

NOTICE
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2016 IL App (5th) 150268-U

NO. 5-15-0268

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

LARRY G. YOUNG, Administrator of the Estate of Molly Young,)	Appeal from the
)	Circuit Court of
)	Jackson County.
Plaintiff-Appellant,)	
)	
v.)	No. 14-L-70
)	
RICHARD L. MINTON,)	Honorable
)	W. Charles Grace,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed the plaintiff's wrongful death action because it was untimely filed.

¶ 2 The plaintiff, Larry G. Young, administrator of the estate of Molly Young, brought a wrongful death action against the defendant, Richard L. Minton, 27 months after Molly died from a gunshot wound. The circuit court dismissed the action as untimely. On appeal, the plaintiff argues that the circuit court improperly dismissed his action because he did not know Molly's death was wrongfully caused when she died and because the

defendant fraudulently concealed his involvement in Molly's death. We affirm the circuit court's dismissal.

¶ 3

BACKGROUND

¶ 4 Molly Young died in the early morning hours of March 24, 2012. Molly died in the defendant's apartment after she was shot in the head by the defendant's 0.45-caliber pistol. Twenty-seven months later, on June 30, 2014, the plaintiff filed a wrongful death complaint against the defendant. In the complaint, the plaintiff alleged that the defendant "caused or contributed to [Molly's] death by shooting [her] and[/]or providing the gun to [her] that was used in [her] shooting death." The plaintiff alleged that "on January 31, 2013, at the [c]oroner's [i]nquest, plaintiff first realized that the [d]efendant was or could have caused the death of Molly Young." The plaintiff alleged that the defendant fraudulently concealed Molly's death in that he called Molly to his apartment for the sole purpose of committing a wrongful act, and after the shooting, he wiped the 0.45-caliber weapon clear of fingerprints, waited three to four hours to call authorities, refused to give a statement, and hired an attorney. The plaintiff further alleged that the defendant stated to authorities during the 9-1-1 call that Molly had overdosed on drugs and was bleeding from her nose, despite the fact that she had a gunshot wound to the head. The plaintiff also alleged that the defendant placed a pill bottle near Molly's body and that Molly had no gunpowder residue on her hand.

¶ 5 On August 11, 2014, the defendant filed a motion to dismiss the plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (the Code). 735 ILCS 5/2-619 (West 2014). In the motion, the defendant asserted that the plaintiff's

wrongful death claim was barred by the two-year statute of limitations. In response to the defendant's motion to dismiss, the plaintiff asserted that the defendant's fraudulent concealment of his conduct, including waiting three to four hours after Molly's death to contact the authorities, showering, and washing his clothes, tolled the statute of limitations.

¶ 6 On May 8, 2015, the circuit court entered its order dismissing the plaintiff's complaint. In its order, the circuit court noted that the plaintiff was aware at Molly's death that Molly died in the defendant's apartment as a result of a gunshot wound to the head from the defendant's pistol and that the defendant was the only other person present. The circuit court acknowledged the plaintiff's allegations that the defendant's actions, *i.e.*, wiping the gun to eliminate fingerprints, taking a shower and washing his clothes, waiting three to four hours to have his roommate call authorities, refusing to speak to authorities, hiring counsel, indicating that Molly had overdosed and was bleeding from the nose, and placing a pill bottle near Molly's body, amounted to fraudulent concealment. The court found that even if the acts attributed by the plaintiff to the defendant were true, the acts were not intended to deceive the plaintiff so that he would miss the statute of limitations. Moreover, the court concluded that even if the plaintiff's fraudulent concealment allegations were found sufficient, there remained 14 months on the limitations provision on January 31, 2013, the date of the inquest when the plaintiff allegedly discovered the fraudulent concealment, and the remaining time was sufficient to pursue the timely filing of a cause of action.

¶ 7 Further, the court found that the plaintiff had all the information that was necessary to proceed with civil litigation against the defendant soon after Molly's death. The court concluded that because the limitations provision under the Wrongful Death Act (740 ILCS 180/2 (West 2014)) was a condition precedent and because the discovery rule exceptions as applied to wrongful death actions were narrow, the two-year statute began to run when the plaintiff acquired the information concerning Molly's death in late March 2012. The court held that Molly's death was a sudden, traumatic event, and the plaintiff's action was required to be filed within two years of March 2012. Accordingly, the circuit court granted the defendant's motion to dismiss.

¶ 8 On May 29, 2015, the plaintiff filed a motion to reconsider. In his motion to reconsider, the plaintiff asserted that the circuit court erred in dismissing his action because it was actually an April 1, 2014, letter from the City of Carbondale, stating that further investigation was warranted, that led plaintiff to believe that there was a cause of action against the defendant. On June 9, 2015, the circuit court denied the motion to reconsider. On July 6, 2015, the plaintiff filed his timely notice of appeal.

¶ 9 ANALYSIS

¶ 10 A defendant is entitled to a dismissal if the plaintiff's action was not commenced within the time limited by law. 735 ILCS 5/2-619(a)(5) (West 2014). We review *de novo* the trial court's order granting a motion to dismiss. *Moon v. Rhode*, 2016 IL 119572, ¶ 15; *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Under the *de novo* standard, our review is independent of the trial court's

determination; we need not defer to the trial court's judgment or reasoning. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶ 11 "The Wrongful Death Act permits a recovery for the death of an individual by wrongful act, neglect, or default, where none existed at common law." *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 360 (1995). "[T]he Act is viewed, traditionally, as creating the cause of action, which must be brought in the name of the representative, for the pecuniary losses which a surviving spouse and next of kin may have sustained by reason of the death of the injured person." *Id.* "The purpose of the Act is to provide such compensation." *Id.* " 'The statute alone is the source of the right to sue,' and 'the act should be strictly construed.' " *Id.* (quoting *Wilson v. Tromly*, 404 Ill. 307, 310 (1949)). "Construction of the Act, however, should not be so technical as to defeat the intention of the Act or the beneficial results thereof when all material provisions have been complied with." *Id.*

¶ 12 Section 2 of the Wrongful Death Act states that a wrongful death action shall be commenced within two years after the death of the decedent. 740 ILCS 180/2 (West 2014). "In the case of a limitations period in a statute, such as the [Wrongful Death] Act, which creates a substantive right unknown to the common law and in which time is made an inherent element of the right, such a time period is more than an ordinary statute of limitations: it is a condition of the liability itself and not of the remedy alone." *Pasquale*, 166 Ill. 2d at 366-67. Thus, the requirement that a plaintiff file his action within two years is a condition precedent to the filing of a wrongful death action and may extinguish the cause of action itself. *Id.* at 367.

¶ 13 Notwithstanding that the limitations period for bringing a wrongful death action has been regarded historically as a condition precedent (*id.*), the discovery rule, which postpones the commencement of the relevant statute of limitations until an injured party knows or reasonably should know that he has been injured and that his injury was wrongfully caused (*Golla v. General Motors Corp.*, 167 Ill. 2d 353, 361 (1995)), has been applied by Illinois courts to wrongful death actions under certain circumstances. See *e.g. Moon*, 2016 IL 119572, ¶ 33 (limitations period for wrongful death actions predicated on medical malpractice begins to run when the plaintiff knows or should have known not only of the death but that it was wrongfully caused); *Arndt v. Resurrection Hospital*, 163 Ill. App. 3d 209, 213 (1987) (in a wrongful death case predicated on medical malpractice, the plaintiff has two years after the discovery that the death was wrongfully caused in which to file her action); *Hale v. Murphy*, 157 Ill. App. 3d 531, 536 (1987) (same); *Coleman v. Hinsdale Emergency Medical Corp.*, 108 Ill. App. 3d 525, 529 (1982) (same); *Fure v. Sherman Hospital*, 64 Ill. App. 3d 259, 269-70 (1978) (same); see also *Praznik v. Sport Aero, Inc.*, 42 Ill. App. 3d 330, 337 (1976) (cause of action for wrongful death of aircraft occupants did not accrue until wreckage of aircraft was discovered).

¶ 14 "The term 'wrongfully caused' does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." *Moon*, 2016 IL 119572, ¶ 43. "Instead, the term refers to that point in time when 'the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved.'" *Id.*

(quoting *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416 (1981)); see also *Beetle v. Wal-Mart Associates, Inc.*, 326 Ill. App. 3d 528, 536 (2001).

¶ 15 "[W]here an individual's injuries are caused by a sudden traumatic event, the cause of action accrues[,] and the statute of limitations begins to run when the injury occurred." *Beetle*, 326 Ill. App. 3d at 537. "A traumatic injury is one in which the damage is caused by external violence or in which the injury is immediate and caused by an external force." *Id.* "In contrast, where the injury is an aggravation of a physical problem that may naturally develop, absent negligent causes, neither its existence nor potential wrongful cause may immediately be known." *Id.* "In the latter situation, it is considered unfair to bar a negligently injured individual's cause of action before he has a chance to discover that it exists." *Id.* The classification of an injury as traumatic aids in the determination of when the plaintiff discovered, or should have discovered, that the injury was caused by the defendant's wrongful conduct. *Pszenny v. General Electric Co.*, 132 Ill. App. 3d 964, 966 (1985).

¶ 16 The plaintiff brought suit on June 30, 2014, three months beyond the two-year statute of limitations. Assuming, for the sake of argument, that the discovery rule applies to a wrongful death action such as this one, the plaintiff became possessed of sufficient information concerning the injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct was involved on March 24, 2012. See *Moon*, 2016 IL 119572, ¶ 43. On that date, Molly died in the defendant's apartment after she was shot in the head by the defendant's pistol. Molly's injury was not the aggravation of a physical problem that may naturally develop absent negligent causes. Rather, the injury was

immediate and caused by an external force. As such, the injury qualified as the type of "sudden traumatic event" from which the limitations period began to run. Accordingly, at the time of Molly's death, the plaintiff discovered, or should have discovered, that the injury was caused by wrongful conduct. See *Beetle*, 326 Ill. App. 3d at 537 (discovery rule did not preserve widow's cause of action against store and construction contractor for wrongful death of her husband who fell while working on store roof and died later the same day).

¶ 17 The plaintiff argues that although he knew an injury had occurred when Molly died on March 24, 2012, he did not know that the injury was wrongfully caused. However, the circuit court correctly held that the plaintiff either knew or reasonably should have known on March 24, 2012, not only that an injury had occurred, but also that the injury was wrongfully caused. The plaintiff knew that Molly died from a traumatic event, either by her own hand, using the defendant's gun, as alleged by the plaintiff, or by the defendant's hand, as alternatively alleged by the plaintiff. The coroner's inquest and the subsequent letter from the Carbondale police department may have added evidence of the defendant's role, but the plaintiff should have known that Molly's death was wrongfully caused on March 24, 2012. See *Cramsey v. Knoblock*, 191 Ill. App. 3d 756, 763 (1989) (deposition statement may add evidence of negligence, but plaintiff should have known of the failure to diagnose and treat from facts which existed prior to deposition statement).

¶ 18 The plaintiff further argues that the defendant's fraudulent concealment extended the wrongful death limitations period from two years from death (740 ILCS 180/2 (West

2014)) to five years from discovery of the cause of action (735 ILCS 5/13-215 (West 2014)).

¶ 19 Section 13-215 of the Code provides:

"If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2014).

The concealment contemplated in section 13-215 must consist of affirmative acts or representations designed to prevent discovery of the cause of action or to lull or induce a claimant into delaying the filing of his claim. *Smith v. Cook County Hospital*, 164 Ill. App. 3d 857, 862 (1987). "Mere silence on the part of the defendant and failure by the claimant to learn of the cause of action are not enough." *Id.* "Moreover, fraudulent misrepresentations which constitute the basis of the claim do not amount to fraudulent concealment unless these actions tended to conceal the cause of action." *Id.* "Finally, this exception does not apply when the party affected by the fraud might, with ordinary diligence, have discovered it." *Id.*

¶ 20 If the plaintiff discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period, section 13-215 of the Code will not apply to lengthen the limitations period. *Id.*; see also *Morris v. Margulis*, 197 Ill. 2d 28, 38 (2001); *Anderson v. Wagner*, 79 Ill. 2d 295, 322 (1979); *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 258-59 (1998);

Turner v. Nama, 294 Ill. App. 3d 19, 27 (1997); *Serafin v. Seith*, 284 Ill. App. 3d 577, 590 (1996). "This rule is logical because once a party discovers the fraud, it is no longer concealed, and if time remains within which to file the action, section 13-215 cannot operate to toll the limitations period." *Muskat v. Sternberg*, 211 Ill. App. 3d 1052, 1061 (1991). "Illinois courts have found that discovery of a claim with as little as five and a half months remaining within the statute of limitations period constitutes a reasonable time within which to file a medical malpractice claim under section 13-215." *Smith*, 164 Ill. App. 3d at 862.

¶ 21 In the present case, the plaintiff alleged in his complaint "[t]hat on January 31, 2013, at the [c]oroner's [i]nquest, plaintiff first realized that the [d]efendant was or could have caused" Molly's death. At that time, the plaintiff had approximately 14 months until March 24, 2014, to file suit before the limitations period elapsed. Even assuming the defendant acted so as to fraudulently conceal the cause of action, the plaintiff had ample time to file his complaint within the limitations period. See *Turner*, 294 Ill. App. 3d at 28 (eight months, as a matter of law, was ample time to file action); *Real v. Kim*, 112 Ill. App. 3d 427, 435-36 (1983) (as a matter of law, a 10-month period of time was sufficient to file suit); *Sabath v. Mansfield*, 60 Ill. App. 3d 1008, 1015 (1978) (as a matter of law, eight-month period of time was sufficient to file suit). Accordingly, section 13-215 of the Code does not apply to lengthen the limitations period and save the plaintiff's action. See *Barratt*, 296 Ill. App. 3d at 258. Therefore, the circuit court properly dismissed the plaintiff's action as untimely filed.

¶ 22

CONCLUSION

¶ 23 For the reasons stated herein, we affirm the judgment of the circuit court of Jackson County.

¶ 24 Affirmed.