2019 IL App (2d) 180232-U
No. 2-18-0232
Order filed March 15, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHAEL V. KERN and IRYNA A. KERN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 16-L-26
	)	
MUNDELEIN ELEMENTARY SCHOOL	)	
DISTRICT NO. 75,	)	Honorable
	)	Diane E. Winters,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly granted summary judgment in favor of defendant because suit was untimely.

¶ 2 The plaintiffs, Michael and Iryna Kern, sued the defendant, the Mundelein Elementary School District No. 75 (District), alleging that Iryna suffered injury to her back after she slipped and fell on ice outside the door of a school within the District. The defendant moved for summary judgment on the basis that, among other things, the suit was untimely under the applicable statute of limitations, the one-year period set out in section 8-101(a) of the Tort

Immunities Act (745 ILCS 10/8-101(a) (West 2012)). The trial court granted the motion and, after the trial court denied their motion to reconsider, the Kerns appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are drawn from the statement of material facts submitted by the District in connection with its motion for summary judgment. Except as noted, these facts are undisputed: the Kerns did not file any objection to the statement filed by the District or otherwise identify any genuine evidentiary dispute over any of the facts set forth therein. The sole evidence submitted by the Kerns to support their opposition to summary judgment was an affidavit executed by Iryna.

¶ 5 On January 14, 2014, Iryna slipped and fell on ice outside the door of Washington Early Learning Center, a school within the defendant school district. That same day, Michael called the District and spoke with Lois Fine, the payroll and benefits coordinator for the District. According to Ms. Fine's affidavit, Michael said that Iryna had slipped and fallen at Washington school and he was concerned that she might have aggravated a preexisting back injury. Michael asked about the District's insurance coverage.

¶ 6 The next day, January 15, 2014, Iryna went to Cordial Medical Center. She was seen by Dr. Mikhail Khodarkovskiy. Dr. Khodarkovskiy's notes state:

> "Patient came in for evaluation of left-sided back pain. The patient states she went to Washington School in Mundelein. She states she fell on the icy spot right before entrance to school. She states she fell on her left side. [R]ight after the fall she felt severe left sided back pain. She also has extensive abrasion of her left palm. The patient states her back pain is up to 10/10; she has difficulties walking. Her pain radiates to her left leg."

¶ 7 Iryna continued to be seen by Dr. Khodarkovskiy for back pain for the next eleven months. On December 26, 2014, she underwent back surgery (lumbar fusion). On December 27, 2014, she saw an occupational therapist, whom she told that she "has had pain since a fall in Jan [*sic*] 2014."

¶ 8 The Kerns filed suit against the District and "unknown defendants" on January 13, 2016, almost two years after the accident. The District moved for summary judgment, arguing that the suit was untimely, as the statute of limitations was only one year under the Tort Immunities Act. (It also argued in the alternative that the Kerns could not show that the ice on which Iryna slipped was anything other than a natural accumulation for which it could not be held liable.) In support of its motion, the District submitted a statement of material facts with affidavits and medical records providing evidence of those facts (summarized above).

¶ 9 The Kerns did not file any formal dispute of any of the facts contained in the District's statement, but they filed a response brief to which they appended an affidavit by Iryna. As relevant here, the affidavit stated that Iryna's back pain "did not start immediately following her fall"; that, prior to her December 2014 back surgery, Iryna "considered her back pain a minor issue"; and that, "[a]s a result, [she] was unaware of the casual [*sic*] connection and that she had significant injury." Iryna averred that she did not know that her back pain "was caused by the fall and that the injury was potentially a lifetime problem" until after she met with "her surgeon" sometime "subsequent to January 13, 2015."

¶ 10 The trial court granted summary judgment in favor of the District on both grounds raised by the motion. The Kerns moved for reconsideration, arguing that they had presented sufficient evidence to demonstrate disputes of material facts as to both grounds. The trial court denied the motion for reconsideration. The Kerns then filed this appeal.

¶ 11 II. ANALYSIS

¶ 12 Although the parties present arguments as to both grounds on which the trial court granted summary judgment, we need consider only one: the statute of limitations.

¶ 13 The Kerns do not dispute that the governing statute of limitations is the one-year period found in section 8-101 of the Tort Immunities Act. Rather, they argue that the start of the one-year period was tolled under the discovery rule. As part of this argument, they point out that the issue of when a limitations period commences under the discovery rule is generally a question of fact.

¶ 14 "The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact." *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Therefore, summary judgment is proper only when the pleadings, depositions and admissions on record, together with any affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). Although summary judgment has been called a "drastic measure," it is an appropriate tool to employ where " 'the right of the moving party is clear and free from doubt.' " *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001) (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)).

¶ 15 Here, the Kerns bear the burden of proving that their claims were timely filed under the discovery rule. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85 (1995). Accordingly, in order to defeat a motion for summary judgment, they must show the existence of facts which could support judgment in their favor on this issue. "Although the nonmoving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment." *Land v. Board of Education*

for the City of Chicago, 202 Ill. 2d 414, 432 (2002). We review the grant of summary judgment under a *de novo* standard. *Morris*, 197 Ill. 2d at 35.

¶ 16 The Kerns argue that the discovery rule applies here with the result that their suit was timely filed. The discovery rule "delays the commencement of the relevant statute of limitations until the plaintiff knows or reasonably should know that he has been injured and that his injury was wrongfully caused." *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 249 (1994). "This rule developed to avoid mechanical application of a statute of limitations in situations where an individual would be barred from suit before he was aware that he was injured." *Hermitage Corp.*, 166 Ill. 2d at 77-78. The rule does not extend the limitations period until the plaintiff knows that the defendant's conduct amounts to a legally valid cause of action. *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 170 (1981). Nor must a plaintiff know the full extent of her injuries before the limitations period can begin running. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 367 (1995). Rather, once the plaintiff knows or reasonably should know (1) that he or she has been injured and (2) that the injury was wrongfully caused, the plaintiff "is under an obligation to inquire further to determine whether an actionable wrong has been committed." *Id.* at 171. Although the application of the discovery rule is generally a question of fact, it may be resolved on summary judgment if the facts are undisputed and support only one conclusion. *Diotallevi v. Diotallevi*, 2013 IL App (2d) 111297, ¶ 28.

¶ 17 Here, there is no genuine dispute about when the Kerns learned of Iryna's injury: they knew Iryna had been injured the same day that she fell. The District produced evidence that Iryna visited a doctor the next day, January 15, 2014, and told him that, "right after the fall," she experienced "severe back pain" (a rating of 10 out of 10 on a pain scale) and that she had difficulties walking, with the pain radiating to her left leg.

¶ 18 Moreover, there is no genuine dispute about the cause of Iryna's back pain. The same day that Iryna fell, Michael called the District and told one of its employees that Iryna had slipped and fallen on ice and that he was concerned that the fall might have aggravated her preexisting back condition. Further, the medical records of Iryna's doctor visits over the next year show that Iryna consistently attributed her back pain to her fall at the school.

¶ 19 The Kerns argue that Iryna's affidavit raises a question about these facts, however. They argue that, because Iryna had had back pain before, her fall did not put her on notice that she was experiencing new or greater back pain—in short, that a new injury had occurred. The affidavit states that Iryna did not know that her back pain was caused by the fall until she met with her surgeon at some point "subsequent to January 13, 2015" (a date that appears to have been chosen because it is one year before the suit was filed). But the Kerns did not produce any evidence to support this assertion (indeed, they did not even identify the name of the surgeon who told them this or the specific date that the conversation took place), and it is flatly contradicted by the evidence of the Kerns' statements to others immediately after the fall, which show that Iryna was in severe pain immediately after the fall and that they attributed that pain to the fall.

¶ 20 "Unsupported assertions, opinions, and self-serving or conclusory statements do not comply with the rule governing summary judgment affidavits." *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1005 (2011) (citing *Jones v. Dettro*, 308 Ill. App. 3d 494, 499 (1999)). "Further, "[a] self-serving affidavit with no other evidence does not create a genuine issue of material fact." *National Union Fire Insurance Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 2. As the Kerns did not submit any evidence to contradict the evidence that Iryna's back pain was severe immediately after the fall and that they knew that the

fall caused that back pain, there is no genuine factual dispute regarding when the statute of limitations began to run under the discovery rule.

¶ 21 The Kerns also argue that, even if they knew generally that the fall caused Iryna's back pain, the affidavit provides evidence that they viewed the pain as "minor" and did not realize that it was "potentially a lifetime problem" until they heard from the surgeon. Even leaving aside our conclusion that the unsupported affidavit does not suffice to show a question of fact, however, this argument lacks merit. Our supreme court has held repeatedly that "[t]here is no requirement that a plaintiff must discover the full extent of her injuries before the statute of limitations begins to run." *Golla*, 167 Ill. 2d at 367; see also *Clay v. Kuhl*, 189 Ill. 2d 603, 613 (2000). "Rather, our cases adhere to the general rule that the limitations period commences when the plaintiff is injured, rather than when the plaintiff realizes the consequences of the injury or the full extent of her injuries." *Golla*, 167 Ill. 2d at 364. Thus, even if the Kerns had produced evidence that would show a factual dispute about when they realized the full extent of Iryna's injuries, the limitations period would still start to run on the date when Iryna was injured, *i.e.*, on January 14, 2014. That being the case, their complaint filed almost two years later was untimely.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 24 Affirmed.