

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF GASTON

FILED

23-CVS-2375

2025 AUG 28 P 12:35

CHARLIE MOSLEY, a.k.a. PRISHA  
MOSLEY, a.k.a. ABIGAIL MOSLEY,

GASTON CO., C.S.C.

Plaintiff,

Vs.

ORDER ON MOTION TO  
RECONSIDER

ERIC T. EMERSON, M.D.; PIEDMONT  
PLASTIC SURGERY AND DERMATOLOGY,  
P. A.; BRIE KLEIN-FOWLER; FAMILY  
SOLUTIONS, PLLC; SHANA GORDON;  
TREE OF LIFE COUNSELING, PLLC;  
MARTHA FAIRBANKS PERRY, M. D.;  
THE MOSES CONE MEMORIAL HOSPITAL  
OPERATING CORPORATION D/B/A  
CONE HEALTH,

Defendants.

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This matter came on for hearing before Robert. C. Ervin, Superior Court Judge, presiding over the August 15, 2025 special session of Civil Superior Court in Gaston County on the Plaintiff's Motion To Reconsider May 7, 2024 Order Dismissing Medical Malpractice Claims. When the matter was called for hearing, both the plaintiff and the defendants were represented by their

counsel of record. The Court heard arguments from counsel and reviewed the plaintiff's motion and the submissions of the parties on this issue.

In the May 7, 2024 order, this Court dismissed certain claims, including the plaintiff's claims for Medical Malpractice and Negligent Infliction of Emotional Distress. In the May 7, 2024 order, this Court denied motions to dismiss claims for Fraud, Facilitation of Fraud and Conspiracy to commit Fraud. The Court notes, that pursuant to the provisions of Rule 54(b) of the North Carolina Rules of Civil Procedure, "any order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all claims and the rights and liabilities of all the parties." A trial court can "amend, modify or rescind it at any time prior to final judgment." *Hamilton v. Hamilton*, 36 N. C. App. 755, 759, 245 S. E. 2d 399 (1978). It appears that the decision of the court whether to amend, modify or rescind an earlier order is a matter left to the exercise of the court's discretion. *Skidmore v. Austin*, 261 N. C. 713, 715, 136 S. E. 2d 99 (1964). Rule 54 of the Federal Rules of Civil Procedure contains a similarly worded provision. The federal courts have recognized that trial courts have discretion in ruling upon such requests. See *Phoenix v. Amonette*, 95 F. 4th 852 (4th Cir. 2024) (discretion afforded to trial court by Rule 54(b)); *Lin v. District of Columbia*, 47 F.4th 828 (D. C. Cir. 2022) (exercise of discretion reviewed on an abuse of discretion standard); *Carlson v. Boston Scientific Corp*, 856 F. 3d 320 (2017) (Court retains discretion to revise order.) In other contexts, North Carolina's appellate courts have affirmed a trial court's exercise of its discretion in cases where proposed amendments would have injected a new legal theory into a case after a vast amount of discovery had been conducted or when the amendment would significantly alter the legal issues presented in the case. See *Brown v. N. C. Division of Motor Vehicles*, 155 N. C. App. 436, 573 S. E. 2d 246 (2002); *Freese v. Smith*, 110 N. C. App. 28, 428 S. E. 2d 841 (1993).

It is hereby ordered, in the exercise of the Court's discretion, that the plaintiff's Motion to Reconsider May 7, 2024 Order Dismissing Medical Malpractice Claims is denied.

This the 28<sup>th</sup> day of August 2025.



Robert C. Ervin

Superior Court Judge

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF GASTON

FILED

SUPERIOR COURT DIVISION

23-CVS-2375

2025 AUG 28 P 12:36

CHARLIE MOSLEY, a.k.a. PRISHA  
MOSLEY, a.k.a. ABIGAIL MOSLEY,

GASTON CO., C.S.C.

BY \_\_\_\_\_

Plaintiff,

Vs.

JUDGMENT

ERIC T. EMERSON, M.D.; PIEDMONT  
PLASTIC SURGERY AND DERMATOLOGY,  
P. A.; BRIE KLEIN-FOWLER; FAMILY  
SOLUTIONS, PLLC; SHANA GORDON;  
TREE OF LIFE COUNSELING, PLLC;  
MARTHA FAIRBANKS PERRY, M. D.;  
THE MOSES CONE MEMORIAL HOSPITAL  
OPERATING CORPORATION D/B/A  
CONE HEALTH,

Defendants.

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This matter came on for hearing before Robert C. Ervin, Superior Court Judge, presiding over the August 15, 2025 special session of Civil Superior Court in Gaston County on the following motions:

Defendants Eric T. Emerson, M. D. and Piedmont Plastic Surgery and Dermatology, P. A.'s Joint Motion for Summary Judgment;

Defendant Brie Klein-Fowler's Motion for Summary Judgment;

Defendant Family Solutions, PLLC's Motion for Summary Judgment;

Defendants Shana Gordon and Tree of Life Counseling, PLLC's Motion for Summary Judgment; and

Motion for Summary Judgment of Defendants Martha Fairbanks Perry, M. D. and The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Cone Health.

When these matters were called for hearing, both the plaintiff and the defendants were represented by their counsel of record. The Court heard arguments from counsel for all of the parties and reviewed the defendants' motions and the memoranda of law and submissions of all of the parties on these motions.

The Court concludes with respect to all of the motions listed above that there are no genuine issues of material fact in this case and that all of the defendants are entitled to judgment as a matter of law.

It is hereby ordered, adjudged and decreed that:

1. Defendants Eric T. Emerson, M. D. and Piedmont Plastic Surgery and Dermatology, P. A.'s Joint Motion for Summary Judgment is granted and the plaintiff's claims against these defendants are dismissed with prejudice;
2. Defendant Brie Klein-Fowler's Motion for Summary Judgment is granted and the plaintiff's claims against this defendant are dismissed with prejudice;
3. Defendant Family Solutions, PLLC's Motion for Summary Judgment is granted and the plaintiff's claims against this defendant are dismissed with prejudice;
4. Defendants Shana Gordon and Tree of Life Counseling, PLLC's Motion for Summary Judgment is granted and the plaintiff's claims against these defendants are dismissed with prejudice; and
5. The Motion for Summary Judgment of Defendants Martha Fairbanks Perry, M. D. and The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Cone Health is granted and the plaintiff's claims against these defendants are dismissed with prejudice.

This the 28<sup>th</sup> day of August 2025.

A handwritten signature in black ink, appearing to read 'R. Ervin', written over a horizontal line.

Robert C. Ervin

Superior Court Judge