

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 24-01622**

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, SMITH, AND GREENWOOD, JJ.

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JOHN HAGERTY, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL J. KLEIN, M.D., ET AL., DEFENDANTS,  
AND TRAVIS L. BOAZ, M.D., DEFENDANT-RESPONDENT.

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RICHARD P. VALENTINE, ESQ., P.C., BUFFALO (RICHARD P. VALENTINE OF  
COUNSEL), FOR PLAINTIFF-APPELLANT.

SUGARMAN LAW FIRM, LLP, BUFFALO (BRIAN SUTTER OF COUNSEL), FOR  
DEFENDANT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Emilio Colaiacovo, J.), entered August 15, 2024, in a medical malpractice action. The order granted the motion of defendant Travis L. Boaz, M.D., to dismiss the complaint against him.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff timely commenced this action against a number of defendants by filing a summons and complaint in May 2022. Plaintiff's injuries as alleged in the complaint stemmed from purported medical malpractice commencing in November 2019. The complaint named Travis L. Boaz, M.D. as a defendant and alleged a distinct cause of action against only Boaz. Plaintiff timely served the other named defendants in August and September 2022, but he did not serve Boaz until March 2024. On Boaz's motion, Supreme Court dismissed the complaint against him based on the untimely service (*see generally* CPLR 306-b). Plaintiff appeals, and we affirm.

Contrary to plaintiff's contention, the relation back doctrine does not apply to the circumstances of this case. The relation back doctrine pertains to "claims against a party mistakenly omitted from the initial filing and then added after the expiration of the limitations period" and has the specific effect of "treat[ing] [the claims] as interposed when the action was timely commenced against the originally named [defendants]" (*Matter of Nemeth v K-Tooling*, 40 NY3d 405, 407 [2023]). Thus, the relation back doctrine "enables a plaintiff to correct a pleading error—by adding either a new claim or a new party—after the statutory limitations period has expired" (*Buran v Coupal*, 87 NY2d 173, 177 [1995]). Here, however, given that Boaz was correctly named in the original complaint in an action that was

timely commenced against him, plaintiff is not seeking to correct a pleading error. Instead, plaintiff is attempting to cure an omission of service as required under CPLR 306-b, and the relation back doctrine is thus inapplicable.