2017 IL App (1st) 162930-U
No. 1-16-2930

THIRD DIVISION
August 9, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPHER TERRAZZINO, on his own Behalf and on the behalf of LISA E. TERRAZZINO,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 16 CH 3863
v.	)	
CITY OF DES PLAINES, an Illinois Municipal Corporation, Michael Bartholomew, City Manager for the City of Des Plaines; and Dorothy Wisniewski, individually and in her capacity as Director of Finance,	)	The Honorable Celia M. Gamrath, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* complaint filed by former police officer seeking health insurance benefits pursuant to the Illinois Public Safety Benefits Act (820 ILCS 320/1 *et seq.* (West 2014)) properly dismissed where the action was not filed within the applicable statute of limitations.

¶ 2 Plaintiff Christopher Terrazzino, a former police officer employed by the City of Des Plaines (City), individually and on behalf of his wife, Lisa Terrazzino, filed a complaint against

the City, Michael Bartholomew, the City's City Manager, and Dorothy Wisniewski, the City's Director of Finance (collectively, defendants) after defendants denied his request for benefits pursuant to the Public Safety Employee Benefits Act (Act or PSEBA) (820 ILCS 320/1 *et seq*. (West 2014)). Defendants subsequently filed a motion to dismiss plaintiff's suit, which the circuit court granted. Plaintiff has appealed the court's ruling. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The following facts have been adduced from the pleadings and accompanying exhibits: Terrazzino commenced employment as a full-time police officer for the City on April 11, 1979. On September 27, 1984, while he was on duty, Terrazzino was called upon to subdue and restrain a violent individual at a McDonald's restaurant. As he attempted to effectuate the restraint, the offender bit Terrazzino's right hand. Terrazzino was subsequently diagnosed and treated for tenosynovitis[1] and an infection of his right index finger. Over the years, however, Terrazzino experienced various complications arising from the injury that he sustained from the 1984 incident. Those complications ultimately led to the amputation of his right index finger in 2000. The amputation affected Terrazzino's physical ability to effectively handle and discharge his police-issued firearm as well as his ability to engage in "hand to hand arrest situations." As a result, following the amputation, Terrazzino filed an application with the City's Police Pension Board (Board) for a line-of-duty disability pension pursuant to section 3-114.1 of the Illinois Pension Code (40 ILCS 5/3-114.1 (West 2014)). A hearing on Terrazzino's application took place, and on April 11, 2000, at the conclusion of that hearing, the Board determined that Terrazzino's disability was "caused by an act of duty as defined in the Pension Code" and

[1] Tenosynovitis is "inflammation of the lining of the sheath that surrounds a tendon (the cord that joins muscle to bone)." https://medlineplus.gov/ency/article/001242.htm (last visited July 12, 2017).

awarded him a "disability pension *** in the amount of 65% of the salary attached to his rank as Officer." Following Terrazzino's pension award, "he had health insurance benefits payable from other sources *** However, in November 2015, his benefits from other sources terminated."

¶ 5 As a result, on December 17, 2015, Terrazzino completed an application for health insurance benefits pursuant to the PSEBA and mailed the application to defendant Wisniewski. The City, however, failed to make health insurance payments.

¶ 6 Accordingly, on March 18, 2016, Terrazzino, individually, and on behalf of his spouse, filed a three-count complaint against defendants. Two of the counts sought a declaratory judgment of Terrazzino's right to insurance benefits under section 10(a) of the PSEBA as a result of the catastrophic injury that he sustained during the course of his tenure as a police officer and a finding that defendants "acted in *ultra vires* in [their] failure to provide benefits." The third count, in contrast, sought an order of *mandamus* compelling defendants to pay the premium for coverage under the City's health insurance plan.

¶ 7 Defendants, in turn, responded with a motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619 (West 2014)). In their motion, defendants argued that dismissal was warranted on two alternative bases. Specifically, defendants argued that plaintiff's claims were barred by the applicable catch-all five-year statute of limitations set forth in 13-205 of the Civil Code (735 ILCS 5/13-205 (West 2014)). In pertinent part, defendants observed that Terrazzino's claim for benefits was based on his "1984 injury which led to his April 11, 2000 line-of-[duty] disability award." However, plaintiff did not file an application for PSEBA benefits until December 15, 2015, and did not file his complaint until March 18, 2016, well after the five-year statute of limitations elapsed. Defendants further argued that notwithstanding "the statute of limitations problem,"

dismissal of the complaint was warranted because Terrazzino's injury was not an injury subject to the PSEBA. In support of this argument, defendants argued that the "PSEBA applies only to injuries that occur 'on or after' the statute's November 14, 1997 effective date." Because Terrazzino's injury occurred in 1984, before the Act was enacted, defendants argued that plaintiff was not entitled to any benefits under the PSEBA.

¶ 8 In response, Terrazzino argued that his injury was an injury subject to the PSEBA. Although he was bitten in 1984, Terrazzino argued that his injury did not become "catastrophic" until 2000 when his right index finger was amputated and when he was awarded his line-of-duty disability pension, which was after the 1997 enactment of the PSEBA. Plaintiff further argued that PSEBA claims are not subject to any statute of limitations period because "the obligation to pay PSEBA benefits to a qualified PSEBA beneficiary does not expire." In pertinent part, plaintiff emphasized that the Act does not, itself, contain a statute of limitations period, and argued that five-year catch-all limitations period set forth in section 13-205 of the Civil Code did not apply because the application of any statute of limitations period would be inconsistent with the purpose of the PSEBA, which is to provide life-time insurance benefits to public service workers who suffer catastrophic injuries rendering them unable to fulfill their duties.

¶ 9 On October 12, 2016, after considering the arguments of the parties, the circuit court issued a written order granting defendants' motion to dismiss plaintiff's complaint. The court explained its rationale as follows:

> "(1) Dismissal is proper pursuant to 735 ILCS 5/2-619(a)(9). [P]laintiff's injury occurred in 1984, prior to the effective date of [the] PSEBA in 1997, and therefore *** plaintiff does not qualify for PSEBA [benefits].

(2) In addition, even assuming the injury became catastrophic in 2000, as plaintiff contends, pursuant to 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/13-205, dismissal is proper because the complaint is time-barred under the five-year statute of limitations. The court adopt[s] the reasoning in *Hancock v. Village of Itasca*, 2016 IL App (2d) 150677 as on point, finding that the five-year statute of limitations applies to mandamus claims *** and that equitable tolling does not apply."

¶ 10 Accordingly, the court dismissed plaintiff's complaint with prejudice. This appeal followed.

¶ 11 ANALYSIS

¶ 12 On appeal, plaintiff argues that the circuit court erred in dismissing his complaint. In doing so, Terrazzino reasserts the arguments he advanced in the circuit court. He contends that the bite that he suffered in 1984 did not become a "catastrophic injury" until 2000, when his finger was amputated and he was awarded a line-of-duty disability pension. Given that the catastrophic injury was sustained after the 1997 effective date of the Act, Terrazzino argues that he is entitled to PSEBA benefits. Plaintiff further argues that claims for PSEBA benefits are not subject to any statute of limitations time period and that his complaint to recover those benefits should not have been dismissed for being untimely.

¶ 13 The purpose of a motion to dismiss pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2014)) is to provide litigants with the means to dispose of issues of law and easily proven issues of fact. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995); *Caywood v. Gossett*, 382 Ill. App. 3d 124, 128-29 (2008). The proponent of a 2-619 motion to dismiss admits the legal sufficiency of the factual allegations contained in the complaint, but asserts that the complaint is barred by an affirmative matter that defeats the claim. *Kedzie and 103rd Currency*

Exchange, Inc. v. Hodge, 156 Ill. 2d 112, 115 (1993); *Caywood*, 382 Ill. App. 3d at 129. Section 2-619(a)(5) of the Code, in pertinent part, provides for the dismissal of a complaint that "was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). When ruling on a 2-619 motion to dismiss, a court will construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *Richter v. Prarie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 18; *In re Parentage of M.J.*, 203 Ill. 2d 526, 533 (2003); *Caywood*, 382 Ill. App. 3d at 128. The circuit court's dismissal of a complaint pursuant to section 2-619 of the Code of Civil Procedure is subject to *de novo* review. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008); *Owens v. VHS Acquisition Subsidiary Number 3, Inc.*, 2017 IL App (1st) 161709, ¶ 19; *Amalgated Transit Union, Local 308 v. Chicago Transit Authority*, 2012 IL App (1st) 112517, ¶ 12. Construction of a statute is similarly subject to *de novo* review. *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 19; *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395 (2003).

¶ 14 The PSEBA was enacted in 1997 (Pub. Act 90-535, § 10 (eff. Nov. 14, 1997)) and its purpose is to continue the provision of employer provided health insurance coverage for public safety employees and their families in the event that an employee is killed or catastrophically injured in the line of duty. *Heelan*, 2015 IL 118170, ¶ 20; *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 16. In order to effectuate that purpose, section 10(a) of the Act provides, in pertinent part, as follows:

> "§ 10. Required health coverage benefits.
>
> (a) An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who *on or after the effective date of this Act suffers a catastrophic injury* or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's

> spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for the support or the child is a fill-time or part-time student and is dependent for support." (Emphasis added.) 820 ILCS 320/10(a) (West 2014).

¶ 15 The term " 'catastrophic injury' is a term of art, and it means an injury that results in the awarding of a line-of-duty disability pension" *Nowak*, 2011 IL 111838, ¶ 12 (citing *Krohe*, 204 Ill. 2d at 398-400); see also *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 26 (emphasizing that a plaintiff cannot establish a catastrophic injury under section 10(a) of the Act simply by showing that he incurred an injury during the course of his employment; rather, the plaintiff "must establish that the injury resulted in a line-of-duty disability pension"); *Heelan*, 2015 IL 118170, ¶ 23 (noting that in construing the term "catastrophic injury," the court has "expressly equated the determination of a catastrophic injury with the award of a line-of-duty disability pension").

¶ 16 Here, there is no dispute that Terrazzino suffered a catastrophic injury that resulted in him being awarded a line-of-duty disability pension. The parties, however, do dispute the timing of Terrazzino's injury and whether the date of the injury rendered him eligible for benefits under the PSEBA. Defendants, in pertinent part, argue that Terrazzino's catastrophic injury occurred in 1984, when he was initially bitten, which was 13 years before the Act's November 14, 1997, effective date. Plaintiff, in contrast, argues that the injury he sustained in 1984 did not become catastrophic until 2000, when his right index finger was amputated and when he was awarded a line-of-duty disability pension by the City's Board. Therefore, plaintiff argues that his catastrophic injury was sustained after the PSEBA went into effect.

¶ 17 Both parties cite *Nowak v. City of Country Club Hills*, 2011 IL 111838 in support of their respective positions. In *Nowak*, our supreme court was called upon to construe the catastrophic injury provision set forth in section 10(a) of the Act in order to determine when a city's obligation to pay PSEBA benefits attaches given that the Act itself was "utterly silent" as to the date on which an employer's payment obligations were triggered. *Nowak*, 2011 IL 111838, ¶ 12. In that case, the plaintiff, a former police officer brought suit against his former city of employ seeking reimbursement of his proportionate share of health insurance premium payments after he sustained an injury in the line of duty. The plaintiff argued that the defendant's obligation was triggered on August 21, 2005, when he suffered an injury while attempting to effectuate an arrest. The defendant city, in turn, argued that its PSEBA payment obligations were not triggered until October 14, 2008, the date on which the plaintiff was awarded a line-of-duty disability pension. Upon review, the supreme court endorsed the city's approach and concluded, "under section 10(a) of the PSEBA, an employer's obligation to pay the entire health insurance premium for an injured officer and his family attaches on the date that it is determined that the officer's injury is 'catastrophic'—that is, on the date it is determined that the injured officer is permanently disabled and therefore eligible for a line-of-duty disability pension." *Id.* ¶ 29. In doing so, the court noted that in many instances, an officer's date of injury could be "difficult, if not impossible, to pin down," because the "condition that renders the officer permanently disabled will result not from a discreet, one-time injury but rather from the accumulation of several prior injuries or the aggravation of a preexisting injury or condition." *Id.* ¶ 21. The court concluded that the approach of tying "PSEBA benefits not to the 'date of injury' but to a declaration that the officer is permanently disabled and therefore eligible for a line-of-duty

disability pension" remained "perfectly workable even in cases" where there is no true date of injury but instead only the onset or aggravation of a disabling condition over time." *Id.* ¶ 22.

¶ 18 Plaintiff argues that pursuant to the framework set forth in *Nowak,* an officer's date of catastrophic injury is based on "the date it is determined that the injured officer is permanently disabled and therefore eligible for a line-of-duty disability pension." Defendants, however, disagree and submit that the *Nowak* decision only addressed the specific question as to the date on which PSEBA benefits attach and not the date on which an officer's injury is sustained. Even if we were to agree with plaintiff's interpretation of the *Nowak* decision and conclude that the date of injury is synonymous with the date on which an employer's obligation under the PSEBA attach, we would still nonetheless conclude that the circuit court properly dismissed plaintiff's complaint because it was not filed within the applicable statute of limitations period.

¶ 19 There is no dispute that the PSEBA does not, itself, provide any specific statute of limitations within its statutory text. Section 13-205 of the Civil Code, however, provides for a "catch-all" five-year statute of limitations for "all civil actions not otherwise provided for." 735 ILCS 5/13-205 (West 2014). Plaintiff, however, submits that the PSEBA creates a "mandate" and "imposes an affirmative duty" on employers to pay the health insurance premiums of employees who sustain catastrophic injuries and argues that the mandate should not be subject to any time statute of limitations period. We find plaintiff's argument unavailing, however, and observe that the Second District has previously held that the five-year statute of limitations period set forth in section 13-205 of the Civil Code applies to claims seeking PSEBA benefits. See *Hancock v. Village of Itasca*, 2016 IL App (2d) 150677, ¶¶ 9, 14.

¶ 20 In *Hancock*, the plaintiff, a former police officer, suffered a gunshot to his right hand in 1992. He received treatment and was ultimately able to return to full duty. Thereafter, the

plaintiff reinjured his right hand during an on-duty motor vehicle accident in 2000 and was found unfit to return to duty. As a result, the plaintiff sought, and obtained, a line-of-duty disability pension. In the pension board's June 13, 2001, decision, the board concluded that the plaintiff's disability related back to the 1992 shooting. The plaintiff subsequently made a request for benefits under the PSEBA in 2003, but the defendant village denied his request. It was not until 2013, however, that the plaintiff filed a declaratory judgment and *mandamus* action against the village seeking PSEBA benefits. The defendant village responded with a motion for summary judgment, which the circuit court granted. On review, the Second District affirmed the circuit court's disposition, finding that the plaintiff's "action was barred by the [five-year] statute of limitations [contained in section 13-205 of the Civil Code] as a matter of law." *Id.* ¶ 14. In doing so, the Second District observed that the plaintiff became entitled to PSEBA benefits in 2001 following his line-of-duty disability pension award, but did not file suit against the village until 2013, which was well-beyond the applicable five-year statute of limitations period. *Id.* ¶ 9.[2]

¶ 21 The facts in this case parallel those in *Hancock*. Like the plaintiff in *Hancock*, Terrazzino sustained an earlier injury, but was able to return to duty for a number of years before he physically became unable to perform his duties and received a line-of-duty disability pension. Both plaintiffs then waited more than five-years after being awarded line-of-duty disability pensions to initiate their declaratory judgment and mandamus actions against their respective employers for PSEBA benefits. In the instant case, Terrazzino's pension was awarded on April 11, 2000, but he did not seek PSEA benefits until December 17, 2015, and did not file his complaint until March 18, 2016. Because plaintiff's action was not timely filed, we conclude

[2] In rendering its decision, the Second District expressly declined to determine whether the plaintiff's 1992 shooting injury that resulted in his 2001 line-of-duty disability pension was a catastrophic injury that occurred on or after the effective date of the PSEBA. *Hancock*, 2016 IL App (2d) 150677, ¶¶ 8-9.

that the circuit court properly dismissed his complaint. *Hancock*, 2016 IL App (2d) 150677, ¶ 14.

¶ 22 In so finding, we decline plaintiff's invitation "to consider the doctrine of equitable tolling." Pursuant to that doctrine, a court may excuse a plaintiff's failure to comply with an applicable statute of limitations period "where 'because of disability, irremediable lack of information, or other circumstances beyond his control,' the plaintiff cannot reasonably be expected to file suit on time." *Williams v. Board of Review*, 241 Ill. 2d 352, 360-61 (2011), (quoting *Miller v. Runyon*, 77 F. 3d 189, 191 (7th Cir. 1996)). The doctrine of equitable tolling is not dependent upon any fault on the part of the defendant; rather, " 'equitable tolling just means that without fault by either party, the plaintiff does not have enough information to sue within the period of limitations.' " *Id*. at 361 (quoting *Tregenza v. Great American Communications Co.*, 12 F. 3d 717, 721 (7th Cir. 1993)). In this case, we cannot agree that plaintiff lacked the requisite information to initiate a timely suit. The fact that Terrazino alleged in his complaint that he continued to receive health insurance benefits from other sources until 2015 did not, as he appears to suggest on appeal, *preclude* him from seeking PSEBA benefits prior to that time. Indeed, the PSEBA actually contemplates such a scenario and specifically provides that any "health insurance benefits payable from any other source shall *reduce* benefits payable under this Section." (Emphasis added.) 820 ILCS 320/10(a)(1) (West 2012). Moreover, we note that although plaintiff alleges in his appellate brief that the City did not have a PSEBA application process until 2015, no such allegation is included in the complaint. Ultimately, upon review, we agree with the circuit court that the doctrine of equitable tolling does not apply to the instant case.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court is affirmed.

¶ 25 Affirmed.