

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).

2017 IL App (4th) 160240-U

NO. 4-16-0240

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 25, 2017

Carla Bender

4th District Appellate

Court, IL

WILLIAM RICHTER,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Macon County
EDWARD RILEY and)	No. 12L117
MERVIS INDUSTRIES, INC.,)	
Defendants-Appellees.)	Honorable
)	Thomas E. Little,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court’s decisions (1) denying plaintiff’s application to waive the fees and costs of his suit and (2) dismissing plaintiff’s complaint for failing to pay those fees and costs.

¶ 2 In August 2012, plaintiff, William Richter, refiled a suit alleging negligence on the part of defendants, Edward Riley and Mervis Industries, Inc. (Riley). The trial court had dismissed the original suit for want of prosecution less than one year earlier, in August 2011. Attached to Richter’s August 2012 complaint was an application to sue as a poor person. The court denied that application and later dismissed Richter’s complaint with prejudice for failing to pay the fees and costs of his suit.

¶ 3 Richter appeals, arguing that the trial court erred by denying his application to proceed as a poor person and dismissing his complaint. We agree. We therefore reverse the trial court’s judgment and remand with directions for the court to properly consider and rule on Rich-

ter's application to waive the fees associated with his suit.

¶ 4

I. BACKGROUND

¶ 5

In August 2012, Richter filed a complaint against Riley in case No. 12-L-117, alleging negligence in that Riley failed to secure items in his truck that dislodged and collided with Richter's vehicle.

¶ 6

Attached to the complaint was an "Application To Sue or Defend as a Poor Person." In it, Richter alleged that he was unable to pay the costs, fees, and expenses of his suit against Riley. Richter alleged further that in August 2011, the trial court dismissed for want of prosecution his complaint in case No. 7-L-186, raising an identical claim of negligence against Riley. Richter argued that under section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217 (West 2012)), he was entitled to refile that previous complaint within one year of its dismissal.

¶ 7

A January 24, 2013, docket entry addressed Richter's August 2012 application to sue as a poor person, as follows:

"The Clerk presents the file. The court, after reviewing and considering the Plaintiff's Application To Sue or Defend as a Poor Person, finds the following:

1. In his Application, the Plaintiff refers to a previously filed case in Macon County, namely [No.] 07-L-186. In that case, the Plaintiff was represented by counsel who filed a complaint seeking a recovery for damages sustained in an incident occurring on December 7, 2005. The court has compared the Complaint filed by Plaintiff's counsel in 7-L-186 to the Complaint attached to Plaintiff's Application To Sue or Defend as a Poor Person. The Complaints are virtually identi-

cal.

2. On August 23, 2011, in Case No. 7-L-186, the Plaintiff's Complaint was dismissed pursuant to Sixth Judicial Circuit Rule 3.7. The Notice of Dismissal specifically stated that the case 'shall not be re-docketed without both good cause shown and leave of court.' The Notice of Dismissal also stated that any motion to reinstate 'must be filed within 35 days from the date of dismissal.' Shortly thereafter, on August 26, 2011, the Plaintiff's counsel filed his Motion to Reinstate and Motion for Stay.

3. On October 17, 2011, with counsel present for the Plaintiff and the Defendant, the court heard arguments on the Motion to Reinstate and Motion for Stay. The Motions were denied and the case was not reinstated.

4. Inasmuch as the Complaint attached to the Plaintiff's Application to Sue or Defend as a Poor Person is based on the same facts and theories of recovery that were the subject of 7-L-186, the court finds that the Application should be denied.

5. The Plaintiff is granted leave to pay all necessary fees, costs, and charges as may be required by the Circuit Clerk's Office on or before April 1, 2013. The failure to pay the necessary fees, costs, and charges within the time and in the manner as ordered by the court may result in the dismissal of the Complaint.

WHEREFORE, the Application To Sue or Defend as a Poor Person is denied."

¶ 8 In June 2015 Richter filed an "Application for Waiver of Court Fees," which he described as a "renewed motion" of his August 2012 application to sue or defend as a poor per-

son.

¶ 9 Later in June 2015, the trial court, using a form order, denied Richter’s application for waiver of court fees. In the section of the form designated for the court’s reasoning, the court referred to its January 24, 2013, docket entry. An accompanying June 12, 2015, docket entry stated that the court (1) denied Richter’s June 2015 application for waiver of court fees; and (2) dismissed his complaint, with prejudice.

¶ 10 In July 2015, Richter filed a pleading titled “In Refiling of Complaint for Jury Trial Demand and Reinstatement [of] Case 2012-L-000117.” A docket entry appearing on July 23, 2015, stated that the trial court interpreted defendant’s July 2015 pleading as a motion to reconsider the court’s June 2015 decision to deny Richter’s June 2015 application for waiver of fees and dismiss Richter’s August 2012 complaint with prejudice. The court denied the motion.

¶ 11 This appeal followed.

¶ 12 In July 2016 this court dismissed Richter’s appeal because Richter had failed to file a record on appeal, as required by Illinois Supreme Court Rule 326 (eff. Feb. 1, 1994). In October 2016, the supreme court entered a supervisory order directing this court to reinstate Richter’s appeal and allow him time to file a record on appeal. We reinstated the appeal, and Richter filed a record on appeal.

¶ 13 **II. ANALYSIS**

¶ 14 Richter argues that the trial court erred by (1) denying his application for waiver of fees and (2) dismissing his August 2012 complaint. We agree.

¶ 15 In support of his claims, Richter argues that the trial court dismissed his complaint because Richter failed to pay the filing fees and costs associated with it. Richter argues that the court’s dismissal was improper because the court failed to properly consider his application to

for want of prosecution ***, whether or not the time limitation for bringing such 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 dismissed for want of prosecution ***.” 735 ILCS 5/13-217 (West 1994).

¶ 21 We cite the 1994 version of the statute because it contains the language of section 13-217 actually in effect when the trial court in 2011 dismissed Richter’s complaint for want of prosecution. See *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 44, n.1, 53 N.E.3d 1. Although the legislature in 1995 amended section 13-217 so that it no longer applied to actions dismissed for want of prosecution (Pub. Act 89-7, § 15 (eff. March 9, 1995)), the supreme court later held Public Act 89-7 void in its entirety. *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467, 689 N.E.2d 1057, 1104 (1997). Thus, section 13-217 of the Code continues to apply to actions dismissed for want of prosecution: “If a plaintiff’s action is dismissed for want of prosecution [(DWP)], that plaintiff has the option, pursuant to section 13-217 of the Code of Civil Procedure, to refile the action within one year of the entry of the DWP order or within the remaining period of limitations, whichever is greater.” *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 497, 693 N.E.2d 338, 342 (1998).

¶ 22 C. Sixth Circuit Local Rule 3.7

¶ 23 Macon County is located within the Sixth Circuit of Illinois trial courts. Sixth Circuit Local Rule 3.7 (eff. Nov. 1, 1992) concerns suits dismissed for want of prosecution and provides the following:

“Procedure. In all cases where no appeal is pending and there has been no action or record for a period of eighteen (18) months, the court may summarily

dismiss the cause of action and it shall not thereafter be redocketed without both good cause shown and leave of court.

* * *

Such cases shall not be redocketed if a motion to reinstate is not filed within thirty-five (35) days from the date of dismissal.”

¶ 24 D. The Trial Court’s Decision To Deny the Application for
Waiver of Fees in This Case

¶ 25 In its January 2013 docket entry, the trial court denied Richter’s application to sue as a poor person. The court explained that it reached that decision because Richter’s August 2012 complaint alleged the same facts and theories as his earlier complaint. The court used the same analysis in its June 12, 2015, denial of Richter’s application for waiver of fees.

¶ 26 The rationale of the trial court’s decisions to deny Richter’s applications was that Richter lacked authority to refile his action in August 2012 after his initial complaint was dismissed for want of prosecution. The court was incorrect on that point. As we explained earlier, section 13-217 of the Code granted Richter authority to refile his action within, at a minimum, one year of the dismissal of his original complaint. The court dismissed Richter’s initial complaint on August 23, 2011. He refiled on August 20, 2012. Richter was therefore within the one-year timeline and was authorized to refile his claim. To the extent that Sixth Circuit Local Rule 3.7 conflicted with section 13-217 by shortening the timeline for refiling and requiring the refiling party to show good cause and obtain leave of court, Rule 3.7 is inapplicable. See Illinois Supreme Court Rule 21(a) (eff. Dec. 1, 2008) (circuit court may adopt local rules “which are consistent with [the supreme court rules] and the statutes of the State”).

¶ 27 The trial court erroneously denied defendant’s application for waiver of fees because it incorrectly determined that Richter lacked authority to file his action. In so doing, the

court failed to exercise its discretion to determine whether Richter should pay for the costs of his suit. The court then based its decision to dismiss Richter's complaint on Richter's failure to pay those costs. Because the court did not properly consider Richter's application for waiver of fees, its decision to dismiss the complaint based on failure to pay those fees was in error. We reverse the trial court's judgment dismissing Richter's complaint and remand for the court to exercise its discretion in deciding Richter's application for waiver of fees.

¶ 28

III. CONCLUSION

¶ 29 For the foregoing reasons, we reverse the trial court's judgment denying plaintiff's application for waiver of fees and dismissing plaintiff's complaint. We remand with directions for the trial court to exercise its discretion in resolving plaintiff's application for waiver of fees.

¶ 30 Reversed and remanded with directions.