2018 IL App (5th) 170391-U

NO. 5-17-0391

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

RANDY HINDMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Williamson County.
	)	
v.	)	No. 16-L-255
	)	
MAQBOOL AHMAD, M.D.,	)	Honorable
	)	Jeffrey A. Goffinet,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's dismissal of the plaintiff's medical-negligence action based on *res judicata* is reversed where the court erroneously found that the claim was barred by the involuntary dismissal of a previous claim filed by the plaintiff, which was based on a violation of the Consumer Fraud and Deceptive Business Practices Act, as there was no identity of cause of action between that claim and his medical-negligence claim. The cause is remanded for the trial court to address the defendant's alternative argument that the plaintiff has violated the one refiling rule set forth in section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217 (West 2016)).

¶ 2 This appeal involves the dismissal of a medical-negligence action filed by the plaintiff, Randy Hindman, against the defendant, Maqbool Ahmad, M.D., on December 15, 2016. The plaintiff originally filed his medical-negligence allegations on January 15,

2010, as part of a two-count complaint asserting medical negligence (count I) and violations of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2008)) (count II). On November 16, 2011, the trial court involuntarily dismissed with prejudice count II of the plaintiff's original complaint. Thereafter, on May 31, 2016, the plaintiff voluntarily dismissed count I. On December 15, 2016, the plaintiff refiled his medical-negligence allegations. On June 21, 2017, the defendant filed a motion for involuntarily dismissal of the plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)), arguing, *inter alia*, that the complaint should be dismissed on the basis of *res judicata*. The trial court agreed and dismissed the action on September 6, 2017. For the reasons that follow, we reverse the decision of the circuit court and remand for further proceedings.

¶ 3 On January 15, 2010, the plaintiff filed his original two-count complaint (Hindman I) against the defendant and Marion Eye Centers, Ltd. The defendant is a physician licensed by the State of Illinois and provided general and surgical eye care through Marion Eye Center in Williamson County. Count I of the complaint sought recovery for medical negligence during the course of that medical treatment. In particular, the plaintiff asserted that the defendant was negligent in the following respects, in pertinent parts: (1) that he improperly diagnosed the plaintiff with proliferative diabetic retinopathy (PDR) and clinically significant macular edema (CSME) in both eyes, which required laser surgery; (2) that he wrongfully performed laser surgery on the plaintiff's eyes on January 18, 2008, February 15, 2008, March 31,

2008, and May 23, 2008; (3) that he wrongfully performed a YAG laser posterior capsulotomy on the plaintiff's right eye on June 13, 2008; (4) that he wrongfully performed intravitroeal (inside the eye) steroid injections on both eyes; (5) that he failed to diagnose the plaintiff with a retinal detachment of the right eye; and (6) that he failed to surgically intervene to repair the retinal detachment. The plaintiff contended that, as a result of the defendant's negligence, he was required to undergo extensive surgical procedures, developed proliferate vitreo-retinopathy (PVR), and irreparably lost vision in his right eye.

¶ 4 Attached to the complaint was a written report from the plaintiff's expert, Andrew Dahl, M.D., who made the following observations and conclusions after reviewing the plaintiff's medical records. The plaintiff was first examined at Marion Eye Center on February 14, 2002, and was diagnosed with diabetic retinopathy of both eyes. Thereafter, laser treatment was performed in both eyes. In October 2002, he was referred by his family physician to Barnes Retina Institute because he was complaining of blurriness in his right eye following the laser treatments at Marion Eye Center. The doctor at Barnes Retina Institute did not find PDR and did not indicate that further laser treatment was necessary. The doctor, however, was concerned about the possibility of glaucoma and suggested that the plaintiff have a glaucoma evaluation. In December 2002, he went to Marion Eye Center for a glaucoma evaluation and was told to return in three months; he did not return until November 2007. In November 2007, he returned to Marion Eye Center for a "diabetic exam," was again diagnosed with PDR in the right eye, and was told to return for a consultation with the defendant on December 18, 2007.

¶ 5 On December 18, 2007, the defendant diagnosed the plaintiff with PDR of both eyes and CSME in both eyes and recommended cataract surgery with intravitreal steroid injections. The cataract surgery for his right eye was performed on December 27, 2007, and the surgery for his left eye was performed on January 3, 2008. Because of repeated complaints of "floaters" in the left eye and itching in both eyes, the plaintiff underwent subsequent laser treatment on January 18. Following the treatment, the plaintiff continued to complain of irritable, red, and itchy eyes and "floaters" in both eyes and underwent additional laser treatment. In total, the plaintiff had four laser treatments: January 18, 2008; February 15, 2008; March 31, 2008; and May 23, 2008.

¶ 6 Following the laser treatments, the plaintiff continued to complain about blurring of vision in his right eye. The defendant again diagnosed him with PDR, CSME, and a secondary cataract in the right eye. On June 13, 2008, the defendant performed a YAG laser posterior capsulotomy on the plaintiff's right eye. Thereafter, the plaintiff complained of his right eye being "cloudy" and was given intravitreal steroid injections into both eyes. The plaintiff was eventually examined by his primary care physician, who referred him to Barnes Retina Institute. The doctor at Barnes Retina Institute diagnosed him with a retinal detachment in the right eye, determined that there was no finding of PDR or CSME, and opined that the YAG laser treatment may have caused the retinal detachment. On July 18, 2008, the plaintiff had surgery to repair the retinal detachment of his right eye.

¶ 7 Dahl believed that the plaintiff was misdiagnosed with PDR from 2002 through 2008 and was subjected to unnecessary laser treatment, that the laser treatment could

have contributed to the retinal detachment, and that the defendant failed to make the correct diagnosis of retinal detachment. He opined that, at the time of the plaintiff's examination at Barnes Retina Institute on July 15, 2008, the plaintiff suffered from moderately advanced PVR in his right eye, a condition seen in some patients with retinal detachment or caused by excessive use of a laser, and had the retinal detachment been properly and timely diagnosed, it was more likely than not that the PVR would not have occurred or been as advanced.

¶ 8 Dahl concluded that the YAG laser treatment was unnecessary and that the retinal detachment was likely a complication of that treatment. He noted that 15 distinct eye operations were performed on the plaintiff in a period of less than six months, which included two cataract surgeries, four intravitreal steroid injections, one YAG laser treatment, and eight laser treatments. He concluded that the diagnostic testing did not necessitate the need for all of these surgeries. As a result of the unnecessary surgeries, and the delay in treatment for the retinal detachment, the plaintiff suffered significant permanent vision loss in his right eye, retinal damage, optic nerve damage, and extra-ocular muscle damage.

¶ 9 Count II of the plaintiff's complaint sought recovery for violations of the Consumer Fraud Act based on the cataract-removal surgery that was performed on him. According to the complaint, the plaintiff was diagnosed with cataracts on both eyes, and the defendant recommended surgical removal of the cataracts with the right eye to be performed first. He asserted that the defendant and Marion Eye Center routinely advertised via radio, television, internet, and print media that they performed cataract

surgery utilizing the "no shot, no stitch, no patch" procedure, which involved the use of topical anesthesia instead of anesthesia requiring a shot, resulting in less or no pain and decreased recovery time. He informed the defendant that he wished to have the "no shot, no stitch, no patch" cataract procedure because he was diabetic and was sensitive to pain, and the defendant agreed to use this new surgery technique. However, during both procedures, he was given a series of anesthesia shots and was required to wear eye patches following the surgeries. He alleged that the "no shot, no stitch, no patch" advertising was used as a "bait and switch" to entice him and other Illinois residents to utilize the defendant and Marion Eye Center as their medical providers for cataract surgery. He contended that he was injured and experienced pain and suffering as a direct result of the false, deceptive, and misleading advertising.

¶ 10 On November 16, 2011, the trial court entered an order dismissing with prejudice count II of the Hindman I complaint, concluding that the Consumer Fraud Act does not apply to actions grounded in medical negligence. In making this decision, the court found that the allegations of misconduct in the plaintiff's complaint are not limited to the "business aspect" of the defendant's medical practice but also included specific allegations involving the "actual practice of medicine." As further support, the court found that the allegations appeared to state a claim for an informed-consent violation and noted that the advertising of health professionals was highly regulated, which included disciplinary measures for violations. The plaintiff did not appeal the court's dismissal of count II.

¶ 11 While Hindman I was pending, on March 21, 2014, the plaintiff participated as a relator in an action filed in the United States District Court for the Southern District of Illinois (Hindman federal action) against, *inter alia*, the defendant and Marion Eye Center, Ltd., based on the False Claims Act (31 U.S.C. § 3729 *et seq.* (2012)) and the Illinois False Claims Act (740 ILCS 175/1 *et seq.* (West 2012)). The Hindman federal action included similar allegations as those raised in Hindman I, *i.e.*, that the plaintiff was misdiagnosed with PDR, that he received improper laser treatments, that he did not receive adequate informed consent for his procedures, and the procedures caused, in part, his retinal detachment and reduced his vision. On June 17, 2015, while Hindman I was pending, the plaintiff and the other relators voluntarily dismissed the federal action without prejudice, which included all claims against the defendant and Marion Eye Center.

¶ 12 On May 31, 2016, the plaintiff dismissed Marion Eye Center with prejudice from Hindman I. Later that same day, the plaintiff voluntarily dismissed without prejudice his medical-negligence action against the defendant.

¶ 13 On December 15, 2016, the plaintiff filed the three-count complaint (Hindman II) against the defendant and Marion Eye Center that is the subject of this appeal. In this complaint, he again made similar allegations as contained in his original complaint in Hindman I and the Hindman federal action. In particular, he asserted that the defendant and Marion Eye Center had violated the Consumer Fraud Act (count I) with their deceptive advertising of the "no shot, no stitch, no patch" procedure and that he was injured as a result of the shot administered to his eye, had delayed recovery time, and had

to wear a patch for several days. He also argued that the defendant was negligent in his medical care and treatment (count II and count III), which was provided from January 18, 2008, to June 27, 2008, in that he was misdiagnosed with PDR, had medically unnecessary laser surgery, and was not properly diagnosed with retinal detachment. The plaintiff contended that he was injured as a result of the defendant's negligence in that he was required to undergo extensive surgical procedures, developed PVR, and irreparably lost vision in his right eye. The same report from Dahl attached to the Hindman I complaint was attached to this complaint.

¶ 14 On February 6, 2017, the defendant and Marion Eye Center filed a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)), arguing that the plaintiff's Consumer Fraud Act claim should be dismissed with prejudice on the basis of *res judicata*. On April 11, 2017, the trial court dismissed with prejudice count I of Hindman II. The claims against Marion Eye Center were also dismissed. The plaintiff did not appeal this dismissal.

¶ 15 On June 21, 2017, the defendant filed a motion for involuntary dismissal of counts II and III pursuant to section 2-619 of the Code, asserting that the remaining medical-negligence claims were also barred by *res judicata* because there was a final judgment entered on the previously filed Consumer Fraud Act claim. The defendant contended that the three requirements for *res judicata*, a final judgment on the merits, an identity of cause of action, and identical parties or their privies in both actions, were met. First, the defendant argued that there was a final adjudication on the Consumer Fraud Act claim in Hindman I, *i.e.*, an involuntary dismissal with prejudice that was not appealed.

¶ 16 Second, the defendant contended that the Consumer Fraud Act claim arose out of the same operative facts as the medical-negligence claims. He argued that, in evaluating the identity of cause of action between claims, Illinois did not require the same evidence or theory of relief for *res judicata* purposes. Instead, Illinois followed the transactional test, which provided that separate claims were considered the same cause of action when they arose from a single group of operative facts, regardless of whether the claims assert different theories of relief. The defendant argued that the plaintiff's Consumer Fraud Act claim arose out of the same operative facts as the medical-negligence claims in that both claims arose out of a series of eye care visits and treatment from March 2002 to March 2009. In support of this argument, the defendant noted that the trial court specifically found in its November 16, 2011, dismissal in Hindman I that the Consumer Fraud Act count contained allegations regarding the actual practice of medicine and informed consent, and, thus, the plaintiff was on notice that the adjudicated Consumer Fraud Act claim was determined to be arising out of the medical care and treatment involved in the medical-negligence claims.

¶ 17 Finally, the defendant argued that there was an identity of the parties as both the defendant and Marion Eye Center were named in Hindman I and Hindman II. Thus, he contended that the medical-negligence claims were barred by *res judicata* and that once the Consumer Fraud Act claim was dismissed with prejudice, the plaintiff could not voluntarily dismiss and refile his medical-negligence claim.

¶ 18 Alternatively, the defendant argued that the plaintiff's complaint should be dismissed because, under section 13-217 of the Code (735 ILCS 5/13-217 (West 2016)),

this action was a second, impermissible filing as section 13-217 only permited one refiling. He noted that the Hindman federal action was voluntarily dismissed on June 17, 2015, and Hindman I was voluntarily dismissed on May 3, 2016. Thus, he contended that the plaintiff had one year from June 17, 2015, to refile the claim, which was a deadline that the plaintiff did not meet as the plaintiff did not file the present action until December 15, 2016.

¶ 19 On July 12, 2017, the plaintiff filed a response to the defendant's motion for involuntary dismissal, asserting that the Consumer Fraud Act claim that was dismissed with prejudice in Hindman I was a different cause of action than the medical-negligence claim. The plaintiff argued that the elements for a Consumer Fraud Act claim, which looked at whether the defendant's intention was for the plaintiff to rely on a misrepresentation of material fact or material omission, were different from the elements required for a medical-negligence claim, which looked at whether the doctor failed to meet the applicable standard of care and, if so, whether the breach of the standard of care proximately caused the plaintiff's injuries. The plaintiff also argued that the Consumer Fraud Act claim dealt with the defendant's advertising in 2007 concerning cataract surgeries and had nothing to do with the PDR misdiagnosis and subsequent laser treatment.

¶ 20 Following a hearing on the motion to dismiss, the trial court entered an order dismissing with prejudice the plaintiff's medical-negligence claims pursuant to *res judicata*. In making this decision, the court found no dispute as to the first, a final judgment on the merits, and third, identical parties or privies in both actions, elements of

res judicata. The court determined that the issue was whether there was an identity of causes of action between the two cases. Relying on *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008), and *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325 (1996), the court found an identity of cause of action, concluding that the complaints appeared nearly identical and that the substance of the two counts in Hindman I and the three counts in Hindman II referenced the same medical care and treatment involving the same parties over the same time frame.

¶ 21 Although the trial court recognized the plaintiff's argument that the claims did not involve the same time period because the Consumer Fraud Act count involved actions taken to induce the plaintiff to become a patient, it concluded that the injury in that claim is identical to the claimed injury in the medical-negligence count. The court acknowledged that there "might be some evidentiary issues at trial" but concluded that those issues did not preclude a finding that there was an identity of cause of action. Thus, the court found that the claims arose from the same set of operative facts, concluding that the plaintiff "could have had a full resolution of all claims raised in Hindman II in Hindman I. While it appears that this rule is unduly harsh and has the effect of denying a plaintiff the ability to voluntarily dismiss a claim, the Court is bound to follow *Hudson* and *Rein*." Because the court found the *res judicata* argument dispositive, it did not address the defendant's one refiling argument. The plaintiff appeals the court's dismissal of his complaint.

¶ 22 The first issue we will discuss is whether the trial court's involuntary dismissal of the Consumer Fraud Act cause of action in Hindman I barred the plaintiff's refiling of his

medical-negligence claims in Hindman II. The plaintiff does not dispute that the rights of the parties were terminated in regard to his Consumer Fraud Act allegations on November 16, 2011, or any matter that could have been decided under the facts of that cause of action. However, the plaintiff does dispute the argument that his medical-negligence allegations are barred by the dismissal of the Consumer Fraud Act claim.

¶ 23 Whether *res judicata* applies to these claims is a question of law that is reviewed *de novo*. *Taylor v. Police Board of the City of Chicago*, 2011 IL App (1st) 101156, ¶ 19; *Arvia v. Madigan*, 209 Ill. 2d 520, 526 (2004). The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties or their privies on the same cause of action. *Hudson*, 228 Ill. 2d at 467. *Res judicata* not only bars what was actually decided in the first action but also what could have been decided in that action. *Id.* For the *res judicata* doctrine to apply, three requirements must be met: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. *Id.* The plaintiff agrees that there was a final judgment entered in the Consumer Fraud Act cause of action in Hindman I and that the parties in Hindman I and Hindman II are identical. The plaintiff contends, however, that that the second requirement is not satisfied because there is no identity of cause of action.

¶ 24 Illinois courts apply the transactional test in determining whether there is an identity of cause of action. *Taylor*, 2011 IL App (1st) 101156, ¶ 21. Under the transactional test, separate claims will be considered the same cause of action for

res judicata purposes if they arose from a single group of operative facts, regardless of whether they assert different theories of relief. *BMO Harris Bank, N.A. v. K&K Holdings, LLC*, 2016 IL App (2d) 150923, ¶ 13.

¶ 25 To determine whether there is identity of cause of action between the first and second suits, the court must look to the facts giving rise to plaintiff's right to relief and assess whether the claims are linked in such a manner that they are part of a single transaction. *Rein*, 172 Ill. 2d at 338-39; *Cload v. West*, 328 Ill. App. 3d 946, 951 (2002). The nature of the evidence required to prove the claims is relevant for determining whether the claims arose from the same group of operative facts. *BMO Harris Bank, N.A.*, 2016 IL App (2d) 150923, ¶ 13. The transactional test allows claims to be considered part of the same cause of action where there is not a substantial overlap of evidence as long as the claims arise from the same transaction. *Id.* "What factual grouping constitutes a transaction or series of transactions is to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation; whether they form a convenient trial unit; and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.*

¶ 26 The parties cite the following two cases in which our supreme court applied the transactional test to determine whether there was an identity of the cause of action: *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008), and *Rodgers v. St. Mary's Hospital of Decatur*, 149 Ill. 2d 302 (1992). In *Hudson*, plaintiffs filed a two-count wrongful death complaint against various defendants asserting negligence and willful and wanton

misconduct in regard to emergency medical treatment provided to their child. *Hudson*, 228 Ill. 2d at 465-66. The trial court dismissed the negligence count on the basis that the City of Chicago and its employees were immune to the action. *Id*. at 466. Plaintiffs thereafter voluntarily dismissed their willful and wanton misconduct count. *Id.* Almost one year later, plaintiffs refiled their wrongful-death action, setting forth only one count for willful and wanton misconduct. *Id.* Defendants moved to dismiss the action based on *res judicata*, and the trial court dismissed the action. *Id.* Our supreme court affirmed the dismissal, finding that the willful and wanton count arose out of the same set of operative facts as the negligence action and could have been resolved in the previously filed action. *Id.* at 474.

¶ 27 In contrast, our supreme court found no identity of cause of action existed in *Rodgers*, 149 Ill. 2d at 312. In that case, plaintiff filed a medical-malpractice action for the wrongful death of his wife, who died two days after childbirth, against the obstetricians, her radiologists, and the hospital. *Id.* at 305-06. The trial court entered summary judgment in favor of the hospital, and the jury subsequently found the radiologists not liable. *Id.* at 306. In the meantime, plaintiff filed a separate complaint for damages against the hospital, alleging that the hospital breached its statutory duty to retain X-rays, which were lost after his wife's death and were allegedly crucial to proving his case against the obstetricians and radiologists. *Id.*

¶ 28 One of the issues on appeal to the supreme court was whether plaintiff's claim concerning the missing X-ray was barred by the summary judgment rendered in favor of the hospital in the malpractice case. *Id.* at 311. As this case was decided before the

supreme court adopted the transactional test in *River Park*, the court applied both the same-evidence test and the transactional test in determining whether *res judicata* barred the subsequent action. *Id.* at 312. In particular, our supreme court concluded that under either test, *res judicata* would not bar the claim regarding the missing X-ray. *Id.*

¶ 29 In making its decision, the supreme court found as follows:

> "[Plaintiff's] amended complaint against the hospital is based on a different cause of action than that underlying his prior claim against the hospital, obstetricians, and radiologists. The present action is for loss of evidence; the first was for medical malpractice. The same evidence would not sustain both verdicts, and the facts essential to each suit did not arise from the same transactions or incidents." *Id.*

The court noted that the X-ray was lost after plaintiff's wife died and could not have affected the defendants' exercise of care in treating her. *Id.* at 313. The court concluded that the existence of the duty to preserve the X-ray, the incidents causing the X-ray to be missing at trial, and the facts surrounding the potential evidentiary value of the missing X-ray were circumstances unrelated to determining medical-malpractice liability. *Id.* Thus, the court found that *res judicata* did not bar the second action. *Id.*

¶ 30 Like *Rodgers*, in the present case, the plaintiff's medical-negligence claim and Consumer Fraud Act claim did not arise from a single group of operative facts. First, the Consumer Fraud Act claim is a distinct cause of action. To obtain a favorable verdict on this claim at trial, the plaintiff would be required to show that the defendant engaged in a deceptive act or practice, that the defendant intended for the plaintiff to rely on the deception, that the deception occurred in the course of conduct involving trade or commerce, and that the plaintiff suffered an injury that was proximately caused by the

deception. The evidence presented at trial would concern the defendant's advertising and oral misrepresentations made to the plaintiff regarding the cataract procedures and what procedure was utilized on the plaintiff for his cataract surgeries. These facts would not have sustained a medical-negligence claim, which looks at the applicable standard of care when providing treatment and determines whether a breach of that standard of care proximately caused the plaintiff's injuries, in this case, loss of vision.

¶ 31 Moreover, the claims are not linked in such a manner that they are part of a single transaction; the time period involved between the two claims is distinct. The plaintiff's Consumer Fraud Act claim was based upon the following facts: that the defendant routinely advertised via radio, television, internet, and print media that he performed cataract surgery utilizing the "no shot, no stitch, no patch" procedure, which resulted in less or no pain and decreased recovery time; that the plaintiff was diagnosed with cataracts in both eyes and the defendant recommended surgery; that the plaintiff agreed to the surgery based on the defendant's representation that he would perform the "no shot, no stitch, no patch" cataract procedure; that the defendant did not utilize the "no shot, no stitch, no patch" cataract surgery procedure; and, as a result, the plaintiff experienced pain and suffering from the anesthesia shots and delayed recovery time.

¶ 32 Because any fraud concludes at the time that the plaintiff had the first surgical cataract procedure, which was December 27, 2007, the Consumer Fraud Act claim was complete at this time. The allegations for the Consumer Fraud Act claim are narrowly targeted to the injury the plaintiff sustained as a result of the "false advertising" when the "no shot, no stitch, no patch" procedure was not performed on him. Thus, the operative

facts in this claim are limited to the defendant's deceptive actions occurring prior to December 27, 2007, and the plaintiff's cataract surgeries. There are no allegations in this claim concerning the misdiagnosis of PDR and the subsequent laser treatments. Any actions made by the defendant after the plaintiff's cataract surgery have no connection to the damages he sustained by the alleged "bait and switch" advertisement.

¶ 33 The plaintiff's medical-negligence claim was based on the following facts: that the defendant misdiagnosed the plaintiff with PDR on January 18, 2008; that, as a result of this misdiagnosis, the defendant performed medically unnecessary laser surgery on the plaintiff on four occasions; and that the defendant failed to properly diagnose the plaintiff with retinal detachment. The plaintiff alleged that he suffered the following damages as a result of the defendant's negligence: he was required to undergo extensive surgical procedures; he developed PVR; and he irreparably lost vision in his right eye. The time period for the medical treatment was January 18, 2008, through June 27, 2008. Thus, the operative facts giving rise to the medical-negligence claim did not occur until after the plaintiff was misdiagnosed with PDR on January 18, 2008, which was after the cataract surgeries and after the Consumer Fraud Act claim had concluded, and the medical-negligence allegations do not relate to the cataract surgeries. The fact that the plaintiff received anesthesia shots during the cataract surgeries and was required to wear a patch following the surgeries is not indicative of a determination of the appropriate standard of care beginning January 18, 2008. The plaintiff's medical treatment by the defendant was not a continuous event but was instead two separate events that do not share a single group of operative facts.

¶ 34 Moreover, the two claims involve different injuries. In his Consumer Fraud Act cause of action, the plaintiff sought recovery for injuries arising from the defendant's deceptive advertising. In particular, he noted that he was a diabetic with a heightened pain sensitivity and sought out the "no shot, no stitch, no patch" surgery technique because it was supposed to result in less pain to the patient. As for his medical-negligence claim, he sought damages for having to undergo extensive unnecessary surgical procedures, the resulting diagnosis of PVR, and his loss of vision in his right eye. Accordingly, we conclude that the defendant's medical-negligence claim is not barred by *res judicata* because there is no identity of cause of action.

¶ 35 Alternatively, the defendant argues that the plaintiff's voluntary dismissal of the Hindman federal action invoked section 13-217 of the Code, which provides, in pertinent part, that if a plaintiff voluntarily dismisses a claim, the plaintiff may commence a new action within one year or within the remaining statute of limitation period, whichever is greater. 735 ILCS 5/13-217 (West 2016). Our supreme court has interpreted this provision as permitting only one refiling even where the applicable statute of limitation period has not yet expired. *Timberlake v. Illini Hospital*, 175 Ill. 2d 159, 163 (1997). In the present case, the trial court did not address this issue because it found the *res judicata* issue dispositive. As we have reversed the *res judicata* issue, the one permitted refiling rule must be considered and ruled upon. Thus, we remand this matter to the trial court to make a determination on this issue.

¶ 36 For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby reversed and remanded for further proceedings.

¶ 37 Reversed and remanded.