FIRST DIVISION
February 6, 2017

No. 1-15-1547
2017 IL App (1st) 151547-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANET BEDIN, Individually and as Executrix of the Estate of Dolores Bedin, deceased, and ALEXANDER BEDIN,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 12 L 12812
NORTHWESTERN HOSPITAL,	)	
Defendant-Appellee.	)	Honorable Margaret Brennan, Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed claim for abuse of process as barred by the statute of limitations; trial court improperly dismissed claim for IIED as barred by the statute of limitations as to Janet only; to the extent trial court based dismissal on Rule 103(b), issue should be remanded since such dismissal was based in part on violation of statute of limitations.

¶ 2 Plaintiffs Janet Bedin, individually and as executrix of the Estate of Dolores Bedin (decedent), and Alexander Bedin, children of decedent, brought claims against defendant

Northwestern Hospital (Northwestern) for intention infliction of emotional distress (IIED) and abuse of process in connection with Dolores' hospitalization and Northwestern's initiation of a guardianship action during Dolores' hospitalization. Northwestern filed a motion to dismiss based in part on the statute of limitations and a failure to use reasonable diligence in service of process, which was granted by the trial court. Plaintiffs now appeal, arguing that the claims were not barred by the statute of limitations and that a lack of reasonable diligence pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007), was not a valid basis for dismissing plaintiffs' claims. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 Plaintiffs' mother, Dolores, was admitted to Northwestern Hospital on September 1, 2010, complaining of severe vomiting episodes. She was subsequently diagnosed with pancreatic cancer. On September 18, 2010, Dolores was medically cleared to be discharged. On that same date, Janet contacted the Iowa Foundation for Medical Care of Illinois (IFMC-IL), an organization that reviews inpatient services provided to Medicare patients, to challenge Medicare's refusal to pay for any further inpatient services for Dolores. A physician reviewer evaluated the medical records and discharge plan and agreed with the determination that Dolores did not require further inpatient hospitalization. However, Dolores did not leave the hospital.

¶ 5 On September 28, 2010, Northwestern again attempted to arrange for Dolores' discharge. That same day, Dolores executed a power of attorney for health care, appointing Janet as her agent.

¶ 6 On October 22, 2010, Northwestern filed a petition for a temporary guardian, a petition for appointment of guardian for a disabled person, and a petition to invalidate, suspend and/or

revoke the power of attorney (the guardianship action) in Winnebago County (Case Number 2010 P 437). The guardianship action alleged that Dolores refused to make her own medical decisions, but that Janet refused to participate in Dolores' discharge. On October 25, 2010, an emergency hearing was held. The Office of the Public Guardian accepted the case, and a guardian *ad litem* was appointed by the court. The case was continued to November 9, 2010.

¶ 7 On November 9, 2010, the parties reached an agreement. The circuit court's order stated in pertinent part that the "parties having reached an agreement to resolve all issues, and the court being fully informed in the premises, IT IS HEREBY ORDERED:

> (1) Respondent Dolores Bedin will be discharged from Northwestern Memorial Hospital on Friday, November 12, 2010 ***.
>
> (2) Northwestern Memorial Hospital will provide at-home care for Respondent Dolores Bedin for a period of 14 consecutive days following her discharge from the hospital, beginning 11/13/10, said care to supplement any care provided by the Illinois Department of Aging, such that the total care provided by IDA and [Northwestern] is no less than 16 hours per day.
>
> (3) Status on completion of above terms set on 12/2/10 FOR STATUS.
>
> (4) The terms of this order shall not be disclosed to third parties."

¶ 8 Dolores was subsequently discharged from Northwestern on November 12, 2010.

¶ 9 On Friday, November 9, 2012, at approximately 11:20 p.m., plaintiffs' attorney electronically filed a complaint with the circuit court of Cook County. Because Monday was a court holiday, the complaint was file-stamped on Tuesday, November 13, 2012, at 8:50 a.m. The complaint named at least 15 other defendants, including physicians, attorneys, and health care professionals, but none of the defendants were ever served. On December 3, 2012, plaintiffs'

attorney filed a motion to withdraw as counsel. On January 11, 2013, the motion was granted and leave was granted to a new attorney to appear for plaintiffs. Also on January 11, 2013, plaintiffs were granted leave to file an amended complaint. On March 26, 2013, plaintiffs filed a first amended complaint naming only Northwestern as a defendant. On March 29, 2013, all other defendants were dismissed without prejudice. Northwestern was served with the action on April 5, 2013.

¶ 10 Plaintiffs' first amended complaint contained claims for IIED and abuse of process.[1] Plaintiffs alleged with respect to the IIED claim that Northwestern conducted itself in an extreme and outrageous manner that went beyond all possible bounds of decency when it filed petitions in the guardianship action for the purpose of harassing and intimidating plaintiffs and decedent, and made threats "[d]uring the time when Dolores was an in-patient at [Northwestern]." With respect to abuse of process, plaintiffs claimed that they were damaged by Northwestern's conduct, including but not limited to causing Janet to hire a lawyer and hire personal caregivers while Dolores was an in-patient at Northwestern.

¶ 11 On June 7, 2013, Northwestern filed a motion to dismiss pursuant in part to section 2-619(a)(5) (735 ILCS 5/2-619(a)(5) (West 2012)) of the Code of Civil Procedure (Code), arguing that the statute of limitations had expired, or alternatively, plaintiffs failed to properly serve defendant in a reasonable amount of time pursuant to Illinois Supreme Court Rule 103(b) (eff. July 1, 2007). Northwestern argued that the statute of limitations for both abuse of process and IIED was two years, and because an agreed order was entered in the guardianship action on November 9, 2010, the filing of plaintiffs' original complaint on November 13, 2012, violated the statute of limitations.

[1] We note that there is no reference to the Survival Act (755 ILCS 5/27-6 (West 2012)) in plaintiffs' first amended complaint.

¶ 12 On August 21, 2013, plaintiffs filed a response to Northwestern's motion to dismiss their first amended complaint. It claimed that the abuse of process continued after November 9, 2010, to December 2, 2010, which was the final status date of the guardianship action, and thus the statute of limitations for abuse of process did not begin to run until December 2, 2010. Plaintiffs made no argument for the statute of limitations regarding IIED. Plaintiffs claimed that "[d]uring the time [p]laintiffs pepared the [first amended complaint], Janet was out of the country on business and Alexander was hospitalized, each for a considerable amount of time, during which they could not participate in preparing the [first amended complaint]." Plaintiffs contended that they filed the first amended complaint on March 26, 2013, and immediately served Northwestern.

¶ 13 On September 6, 2013, plaintiffs filed a motion for relief pursuant to Illinois Supreme Court Rule 191(b) (eff. Jan. 4, 2013), alleging that the trial court could deny Northwestern's motion to dismiss where, as here, material facts needed to rebut the motion to dismiss were "known only to" Northwestern. Plaintiffs alleged that Northwestern knew the identities of knowledgeable persons who participated in the alleged conduct that formed the basis of their IIED and abuse of process claims, the content of oral and written communications between Northwestern personnel referring to the alleged conduct, documents and testimony demonstrating that Northwestern knew and understood the positions articulated in the guardianship action were false, and the dates on which Northwestern committed the alleged act.

¶ 14 The motion for relief was accompanied by Janet's affidavit, which claimed that Northwestern personnel threatened her on the day her mother was discharged from the hospital, November 12, 2010, and leading up to the final court date in the guardianship action on December 2, 2010.

¶ 15 On September 11, 2013, Northwestern filed a reply in support of its motion to dismiss.

¶ 16 On October 7, 2013, the trial court issued an order allowing plaintiffs to conduct written discovery related to the statute of limitations. Northwestern's motion to dismiss was entered and continued.

¶ 17 On November 5, 2014, a hearing was held on Northwestern's motion to dismiss. The trial court found that because there was an agreed order entered on November 9, 2010, in the guardianship action, the statute of limitations began to run at that time. The trial court noted that at the time the complaint was filed, it had to be filed by 4:30 p.m. on the date of statute of limitations period expired, or else it would be file-stamped the next business day. Accordingly, the trial court found that the filing of this complaint after business hours on November 9, 2012, resulting in a file-stamped complaint on November 13, 2012, was after the statute of limitations period expired. The trial court also noted that a Rule 103(b) motion should be looked at more carefully in a case where the statute of limitations period had expired, which happened in this case. The trial court further stated that it was "deeply troubled" by plaintiffs' attempt to collaterally attack the guardianship proceeding, and that every single argument raised by plaintiffs "[was] based on [the] belief that the guardianship was improperly brought by Northwestern Memorial Hospital." The court dismissed plaintiffs' case with prejudice. Plaintiffs now appeal.

¶ 18 ANALYSIS

¶ 19 On appeal, plaintiffs allege that the trial court erred in concluding that the statute of limitations had expired at the time this action was filed, and that Northwestern was served in time to avoid a dismissal under Illinois Supreme Court Rule 103(b) (eff. July 1, 2007). Northwestern responds that the statute of limitations period for both causes of action began

running as of the date of the agreement between the parties, and because two years had passed between the date of that agreement and the filing of the complaint in this case, the statute of limitations expired. Northwestern alternatively maintains that it was not properly served pursuant to Rule 103(b).

¶ 20 Statute of Limitations

¶ 21 Plaintiffs first allege that the trial court erred when it found that the statute of limitations for both claims had expired at the time this action was filed. When a defendant makes a motion to dismiss a plaintiff's complaint based on the statute of limitations under section 2-619, all well-pleaded facts and reasonable inferences are accepted as true for the purpose of the motion. *Hermitage Corp. v. Contractors Adjustment Co*., 166 Ill. 2d 72, 84-85 (1995). A section 2-619 motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action. *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206 (2000). We review the dismissal of a complaint pursuant to section 2-619 *de novo*. *Doe v. McKay*, 183 Ill. 2d 272, 274 (1998). Here, there is no dispute that the statute of limitations for both IIED and abuse of process is two years. See 735 ILCS 5/13-202 (West 2012). The question then becomes when the statute of limitations period for each claim began to run.

¶ 22 Generally, a limitations period begins to run when facts exist that authorize one party to maintain an action against another. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003). "However, under the 'continuing tort' or 'continuing violation' rule, 'where a tort involves a continuing or repeated injury, the limitations period does not begin to run until the date of the last injury or the date the tortious acts cease.' " *Id.* (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc*., 199 Ill. 2d 325, 345 (2002)).

¶ 23 Here, plaintiffs' claim for abuse of process was based entirely on grievances that arose as a result of the underlying guardianship action. Specifically, plaintiffs alleged in their first amended complaint that they were damaged when Northwestern "filed the [p]etitions" in the guardianship action because the initiation of that action caused Janet to hire a lawyer, incur attorney fees, and hire personal caregivers while Dolores was an in-patient at Northwestern to help protect Dolores. In *Withall v. Capitol Federal Savings of America*, 155 Ill. App. 3d 537, 544 (1987), this court specifically found that in a suit where the only "process" alleged by the plaintiff was the institution of the lawsuit by the defendant, the "last act that could have given rise to the cause of action occurred no later than *** the date on which [the defendant] filed its amended complaint." Similarly here, since the only "process" alleged by plaintiffs was the initiation of the guardianship action, the last act that could have given rise to the cause of action occurred no later than the filing of the petitions in the guardianship action, which occurred on October 22, 2010. Accordingly here, the last date on which plaintiffs could have filed their action for abuse of process was October 22, 2012, and therefore the count alleging abuse of process was properly dismissed by the trial court.

¶ 24 Moreover, even if the statute of limitations had not expired, we would find that plaintiffs failed to state a claim for abuse of process. 735 ILCS 5/2-615 (West 2012). In order to state a claim for abuse of process, the pleadings must allege the existence of an ulterior purpose or motive and some act in the use of legal process not proper in the regular prosecution of the proceeding. *Reed v. Doctors' Associates*, 355 Ill. App. 3d 865, 875 (2005). The mere institution of proceedings, even with a malicious intent or motive, does not alone constitute abuse of process. *Id.* "The test is whether process has been used to accomplish some end which is beyond the purview of the process or which compels the party against whom it is used to do

some collateral thing that he could not legally and regularly be compelled to do. In other words, the defendant must have intended to use the action to accomplish some result that could not be accomplished through the suit itself." *Id.* "The *only* elements necessary to plead a cause of action for abuse of process are: (1) the existence of an ulterior purpose or motive and (2) some act in the use of legal process not proper in the regular prosecution of the proceedings." *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2004). In order to satisfy the first element, a plaintiff must plead facts that show the defendant instituted proceedings against him for an improper purpose, "such as extortion, intimidation, or embarrassment." *Id.* In order to satisfy the second element, the plaintiff must show that the process was used to accomplish some result that is beyond the purview of the process. *Id.*

¶ 25 We note that plaintiffs did not allege or implicate any court-issued process, only the institution of legal proceedings, which has been held to be insufficient to support an abuse of process claim. See *Holiday Magic, Inc. v. Scott*, 4 Ill. App. 3d 962, 966. In *Holiday Magic*, the court defined "process" as "any means used by the court to acquire or to exercise its jurisdiction over a person or over specific property." *Id.* at 967. The court found that the mere filing of pleadings was not "process" because pleadings are created and filed by the litigants, whereas "process" is issued by the court. *Id.* at 968.

¶ 26 It therefore seems to us that plaintiffs have failed to state a claim for abuse of process since their allegations relate to the initiation of the guardianship action, and have no relation to the court's process. *Id.* at 968. Accordingly, we find that the while the trial court properly dismissed the abuse of process claim pursuant to section 2-619(a)(5) for violating the statute of limitations, it could also have dismissed it pursuant to 2-615 for failure to state a claim.

¶ 27 Plaintiffs' IIED claim is not as clear. Plaintiffs alleged as part of their IIED claim in their first amended complaint that Northwestern made threats to plaintiffs while Dolores was a patient at the hospital. However, plaintiffs allege in their brief on appeal that, "as pleaded in the First Amended Complaint, [Northwestern's] outrageous conduct continued outside the hospital ***." However, the record cite for this argument takes us to Janet's affidavit that was attached to plaintiffs' motion for further relief, filed in September 2013, in response to Northwestern's motion to dismiss. In that affidavit, Janet claims that Northwestern made additional threats to her on the date of her mother's discharge, as well as at the final hearing in the guardianship case. While these allegations were not part of the first amended complaint, once a defendant raises a statute of limitations issue in a motion to dismiss, "the plaintiff must provide enough facts to avoid the application of the statute of limitations." *Clay v. Kuhl*, 297 Ill. App. 3d 15, (1998). Here, plaintiffs filed Janet's affidavit after Northwestern's motion to dismiss, as part of their motion for additional relief. Because all well-pleaded facts and reasonable inferences from the pleadings must be accepted as true for purposes of a motion to dismiss, the trial court was obligated to accept that threats to Janet were made on the date of discharge, and to Janet on December 2, 2010. *Id.*

¶ 28 Accordingly, taking these allegations as true, we find that a question of fact remains as to when the statute of limitations accrued for Janet's IIED claim, which should be resolved by the trial court. Janet's claim regarding the date of discharge was stated in her affidavit as follows:

> "On November 12, 2010, [Northwestern] made threats, if I spoke to anyone about the facts in this case, saying they would send me a medical bill for over half a million dollars, ruin me professionally, prevent me from ever seeing my mother again, and take Alexander away without telling my mother and I where he was

> going. [Northwestern] also stated that it would also attempt [to] take away my power of attorney, and have a public guardian appointed to make decisions for my mother."

¶ 29 There is no mention of any threats to Alexander on the date of discharge. Accordingly, we find that the trial court correctly dismissed Alexander's IIED claim, as the statute of limitations had expired by the time this suit was file. We are additionally troubled by the lack of documentation in the record proving Janet's power of attorney to bring claims on Alexander's behalf. Alexander is listed as a plaintiff, but the verification of certification of the complaint is signed by Janet as Alexander's power of attorney.

¶ 30 We also affirm the dismissal of the IIED claim as to Dolores' estate. As noted in the facts of this case that there was no reference to the Survival Act in plaintiffs' first amended complaint. The Survival Act does not create a statutory cause of action. *Turcios v. DeBruler Co*., 2015 IL 117962, ¶ 17. It merely allows a representative of the decedent to maintain those statutory or common-law actions that had already accrued to the decedent before she died. *Id*. Section 13-209(a) of the Code contains the statute of limitations for such actions and provides that "[i]f a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives: *** an action may be commenced by his or her representative before the expiration of that time, or within one year from his or her death whichever date is later." 735 ILCS 5/13-209(a) (West 2012).[2] For purposes of triggering the statutory limitations period, it is the date the deceased learns of her injury that is controlling. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 42 (1996). Here, as discussed above, there are simply no facts in the first amended complaint or Janet's affidavit that indicate threats were made

[2] Plaintiffs made no argument in the trial court that Dolores' death tolled the statute of limitations, and thus this argument would be forfeited on review. See *Tully v. McLean*, 409 Ill. App. 3d 659, 664 (2017).

to Dolores, or that Dolores learned of her injury, after the date of the agreed order in the guardianship action. Accordingly, we find that the statute of limitations began to run at that time at the very latest, and that it had expired when the complaint was filed in this case.

¶ 31 Moreover, also in regards to Dolores' estate, we have concerns about whether plaintiffs properly stated a claim for IIED. 735 ILCS 5/2-615 (West 2012). In order to establish a claim for IIED, a "plaintiff must plead facts which indicate: (1) that the defendant's conduct was extreme and outrageous; (2) that the defendant knew that there was a high probability that his conduct would cause severe emotional distress; and (3) that the conduct in fact caused severe emotional distress." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 20 (1992). A complaint for IIED must be " 'specific, and detailed beyond what is normally considered permissible in pleading a tort action.' " *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 43 (quoting *McCaskill v. Baker*, 92 Ill. App. 3d 157, 158 (1980)). Here, the first amended complaint is vague as to what conduct exactly caused Dolores' alleged emotional distress, who exactly conducted the complained-of acts, and when exactly Dolores learned of this conduct or when she indicated to Janet that she was suffering from emotional distress. While we accept all well-pleaded facts and all reasonable inferences that can be drawn from those facts when reviewing the sufficiency of a complaint, Illinois is a fact-pleading state and therefore conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted. See *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 767 (2007). We find that the lack of specific facts in the first amended complaint pertaining to the alleged IIED suffered by Dolores would be a sufficient basis upon which to dismiss the claim.

¶ 32 We therefore reverse only as to Janet's IIED claim, and remand for further proceedings. See *Cangemi v. South Suburban Hospital*, 364 Ill. App. 3d 446, 456 (2006) (quoting *Illinois*

Graphics Co. v. Nickum, 159 Ill. 2d 469, 494 (1994) ("The question on review of a motion to dismiss pursuant to section 2-619 is 'whether there is a genuine issue of material fact and whether defendant is entitled to judgment as a matter of law.' ")

¶ 33 Rule 103(b)

¶ 34 We briefly address the trial court's findings with respect to Rule 103(b). It is not clear from the trial court's order whether Rule 103(b) formed a basis for its dismissal. The trial court stated that the statute of limitations had expired on plaintiffs' claims against Northwestern, which meant "that in reviewing this matter on a [Rule] 103(b) that the case law is clear that it has to be looked at much more stringently when you're looking at something where the [s]tatute of [l]imitations has expired and then the failure to serve." The trial court then stated that it had heard no argument as to why the complaint was not timely field on November 13, 2012, and was not served on Northwestern. It went on to state:

> "In fact, it was not until the [a]mended [c]omplaint was filed that that [summons] was filed. There's no case law that supports the filing of a case and scurrying around to figure out what case you should have filed. I haven't seen any. I would be surprised if there were any, that that was a new tact of our jurisprudence. The fact is that's why we have Supreme Court Rule 137. That's why you make your due investigation prior [to] filing your [c]omplaint and setting forth your basis to go forward. So that addresses the issue of the [Rule] 103(b) and the [s]tatute of [l]imitations."

¶ 35 In the event that this language from the trial court indicates that Rule 103(b) formed a basis for the trial court's dismissal, we find that such basis would have been improper. Rule 103(b) states the following:

> "(b) Dismissal for Lack of Diligence. If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice. If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct. The dismissal may be on the application of any party or on the court's own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances ***." Ill. S. Ct. R. 103(b) (eff. July 1, 2007).

¶ 36 Our supreme court has noted that Rule 103(b) "does not state a specific time limitation within which a defendant must be served." *Segal v. Sacco*, 136 Ill. 2d 283 (1990). "The rule 'has an essential purpose in promoting the expeditious handing of suits by giving trial courts wide discretion to dismiss when service is not effected with reasonable diligence.' " *Id*. (quoting *Karpiel v. LaSalle National Bank*, 119 Ill. App. 2d 157, 161 (1970)). "The plaintiff has the burden of showing reasonable diligence in service of process." *Id*.

¶ 37 "The purpose of Rule 103(b) is to protect defendants from unnecessary delay in the service of process on them and to prevent the circumvention of the statute of limitations." *Silverberg v. Haji*, 2015 IL App (1st) 141321, ¶ 31. " 'Statutes of limitations, like other statutes, must be construed in the light of their objectives. The basic policy of such statutes is to afford a defendant fair opportunity to investigate the circumstances upon which liability against him is predicated while the facts are still accessible.' " *Segal*, 136 Ill. 2d at 286 (quoting *Geneva*

Construction Co. v. Martin Transfer & Storage Co., 4 Ill. 2d 273, 289-90 (1954)). Our supreme court has stated that, "[i]t has long been noted that '[p]revention of intentional delay in the service of summons which would postpone service for an indefinite time after a statutory period of limitations has run, was a primary reason for the passage of Supreme Court Rule 103(b) and its predecessors.' " *Id*. (quoting *Karpiel*, 119 Ill. App. 2d at 160).

¶ 38 "The public policy of Illinois favors determining controversies according to the substantive rights of the parties," and therefore "courts have held that rule 103(b) is not to be used merely to clear a crowded docket." *McCormack v. Leons*, 261 Ill. App. 3d 293, 295 (1994). If a plaintiff made a reasonable effort to locate a defendant during the months between filing the complaint and service of summons, a dismissal order would not be proper. *Id*.

¶ 39 Our supreme court set forth a list of factors for the court to consider when determining whether to allow or deny a Rule 103(b) motion to dismiss: (1) the length of time used to obtain service of process; (2) the activities of the plaintiff; (3) the plaintiff's knowledge of the defendant's location; (4) the ease with which defendant's whereabouts could have been ascertained; (5) the defendant's actual knowledge of the pendency of the action; (6) special circumstances that would affect the plaintiff's efforts; and (7) actual service on the defendant. *Segal*, 136 Ill. 2d at 287.

¶ 40 A trial court's ruling on a motion to dismiss pursuant to Rule 103(b) will not be disturbed absent a showing of an abuse of discretion, *i.e.*, where that ruling is " 'so arbitrary, fanciful, or unreasonable that no reasonable person would take the view it adopted.' " *Christian v. Lincoln Automotive Co*., 403 Ill. App. 3d 1038, 1044 (2010) (quoting *People v. Lisle*, 376 Ill. App. 3d 67, 78 (2007)). "All factors must be considered in light of the purpose of Rule 103(b)." *Brezinski v. Vohra*, 258 Ill. App. 3d 702, 704 (1994).

¶ 41 In the case at bar, because the trial court reviewed the Rule 103(b) violation claim in light of the expiration of the statute of limitations on November 10, 2012, which we have concluded may have been in error, we remand this case for further proceedings. However, we note that if the trial court finds that the statute of limitations expired on November 13, 2012, or December 2, 2012, plaintiffs' complaint would be timely, but there would still be a delay in service as Northwestern was not served until April 5, 2013, approximately 19 weeks later.

¶ 42 As stated above, none of the defendants were served when the original complaint was filed. We do not know why this was the case. However, on December 3, 2012, plaintiffs' attorney filed a motion to withdraw as counsel. On January 11, 2013, the trial court granted that motion and also granted leave to a new attorney to appear on plaintiffs' behalf. On that same date, the new attorney requested leave to file an amended complaint. Plaintiffs claimed that they were unavailable for extensive periods of time after new counsel appeared, and could not aid in drafting the amended complaint. On March 26, 2013, plaintiffs filed their first amended complaint, naming only Northwestern as a defendant. The trial court dismissed the other defendants on March 29, 2013, and Northwestern was served a week later.

¶ 43 A look at the seminal case on this issue is helpful. In *Segal*, the plaintiff filed a complaint on December 9, 1985. On April 24, 1986, the plaintiff filed a motion to have a special process serve appointed, and the defendants were subsequently served on April 29, 1986, and May 5, 1986. "Nineteen [19] weeks passed between the filing of plaintiff's complaint and placement of the complaint for service with the special process server." *Segal*, 136 Ill. 2d at 284. The defendants filed a motion to dismiss based on Rule 103(b). The plaintiff failed to appear at the hearing on the motion, and the trial court allowed the defendants' motion to dismiss with prejudice. *Id*. at 285.

¶ 44 On appeal, the appellate court reversed the circuit court's order, and the defendants filed a motion for leave to appeal to our supreme court, which was granted. Our supreme court found that an order of dismissal was not justified. It noted that "the reason given by plaintiff for failure to place the summonses for service for 19 weeks after the filing of his complaint was that plaintiff inadvertently forgot to do so. Upon realization of this, plaintiff moved for leave to have a special process server appointed, which was allowed by the circuit court on April 24, 1986." *Id*. at 286. Our supreme court further noted that "this cause arose in Cook County, where it is not uncommon for a trial not to occur until years after the filing of a complaint." *Id*. The court stated that the "inadvertent delay of 19 weeks" did not threaten the circuit court's ability to proceed expeditiously to a just resolution of the matter before it, and it did not continue long after the expiration of the statute of limitations. *Id*.

¶ 45 Our supreme court specifically found:

> "In this case, because the length of the delay in service of process was such that the purpose of Rule 103(b) would not be served by dismissing plaintiff's action, the allowance of defendants' Rule 103(b) motion by the circuit court was an abuse of discretion. It would not be an abuse of discretion for a circuit court to allow a dismissal with prejudice under Rule 103(b) for a delay equal to or shorter than the delay present in this case if the delay occurs under circumstances which serve to deny the defendants a fair opportunity to investigate the circumstances upon which liability against the defendants is predicated while the facts are accessible. [Citation.] Under such circumstances, the purpose of Rule 103(b), the protection of defendants from unnecessary delay and the prevention of the circumvention of the statute of limitations, would be promoted." *Id*. at 289.

¶ 46 We likewise would reach the same conclusion here. Under the circumstances of this case, it appears that after the complaint was filed, nothing happened until a few weeks later when plaintiffs' attorney requested leave to withdraw. It took another month for the trial court to rule on that request and for new counsel to appear. New counsel then filed an amended complaint, naming only Northwestern as a defendant. Northwestern was served within a week of the order dismissing the other defendants from the case. While this time frame was not ideal, we would not find that these circumstances served to deny Northwestern a fair opportunity to investigate the circumstances upon which liability against them is predicated while the facts are accessible. However, this is ultimately a matter for the trial court to decide.

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, we affirm in part and reverse in part the judgment of the circuit court of Cook County, and remand for further proceedings.

¶ 49 Affirmed in part; reversed in part; remanded for further proceedings.