

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

ROBIN WILLIAMS

CIVIL ACTION

VERSUS

No. 18-3239

PRENTISS SMITH, ET AL.

SECTION: "J"(2)

**ORDER**

Before the Court is the Defendants' joint *Motion to Dismiss* (**Rec. Doc. 33**). Plaintiff opposes the Motion. (Rec. Doc. 37). Considering the Motion, the memoranda, the record, and the law, the Court finds the Motion should be **GRANTED**.

Defendants argue that dismissal is appropriate because the Defendant has failed to properly effect service, the Court lacks subject matter jurisdiction, the claims are frivolous, and Plaintiff's claims have prescribed. (Rec. Doc. 33-1 at 2-5). Although, Plaintiff was given the opportunity to file an amended complaint (Rec. Doc. 30), Defendants argue this failed to cure these problems. The Court agrees.

First, Plaintiff originally brought this case pursuant to this Court's diversity jurisdiction. 28 U.S.C. § 1332. Diversity jurisdiction requires that the parties be "citizens of different States." *Id.* Plaintiff does not contest that the parties in this case are all citizens of Louisiana. However, in his opposition, Plaintiff suggests this Court has jurisdiction because it involves a federal question. 29 U.S.C. § 1331. No issue of federal law is obvious from Plaintiff's complaints, and the Court fails to divine one.

In any case, Plaintiff fails to rebut the Defendants' assertion that Plaintiff's claims—which appear to be for medical malpractice—have prescribed. According to


La. R.S. 9:5628, a medical malpractice claim may be brought “not more than three (3) years from the alleged act of malpractice,” at the latest. *Campo v. Correa*, 828 So.2d 502, 514 (La. 6/21/02). Plaintiff’s alleged injuries occurred almost 25 years ago. Plaintiff has brought claims well outside the actionable period, and Plaintiff has given no reason why any equitable principle, such as tolling, should be applied.

Accordingly,

**IT IS HEREBY ORDERED** that the Motion is **GRANTED**. Because amendment would be futile, Plaintiff’s claims shall be **DISMISSED with prejudice**.

**IT IS FURTHER ORDERED** that the *Motion to Dismiss Party (Rec. Doc. 10)* and the *Motion to Dismiss for Failure to State a Claim (Rec. Doc. 12)* are **DENIED as moot**.

New Orleans, Louisiana, this 25th day of January, 2019.

  
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CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE