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2017 IL App (3d) 160755-U

Order filed October 5, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

LARRY MALY,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-16-0755
	)	Circuit No. 16-L-544
PRESENCE HOME CARE,	)	
	)	Honorable
Defendant-Appellee.	)	Michael J. Powers,
	)	Judge, presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Schmidt and McDade concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not err in dismissing plaintiff's complaint.
- ¶ 2 Plaintiff, Larry Maly, in case number 15-L-129, brought an action for damages due to injuries he suffered as the result of alleged medical negligence by defendant, Presence Home Care, beginning in March of 2013. On May 26, 2015, plaintiff voluntarily dismissed the action without prejudice. On May 24, 2016, under the same case number, plaintiff filed a motion to reinstate the original complaint. On July 25, 2016, plaintiff filed what was substantially the same

complaint against defendant in this case—case number 16-L-544. Subsequently, plaintiff withdrew his motion to reinstate in case no. 15-L-129. Defendant filed a motion to dismiss the complaint filed in this case, which the trial court granted, with prejudice. Defendant appeals the trial court’s dismissal order, arguing the trial court erred in dismissing the complaint filed in this case (case no. 16-L-544) where he had previously filed a motion to reinstate in case no. 15-L-129 within one year of that action having been voluntarily dismissed. We affirm.

¶ 3

### FACTS

¶ 4

On February 12, 2013, plaintiff was admitted into a medical care facility after suffering a hip fracture. He was discharged on March 4, 2013, at which time he received in home nursing care services from defendant.

¶ 5

On February 25, 2015, plaintiff filed a complaint (case no. 15-L-129) against defendant, in which plaintiff alleged defendant was negligent in providing medical care to him beginning in March of 2013. On May 26, 2015, the parties entered an agreed order for plaintiff to voluntarily dismiss the complaint in case number 15-L-129, without prejudice, pursuant to section 2-1009 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1009 (West 2014) (allowing for a plaintiff to voluntarily dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause). The order indicated “defendant \*\*\* is hereby dismissed, without prejudice and with leave to refile.”

¶ 6

Less than a year later, on May 24, 2016, plaintiff filed a “Motion to Reinstate” in case 15-L-129, indicating that it was his intention “to reinstate his case originally filed against defendant” and requesting that case “No. 15-L-129” be reinstated. On July 25, 2016, plaintiff filed a new complaint, which initiated the case at hand—case number 16-L-544.



which allows a plaintiff who has voluntarily dismissed an action to commence a “new action” within one year of the voluntary dismissal (735 ILCS 5/13-217 (West 1994)), should be liberally construed to allow for the complaint filed in this case to “relate back,” pursuant to section 616(b) of the Code (735 ILCS 5/2- 616(b) (West 2014)), to the date that he filed the motion to reinstate in case number 15-L-129. In response, defendant contends that the trial court properly dismissed plaintiff’s 2016 complaint pursuant to section 2-619(a)(5) of the Code because the new action was not timely filed within the applicable statute of limitations. See 735 ILCS 5/2-619(a)(5) (West 2014) (providing for a dismissal where “the action was not commenced within the time limited by law”).

¶ 12 A section 2-619 motion provides for the involuntary dismissal of a cause of action based on certain defects or defenses. 735 ILCS 5/2-619 (West 2014). In ruling on the motion, the trial court will interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 19. A section 2-619 motion to dismiss presents a question of law, which we review *de novo*. *Id.*

¶ 13 Section 13-217 of the Code allows a plaintiff to commence a “new action” within one year following the voluntary dismissal of a claim, regardless of the expiration of an applicable statutory limitation period. See 735 ILCS 5/13-217 (West 1994). Section 13-217 operates as a “savings statute,” for the purpose of facilitating the disposition of litigation on the merits and to avoid frustration upon grounds unrelated to the merits. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 16.

¶ 14 Specifically, section 13-217 provides:

“[W]hether or not the time limitation for bringing [an] action expires during the pendency of such action, the plaintiff \*\*\* may commence a ‘new action’ within

one year or within the remaining period of limitation, whichever is greater, after \*\*\* the action is voluntarily dismissed by the plaintiff.” 735 ILCS 5/13-217 (West 1994).

¶ 15 Here, plaintiff acknowledges that the one-year limitation period to commence a “new action” following the voluntary dismissal of the original complaint expired on May 26, 2016, and the new complaint was not filed until July 25, 2016. Plaintiff argues, however, that pursuant to section 2-616(b) of the Code (735 ILCS 5/2-616(b) (West 2014)) the complaint filed in this case should be held to “relate back” to the time he filed the motion to reinstate in the previous action (case no. 15-L-129), which had been voluntarily dismissed. Section 2-616(b) allows for a claim or defense asserted in an “amended pleading” to “relate back” to the date of the filing of the original pleading if the limitations period had not expired when the original pleading was filed and the claim or defense asserted in the amended pleading grew out of the same transaction or occurrence as set out in the original pleading. 735 ILCS 5/2-616(b) (West 2014). It is undisputed that the complaint filed in this case alleged the same cause of action as the 2015 complaint filed in case number 15-L-129, with facts that “grew out of the same transaction or occurrence.” However, section 2-616(b) of the Code is not applicable because section 2-616 governs amendments to pleadings and is not applicable to refiled causes of actions. *Mabry*, 2012 IL App (1st) 111464, ¶ 18. Section 2-616 of the Code is only concerned with amendments, whereas refilings are governed by section 13-217 of the Code. *Id.*

¶ 16 The filing of a complaint is considered a “refiling” of a previously filed complaint if it contains the same cause of action as defined by *res judicata* principles. *Mabry*, 2012 IL App (1st) 111464, ¶ 22; *Richter*, 2016 IL 119518, ¶ 21 (the doctrine of *res judicata* provides that a final judgment on the merits bars a subsequent action between the same parties or their privies

involving the same cause of action). Separate claims are considered to be the “same cause of action” for purposes of *res judicata* if the claims arise from a single group of operative facts.

*Mabry*, 2012 IL App (1st) 111464, ¶ 22.

¶ 17 Here, the 2016 complaint filed in this case was governed by section 13-217 of the Code. The 2016 complaint was not an amended pleading subject to the relation back doctrine under section 2-216(b) of the Code but rather a “new action” subject to the statutory time limitation for commencing a new action after having taken a voluntarily dismissal that is set forth in section 13-217 of the Code. See 735 ILCS 5/13-217 (West 1994). Plaintiff simply failed to timely file the complaint in this case within the applicable one-year limitation period for commencing a new action under section 13-217, which expired on May 26, 2016. *Id.* Consequently, the trial court did not err in dismissing the complaint filed in this case.

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.