against Dr. Haq is due to be dismissed as a matter of law.

I.

When Cooper filed her Complaint in the United States District Court in June 2016, she did not name Dr. Haq as a party defendant. She also did not specify any fictitious defendants, as that practice is not provided for in the Federal Rules of Civil Procedure. Cooper asserted state law wrongful death claims based on medical negligence and wantonness against all of the federal court defendants except Whitaker.

United States District Courts acquire pendant or supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. IF a federal District Court dismisses federal claims over which it has original jurisdiction, then it may decline to exercise supplemental jurisdiction and may dismiss the pendant state court claims. Subsection 1367(d) provides that the "period of limitations for any claim asserted under subsection (a) ...shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

In *Rester v. McWane, Inc.*, 962 So.2d 183 (Ala. 2007), our Supreme Court construed § 1367(d) as providing the 30-day tolling period only when the state claims refilled in the state court are the same state claims that the plaintiff asserted in the federal court. Because the plaintiff's state claims asserted in his federal complaint were "wholly distinct" from the state claims he later brought in the state court, the Supreme Court held in *Rester* that the statute of limitations for his later filed state claims was not tolled by § 1367(d) and these claims were barred.

In her original complaint and First Amended Complaint filed in this Court, Cooper asserted wrongful death claims based on medical negligence or wantonness that are virtually identical, except for the addition of Dr. Haq, the same claims she filed in the federal District Court. For this reason the Court does not find *Rester v. McWane* to be controlling precedent. The question here is whether the § 1367(d) tolling provision applies to a refilled state claim asserted against a newly added defendant in the state court who was not named as a defendant in the federal District Court case.

This issue received recent attention from the New Mexico Court of Appeals in *Williams v. Mann*, 2016 WL 6081847 (New Mexico Ct. App. 2016). In that case Williams brought federal and state law claims in federal District Court against one defendant other than Mann. Williams then voluntarily dismissed those claims. Williams either amended a pending state court action or filed a new state court case in which she reasserted her original state law claim, but with Mann added as a new defendant. The state trial court dismissed the claim against Mann because the applicable statute of limitations had expired before the claim was filed. Williams argued on appeal that the statute of limitations had been tolled by § 1367(d). The New Mexico Court of Appeals affirmed the trial court's ruling, however, stating: "Because Defendant Mann was not named as a defendant in Plaintiff's federal action, the federal district court did not exert supplemental jurisdiction over that claim under 28 U.S.C. § 1367(a). It follows that the statute of limitations on that claim as to Defendant Mann was not tolled under 28 U.S.C. § 1367(d)."

The arguments presented by Cooper on this issue are valid and supportive of her refilled state claims against the defendants named in the federal District Court action. There is no question that those claims receive the benefit of the § 1367(d) tolling period because they were timely refilled in this Court with the applicable 30 days after the District Court entered its order of dismissal. Cooper's arguments disregard, however, the more fundamental problem that Dr. Haq was not one of the named defendants in the federal District Court case. No authority is provided for Cooper's proposition that her medical negligence and wantonness claims against Dr. Haq should receive the same § 1367(d) tolling benefit as her similar claims against

the other defendants even though Dr. Haq was an “unknown” during the brief pendency of the federal court action.

While the *Williams v. Mann* ruling may be short on discussion and rationale, it makes sense and is persuasive. Because Dr. Haq was not named as one of the defendants in the federal court action, the District Court did not acquire supplemental jurisdiction over Cooper’s eventual wrongful death claim against him. The tolling provision of § 1367(d) applies only to claims over which the federal court exerts supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). The Court concludes, therefore, that the two-year period for Cooper to file a wrongful death claim was not tolled by § 1367(d) as to Dr. Haq.

II.

Cooper argues that her claim against Dr. Haq is not barred because it was timely filed within the six month discovery period provided by § 6-5-482(a), Ala. Code, 1975. Section 6-5-482 is the statute of limitations that applies to a medical malpractice claim. Cooper’s claim against Dr. Haq is for the wrongful death of the decedent, Jason Cooper, based on alleged medical negligence or wantonness. In a wrongful death case alleging medical malpractice, § 6-5-482 does not apply. Rather, the two year period for commencing a wrongful death action, as provided in § 6-5-410(d), Ala. Code, 1975, applies to Cooper’s claim against Dr. Haq. *McMickens v. Waldrop*, 406 So.2d 867 (Ala. 1981); *Johnson ex rel. Estate of Darnell v. Brookwood Medical Center*, 946 So.2d 849 (Ala. 2006). This time limitation is part of the substantive cause of action for wrongful death and is not subject to state law tolling provisions that are intended to temporarily suspend the running of a statute of limitations. *Cofer v. Ensor*, 473 So.2d 984 (Ala. 1985); *Ex Parte FMC Corp.*, 599 So.2d 592 (Ala. 1992).

Cooper had two years from Jason Cooper’s death on September 10, 2014 within which to file her wrongful death claim against Dr. Haq. She did not file her original Complaint in this Court until September 16, 2016. By that time her wrongful death claim against Dr. Haq had expired. As a matter of law, Cooper’s wrongful death claim against Dr. Haq is barred by § 6-5-410(d).

III.

Cooper’s final argument in opposition to Dr. Haq’s Motion for Summary Judgment is that her wrongful death claim was timely filed because it relates back to the date of the filing of her original Complaint in this Court pursuant to Rules 9(h) and 15(c)(4) of the *Alabama Rules of Civil Procedure*. This argument works for Cooper only if she filed her original Complaint in this Court before the two years for commencing a wrongful death action expired.

As noted above, it is undisputed that she filed the original Complaint in this Court six days after the two year deadline for commencing a wrongful death action pursuant to § 6-6-410. That deadline was not extended by 28 U.S.C. § 1367(d) or any other statutory or rule-created tolling provision. The Court recognizes that Cooper and her attorneys used diligent efforts to identify all necessary defendants and did not learn of the medical services provided by Dr. Haq until after the two years for commencing a wrongful death action had expired. However, the amendment that added Dr. Haq could relate back only to the date when the original Complaint was filed in this Court. By that time the wrongful death claim was barred by § 6-5-410(d) as a matter of law.

It is, therefore, ORDERED AND ADJUDGED by the Court that Dr. Haq's Motion for Summary Judgment is granted. Cooper's wrongful death claim in this case against Dr. Haq is dismissed with prejudice. This summary judgment does not affect Cooper's claims against the remaining defendants.

Copies of this Order shall be sent to the attorneys of record.

DONE this 28th day of February, 2017.

/s/ STEVEN E. HADDOCK
CIRCUIT JUDGE

DOCUMENT 403

IN THE CIRCUIT COURT OF MORGAN OCUNTY, ALABAMA

REBEKAH COOPER,)
)
)
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)
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V.)
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)
)
)
DECATUR MORGAN)
HOPITAL, et al.,)
)
)
)
DEFENDANTS.)

CASE NO. CV
2016-900415

AMENDMENT TO ORDER

Having considered the Plaintiff's Motion for Entry of Rule 54(b) Final Judgment and Order, the Court finds that on February 28, 2017 it entered an Order granting the Motion for Summary Judgment filed by one of the Defendants, Ehtsham Haq, M.D. ("Dr. Haq"), and dismissing the Plaintiff's wrongful death claims against Dr. Haq with prejudice. That Order did not affect the Plaintiff's claims against remaining Defendants.

The Court is satisfied that its February 28, 2017 Order in favor of Dr. Haq was intended to be a final adjudication and disposition of the Plaintiff's claims against him in this case and hereby expressly finds that there is no just reason for delay in making that Order a final judgment.

It is, therefore, **ORDERED AND ADJUDGED** by the Court pursuant to Rule 54(b), *Alabama Rules of Civil Procedure*, that its February 28, 2017 Order is amended by this rendition of a final judgment in favor of the Defendant, Ehtsham Haq, M.D., and against the Plaintiff, Rebekah Cooper, whereby her claims against said Defendant in this case are dismissed with prejudice. The Plaintiff may proceed with her claims against the remaining Defendants.

Copies of this Amendment to Order shall be sent to the attorneys of record.

DONE this 23rd day of March, 2017.

/s/ STEVEN E. HADDOCK
CIRCUIT JUDGE

App. 3

8.11.2017 *Order* granting Respondent Dr. Javaid's summary-judgment motion,
Cooper v. Haq, Circuit Court of Morgan County, 52-CV-2016-900415

DOCUMENT 455

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA

| | | |
|-------------------|---|-------------------|
| REBEKA COOPER, |) | |
| |) | |
| PLAINTIFF, |) | |
| |) | |
| VS. |) | CASE NO. CV 2016- |
| |) | 900415 |
| DECATUR MORGAN |) | |
| HOSPITAL, et al., |) | |
| |) | |
| DEFENDANTS. |) | |

ORDER

On August 10, 2017 the Court held a hearing on the Motion for Summary Judgment filed by the Defendant, Amjed Javaid, M.D. ("Dr. Javaid"). Before the hearing the Court reviewed Dr. Javaid's Motion for Summary Judgment, the pertinent pleadings and prior Orders filed in this case, Dr. Javaid's evidentiary submissions and Memorandum Brief and the brief and evidentiary materials filed in opposition by the Plaintiff, Rebekah Cooper ("Cooper"). The essence of Dr. Javaid's argument in support of his Motion is that Cooper's wrongful death claim against him is time barred by the two-year limitation period set forth in § 6-5-410(d), Ala.Code, 1975.

The Court addressed this same issue in its February 28, 2017 Order in this case (Document 382) that granted the Motion for Summary Judgment filed by another Defendant, Ehtsham Haq, M.D. ("Dr. Haq"). In that Order the Court concluded that Cooper's wrongful death claim against Dr. Haq was barred as a matter of law by § 6-5-410(d), Code. The February 28, 2017 Order is currently on appeal before the Supreme Court of Alabama.

Although a different defendant, Dr. Javaid, brings the Motion for Summary Judgment currently before the Court, it appears that the underlying material facts, legal grounds and arguments submitted in support of and in opposition to Dr. Javaid's Motion are substantially the same as the material facts, legal grounds and arguments that were submitted earlier regarding Dr. Haq's Motion for Summary Judgment. After due consideration the Court finds that there are no genuine issues of material disputed fact, that the two-year limitation for filing a wrongful death claim under § 6-5-410, Code was not tolled or extended or any of the grounds asserted by Cooper and that Cooper's wrongful death claim against Dr. Javaid is time barred as a matter of law.

Accordingly, it is **ORDERED AND ADJUDGED** by the Court as follows:

1. Dr. Javaid's Motion for Summary Judgment is granted.
2. A judgment is hereby rendered against Cooper and in favor of Dr. Javaid whereby Cooper's wrongful death claim against him is dismissed with prejudice.
3. The entry of this Order does not affect Cooper's claims against the remaining Defendants.
4. This Order is intended to be a final adjudication and disposition of Cooper's claims against Dr. Javaid in this case pursuant to Rule 54(b), *Alabama Rules of Civil Procedure*. The Court expressly finds that there is no just reason for delay and hereby directs that this Order shall be entered as a final judgment. The entry of this Order as a final judgment is particularly appropriate since the Court's findings, legal conclusions and rulings in this Order are virtually identical to those set forth in its February 28, 2017 Order, which is presently on appeal before the Supreme Court of Alabama, that granted Dr. Haq's Motion for Summary Judgment in this case.

Copies of this Judgment shall be sent to the attorneys of record and any pro se parties.

DONE this 11th day of August, 2017

/s/ STEVEN E. HADDOCK
CIRCUIT JUDGE

App. 4

12.27.2017 *Order* of Ala. Sup. Ct. consolidating appellate matters *Cooper v. Haq*
(1160569) and *Cooper v. Javaid* (1161066)



IN THE SUPREME COURT OF ALABAMA

December 27, 2017

1160569

Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v.
Ehtsham Haq, M.D. (Appeal from Morgan Circuit Court: CV-16-900415).

1161066

Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v. Amjed
Javaid, M.D. (Appeal from Morgan Circuit Court: CV-16-900415).

ORDER

IT IS ORDERED that the above-styled cases are hereby CONSOLIDATED for the purposes of submission, briefing, and oral argument, if oral argument is requested and granted.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 27th Day of December, 2017.

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

cc:

Steven Ellis Haddock
Morgan County Circuit Clerk's Office
William T. Johnson, III
Jeffrey C. Kirby
Mark W. Lee
Reid Carpenter

Laura H. Peck

App. 5

5.11.2018 *Decision* of Ala. Sup. Ct. of affirmed (no opinion) in appellate matters
Cooper v. Haq (1160569) and *Cooper v. Javaid* (1161066)

Rel: May 11, 2018

STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 2017-2018

1160569

Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v.
Ehtsham Haq, M.D.

and

1161066

Rebekah Cooper, as administrator of the Estate of Jason Cooper, deceased v. Amjed
Javaid, M.D.

(Appeals from MORGAN CIRCUIT COURT: CV-16-900415)

BOLIN, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a) (1) and (a) (2) ®, Ala. R. App. P.

Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

App. 6

9.12.2016 *Order Dismissing Plaintiff's Case Without Prejudice, Cooper v. Decatur Morgan Hospital et al.*, U.S. District Court, Northern District of Alabama, 5:16-CV-956-AKK

DOCUMENT 232

Case 5:16-cv-00956-AKK
Filed 09/12/16

Document 28
Page 1 of 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

REBEKAH COOPER, as)
Administrator of the)
ESTATE OF JASON)
COOPER, deceased,)
)
Plaintiff,) Civil Action Number
) 5:16-cv-956-AKK
vs.)
)
DECATUR MORGAN)
HOSPITAL, et al.,)

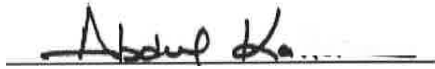
Defendants.

ORDER

The court has for consideration Defendants' motion to dismiss the plaintiff's Section 504 claim under the Rehabilitation Act. Doc. 9. Based on a review of the complaint, the case law, and the parties' briefs, the court agrees with Defendants that Jason Cooper is not an "otherwise qualified" individual because he would not have needed the medical services but for his medical condition, and was not denied medical services because of his medical condition. *See, e.g., Liebe v. Norton*, 157 f.3d 574, 577 (8TH Cir. 1998) ("[O]nce one is classified as a suicide risk, the right to be protected from that risk would seem to fall under the ambit of the right to have medical needs addressed."); docs. 25 at 8-9; 27 at 3. Moreover, the Rehabilitation Act is not a "remedy for medical malpractice," *see Jones v. Rutherford*, 546 F. App'x 808, 811 (11th Cir. 2013), and "like the ADA, was never Intended to apply to decisions involving . . . medical treatment," *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289 (11th Cir. 2005); *see also Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996). Accordingly, the motion to dismiss Count I is **GRANTED**.

In light of the dismissal of the Section 504 claim, because federal courts are courts of limited jurisdiction and no claims arising under federal law remain and there is no basis for diversity jurisdiction, the court declines to exercise jurisdiction over the remaining state law claims. These claims are **DISMISSED WITHOUT PREJUDICE**.

DONE the 12th day of September, 2016.

A handwritten signature in black ink, appearing to read "Abdul K.", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE

ABDUL K. KALLON

App. 7:

Title 28 U.S.C. § 1367, subparagraphs (a) and (d) is the United States statute involved.

28 U.S.C.A. § 1367

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on [section 1332](#) of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under [Rule 14](#), [19](#), [20](#), or [24 of the Federal Rules of Civil Procedure](#), or over claims by persons proposed to be joined as plaintiffs under

Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of [section 1332](#).

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any

other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

App. 8:

January 31, 2018 letter to Ms. Julia Jordan Weller, Clerk of the Supreme Court of
Alabama

January 31, 2018

Ms. Julia Jordan Weller, Clerk
Supreme Court of Alabama
300 Dexter Avenue
Montgomery, AL 36104

Estate of Cooper v. Ehtsam Haq, M.D.
Case Number 1160569
Appeal From the Circuit Court of Morgan County
CV-2016-900415

and

Estate of Cooper v. Amjad Javaid, M.D.
Case Number 1161066
Appeal From the Circuit Court of Morgan County
CV-2016-900415

Dear Ms. Weller:

Pursuant to the orders from the Alabama Supreme Court dated January 25 and signed by you, and pursuant to Rule 28B of the Alabama Rules of Appellate Procedure, Ms. Cooper, the plaintiff-appellant in the above-styled appeals, submits to the Court that the case of *Artis v. District of Columbia*, 2018 WL 491524, decided by the U.S. Supreme Court on January 22, controls the outcome of both appeals, warrants a reversal of the trial court's judgments in both cases, and requires a remand of both cases to the trial court.

The discussion contained in this letter applies to the sections called "Argument 1" in Ms. Cooper's initial briefs in both appeals. In *Artis*, the U.S. Supreme Court held that 28 U.S.C. § 1367 "stops the clock" on the limitations periods for state-law claims when they are included in a federal discrimination lawsuit. The Court explained, "Congress ordered tolling of the state limitations period 'while the claim is pending' in federal court." *Id.* at *9. *Artis* applies to the facts of both *Cooper v. Haq* and *Cooper v. Javaid*. *Artis* means that Ms. Cooper's original state court complaint and her *First Amended Complaint* were timely because the limitations period for her wrongful-death claims against both Dr. Haq and Dr. Javid were tolled by § 1367. Under *Artis*, the two-year limitations period was tolled while it was pending in federal court as part of Ms. Cooper's ADA and § 504 claims and for 30 more days after Judge Kallon dismissed the federal and state-court claims.

This means that, under *Artis*, Ms. Cooper's deadline for re-filing her wrongful-death claims against both Dr. Haq and Dr. Javaid did not expire until 122 days after the dismissal of the federal court lawsuit.

Here is how Ms. Cooper arrives at this conclusion. Mr. Cooper died on September 10, 2014. Ms. Cooper had until September 10, 2016, to file her wrongful-death claims. She filed her case in federal court on June 8, 2016. When she filed her federal discrimination claims and her state law wrongful-death claims together, Ms. Cooper "stopped the clock" for the limitations periods for her wrongful-death eventual claims against Dr. Javaid and Dr. Haq. As of June 8, 2016, Ms. Cooper had 92 days left in the original two-year wrongful-death limitations period that started on September 10, 2014 and expired on September 10, 2016. When the district court dismissed the case on September 12, 2016, Ms. Cooper gained another 30 days in which to re-file her lawsuit in state court.¹

When the district court dismissed Ms. Cooper's entire case, the clock on her wrongful-death limitations period began ticking again and her remaining 122 days began to diminish. As of September 12, 2016, which was the date the district court dismissed Ms. Cooper's entire lawsuit, and, with the 92-day balance of the wrongful death limitations period remaining, Ms. Cooper would have had until January 14, 2017, to file her lawsuit against Dr. Haq and Dr. Javaid. With the additional 30 days conferred by § 1367, Ms. Cooper would have had until February 14, 2017, to sue Dr. Haq and Dr. Javaid.

Because it is undisputed that Ms. Cooper filed her *First Amended Complaint* against Dr. Haq and Dr. Javaid in October 2016, which was well before January or February 2017, this Court, based on *Artis*, ought to reverse the trial court, hold that Ms. Cooper's claims against Dr. Haq and Dr. Javaid were timely, and remand the case so that Ms. Cooper may proceed with her claims against Dr. Haq and Dr. Javaid. Even without the remaining 92 days, Ms. Cooper's limitations period for her wrongful-death claims was tolled by 30 days under *Artis*. The federal district court dismissed Ms. Cooper's claim on September 12, 2016. Ms. Cooper filed her *First Amended Complaint* against both Dr. Haq and Dr. Javaid on October 11, 2016, which was within 30 days conferred by § 1367. For this additional reason, this Court ought to reverse the trial court, hold that Ms. Cooper's claims against Dr. Haq and Dr. Javaid were timely, and remand the case so that Ms. Cooper may proceed with her claims against Dr. Haq and Dr. Javaid.

Thank you for your attention.

Sincerely,

Kirby Johnson, P.C.

¹ 6.8.2016 to 9.10.2016 is 92 days, and 30 days plus 92 days equals 122 days.

William T. Johnson III, Esquire

CC: All Counsel of Record