2015 IL App (1st) 142510-U

Second Division
November 24, 2015

No. 1-14-2510

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MICHELLE PIERCE, Plaintiff-Appellant, v. JOHN C. VOJTA, DONNALYN M. VOJTA, LAW OFFICES OF JOHN C. VOJTA, and each partner or shareholder therein, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13 L 63062 The Honorable Martin S. Agran, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not err in dismissing plaintiff's legal malpractice complaint that was filed more than two years from the date the plaintiff knew or reasonably should have known of her injury and that it may have been wrongfully caused. The court also correctly found that defendants did not fraudulently conceal their own malpractice to trigger a five year statute of limitations.

¶ 2 On November 8, 2013, Michelle Pierce filed a *pro se* complaint against her former attorneys, alleging legal malpractice and breach of contract. Pierce alleged defendants' deficient legal performance caused her to lose custody of her son and resulted in an order terminating child support from her son's father. She also alleged defendants participate in a "cottage industry" in Illinois custody cases, in which lawyers and court-appointed professionals knowingly protract litigation for increased fees and public funding, suppress evidence of child abuse, and exploit parents and children for unlawful financial gain. She stated she became aware of this "cottage industry" after a November 3, 2011 meeting with two other women who had cases before the Domestic Relations Division of the Cook County Circuit Court.

¶ 3 The trial court granted defendants' motion to dismiss finding that, as evidenced by her statements regarding her November 3, 2011 discovery of the "cottage industry" in Illinois custody cases, Pierce knew more than two years before she filed her complaint that she had been wrongfully injured by her former attorneys. Thus, her November 8, 2011 complaint failed to satisfy the statute of limitations for legal malpractice claims under section 13-214.3(b) of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/13-214.3(b) (West 2012).

¶ 4 Pierce appeals, *pro se*, asserting the trial court erred in finding she knew or should have known that she had been wrongfully injured more than two years before she filed her complaint. Alternatively, Pierce contends defendants engaged in fraudulent concealment by failing to disclose that she might have a negligence claim against them, triggering a five-year statute of limitation under section 13-215 of the Code (735 ILCS 5/13-215 (West 2012)). We affirm. Pierce's pleadings, including her complaint, establish that she knew no later than November 3, 2011, that she had been wrongfully injured by her former attorneys, which triggered the statue of limitations on her legal malpractice claim against them. Further, Pierce fails to make a claim of

fraudulent concealment to assert a five-year statute of limitations. Because we find the statute of limitations issue dispositive, we express no opinion on the merits of Pierce's claims.

¶ 5 BACKGROUND

¶ 6 In December 2006, Pierce hired attorney John Vojta to represent her in a child support post-judgment proceeding. Pierce wanted to obtain a visitation order for her son's father, Richard Addante (to whom Pierce had never been married), and an increase in child support from Addante. On May 3, 2010, rather than entering a visitation order, the court entered an order granting Addante joint custody. Eight months later, on January 3, 2011, the trial judge held a pre-trial conference with Vojta, Addante's attorney, the court-appointed attorney for the minor child, and a court-appointed parenting coordinator. The trial judge advised Pierce that he was granting sole custody of the child to Addante. The decision was formalized in a final custody judgment order entered on January 12, 2011. The order stated that the parties "waived the right to appeal." In February 2011, the court terminated all child support payments from Addante to Pierce.

¶ 7 On November 8, 2011, Pierce met with Vojtas to discuss the next steps in her case. According to Pierce, Vojtas advised her of a strategy that would "cost a lot of money" but said he likely could obtain reimbursement of some of her attorney fees and child support. Pierce asserts that having decided she could no longer trust Vojta, she gave him a letter terminating his representation. On November 10, 2011, the trial court entered an order permitting Vojta to withdraw from the case.

¶ 8 On November 8, 2013, Pierce filed a *pro se* two-count complaint against Vojta alleging legal malpractice and breach of contract in the underlying domestic relations case. (Pierce also named the law firm and Vojta's law partner, Donnalyn Vojta, as defendants). Pierce claimed defendants' deficient legal services caused the trial court to award custody of her son to Addante

and to terminate her child support payments. She alleged that defendants, working in conjunction with Addante's attorney and her son's court appointed attorney, "intentionally" deceived the trial court judge "in a secret proceeding behind closed doors." She alleged they convinced the judge to enter a final custody judgment without a trial or evidentiary hearing, without any substantial change in circumstances, and "in direct opposition to [her] written objections." For instance, she claimed that when a proposed final custody order was circulated, she specifically advised Vojta that she wanted the word "final" to be removed from the order and that she would not waive her right to appeal, but that he ignored her request.

¶ 9 Pierce further alleged that defendants participate in a "cottage industry" in practice in Illinois child custody cases in which attorneys and court-appointed professionals knowingly protract litigation for increased fees and public funding, suppress evidence of child abuse, and exploit parents and children for financial gain. She claimed she learned of defendants' alleged participation in this cottage industry on November 3, 2011, when she met with two women who had pending domestic relations cases in Cook County. One of the women, who was a former client of the defendants and who had filed a legal malpractice claim against them, gave Pierce a report of the Illinois Family Law Study Committee on custody and visitation (called POD 1) describing the "cottage industry" in Illinois domestic relations practice. Pierce claimed that as a result of that meeting, she "immediately and traumatically began to realize that *** defendants and the court appointees (which appointments defendants initiated in December 2006) had intentionally churned conflict between herself and Richard [Addante] to get all her money and that her own attorneys, who claimed to be Christian, had betrayed her trust, irreparably harmed her child, and hidden this betrayal from her."

¶ 10 Defendants filed a motion to dismiss under 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2012)), arguing that Pierce's complaint was barred by the applicable two-year statute of limitations for legal malpractice actions. 735 ILCS 5/13-214.3(b) (West 2012). In the alternative, defendants argued count II should be dismissed under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), because it is duplicative of count I, and that Pierce should be required to make a more definite and certain statement of her complaint

¶ 11 After argument, the trial court granted Vojta's motion to dismiss Pierce's complaint, with prejudice, under sections 2-619(a)(5) and 13-214.3 (735 ILCS 5/2-619(a)(5); 13-214.3 (West 2012)). The trial court, which carefully considered the issue, stated:

> "It is this court's opinion that the proper date of discovery is February, 2011, when the court formally terminated all child support payments from Addante to Pierce. However, to err on the side of caution, the court will use November 3, 2011, as the date when [Pierce] knew or reasonably should have known of the injury for which damages are sought."

¶ 12 The trial court found that judicial admissions removed from contention whether Pierce knew before November 8, 2011, that she had been wrongfully injured by the defendants' conduct. Those judicial admissions included the assertion in her complaint that on November 3, 2011, she received a copy of the POD 1 report, which stated, in part, that "the effect of the present system, in practice, has created 'cottage industries' of GALs/child representatives, custody evaluators, and others, who have increased litigation costs and are not necessarily helpful in reducing conflicts between the parents." In addition, Pierce made a statement under oath in the underlying child custody proceeding, that on November 5, 2011, she "found out her attorney Mr. Vojta was a known participant in the family court 'cottage industries. ' " The court

also rejected Pierce's contention that the statute of limitations was extended to five years under section 13-215 of the Code (735 ILCS 5/13-215 (West 2012), due to defendants' fraudulent concealment, because Pierce discovered or should have discovered fraudulent concealment on defendants' part no later than November 3, 2011. Thus, Pierce had until November 2, 2013, to file her complaint but did not do so until November 8, 2013. Because of its ruling, the court found that portion of defendants' motion to dismiss based on section 2-615 (735 ILCS 5/2-615 (West 2012)) to be moot. Pierce filed a motion to reconsider, which the trial court denied.

¶ 13 ANALYSIS

¶ 14 Statute of Limitations

¶ 15 Section 2-619(a)(5) of the Code allows for the involuntary dismissal of an action that "was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2012). Whether a cause of action has been properly dismissed under section 2-619(a)(5) of the Code on the statute of limitations grounds presents a matter we review *de novo. Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004).

¶ 16 Section 13-214.3(b) of the Code states that an action for legal malpractice must be filed within two years "from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b) (West 2012). This statute of limitations incorporates the discovery rule, "which delays commencement of the statute of limitations until the plaintiff knows or reasonably should have known of the injury and that it may have been wrongfully caused." *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1997). Significantly, actual knowledge of the alleged malpractice is not a necessary condition to trigger the running of the statute of limitations. *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (2011) ("under the discovery

rule, a statute of limitations may run despite the *lack* of actual knowledge of negligent conduct" (emphasis in original)). A statute of limitations begins when the purportedly injured party "has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue." *Dancor*, 288 Ill. App. 3d at 673.

¶ 17 Knowledge that an injury has been wrongfully caused "does not mean knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis and internal quotation marks omitted.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004). A person knows or reasonably should know an injury is "wrongfully caused" when he or she possesses sufficient information concerning an injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (2002). The law is well settled that once a party knows or reasonably should know both of his or her injury and that it was wrongfully caused, "the burden is upon the injured person to inquire further as to the existence of a cause of action." (Internal quotation marks omitted.) *Castello*, 352 Ill. App. 3d at 745. "For purposes of a legal malpractice action, a client is not considered to be injured unless and until he [or she] has suffered a loss for which he [or she] may seek monetary damages." *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 306 (2005).

¶ 18 The trial court stated, "the proper date of discovery is February, 2011, when the court formally terminated all child support payments from Addante to Pierce." We agree. Generally, the statute of limitations on a cause of action for legal malpractice begins on the entry of an underlying adverse judgment. A party must then inquire further to determine whether an actionable wrong was committed. See *Hermitage v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 86-87 (1995) (finding plaintiffs aware they had been wrongfully injured when circuit court

entered order reducing their mechanic's lien); *Belden v. Emmerman*, 203 Ill. App. 3d 265, 270 (1990) (holding plaintiff injured at the time adverse judgment entered, even if amount of damages uncertain or judgment might be later reversed).

¶ 19 Pierce hired defendants to obtain a visitation order for her son's father and an increase in child support. On January 3, 2011, the trial court advised Pierce that he was awarding sole custody of her son to his father, a decision she said "paralyzed [her] with dramatic shock." And in February 2011, the court terminated all child support. These orders, which were plainly adverse to Pierce's interest, put her on notice that she had been injured, and required her to inquire further to determine if an actionable wrong was committed.

¶ 20 But, even if Pierce did not know as of February 2011 that she had been wrongfully injured, statements in her complaint, which constitute judicial admissions, show that she knew no later than November 3, 2011, which was over two years before she filed her complaint. Judicial admissions are formal admissions in the pleadings that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. *Konstant Products, Inc. v. Liberty Mutual Fire Insurance Co.*, 401 Ill. App. 3d 83, 86 (2010). For a statement to constitute a judicial admission, it must be clear, unequivocal, and uniquely within the party's personal knowledge. *Williams Nationalease, Ltd v. Motter*, 271 Ill. App. 3d 594, 597 (1995). The statement also must be an intentional statement relating "to concrete facts and not an inference or unclear summary." *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907 (2011). Evidentiary admissions can be controverted or explained by the party, while judicial admissions cannot be disputed or explained. *Pryor v. American Central Transport, Inc.*, 260 Ill. App. 3d 76, 85 (1994).

¶ 21 In her complaint, Pierce stated that on November 3, 2011, she met two women for coffee, one of whom had filed a legal malpractice complaint against defendants. Pierce asserted that

when one of the women gave her a copy of the POD 1 report describing the "cottage industry" in Illinois domestic relations cases, she "immediately and traumatically began to realize that *** defendants *** had intentionally churned conflict between herself and Richard to get all her money and that her own attorneys *** had betrayed her trust, irreparably harmed her child, and hidden this betrayal from her." Pierce contends these statements are not judicial admissions. We disagree. These statements regarding when Pierce became aware of this alleged "cottage industry" and her attorneys possible involvement in it, are clear, unequivocal, and uniquely within her knowledge. As of that date, she not only knew that she had been injured by the trial court orders removing her son from her custody and terminating child support payments, but she also knew that her counsel's conduct, namely, his participation in the alleged "cottage industry," was the cause.

¶ 22 Pierce points to her decision to fire Vojtas on November 8, 2011, as evidence that she did not know until then that he had wrongfully injured her. While Piece's dissatisfaction with Vojta's representation may have culminated with her decision to fire him, it is not dispositive of the date on which she knew or reasonably should have known of her injury and its cause, which, as discussed, was no later than November 3, 2011. Further, as Pierce acknowledges, she brought a termination letter to her meeting with Vojta, which further supports the finding that she knew before that date of her alleged wrongful injury. Thus, because the statute of limitations on a legal malpractice claim began to run no later than November 3, 2011, section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2012) requires dismissal of Pierce's complaint filed on November 8, 2013, after the passage of the statute of limitations.

¶ 23 Fraudulent Concealment

¶ 24 Pierce next contends defendants' fraudulent concealment of their own malpractice triggered a five year statute of limitations under section 13-215 of the Code. 735 ILCS 5/13-215 (West 2012).

¶ 25 Under the fraudulent concealment doctrine, the statute of limitations tolls if the plaintiff pleads and proves that fraud prevented discovery of a cause of action. *Clay v. Kuhl*, 189 Ill. 2d 603, 613 (2000). When applicable, the fraudulent concealment doctrine allows a plaintiff to file a suit at any time within five years after discovering the cause of action. 735 ILCS 5/13-215 (West 2012). As a general matter, one alleging fraudulent concealment must " 'show affirmative acts by the fiduciary designed to prevent the discovery of the action.' " *Clay*, 189 Ill. 2d at 613 (quoting Hagney *v. Lopeman*, 147 Ill. 2d 458, 463 (1992)). In other words, a claimant must show "affirmative acts or representations [by a defendant] that are calculated to lull or induce a claimant into delaying filing his [or her] claim or to prevent a claimant from discovering his [or her] claim." *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 257 (1998). But there is a widely recognized exception to this rule where a fiduciary relationship has been plainly established. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 76 (2006) (citing *Crowell v. Bilandic*, 81 Ill. 2d 422, 428 (1980)). "[A] fiduciary who is silent, and thus fails to fulfill his duty to disclose material facts concerning the existence of a cause of action, has fraudulently concealed that action, even without affirmative acts or representations." (Emphasis omitted.) *Id.* at 77. Our supreme court has recognized that an attorney-client relationship constitutes a fiduciary relationship. *Id.* (and cases cited).

¶ 26 Pierce asserts that defendants had an obligation to inform her that she might have a claim of legal malpractice against them. Pierce, however, fails to cite a case holding that a lawyer has

an affirmative obligation to advise a client to sue the attorney for legal practice. Indeed, in *Fitch v. McDermott*, this court stated, "We *** find no case that would require an attorney to affirmatively advise his client of his negligence and the statute of limitations for suing him." *Fitch*, 401 Ill. App. 3d 1006, 1025 (2010). Thus, absent evidence of fraudulent concealment, a five year statute of limitations does not apply.

¶ 27 Further, courts decline to allow fraudulent concealment to be used as a shield where "the claimant discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period." *Mauer v. Rubin*, 401 Ill. App. 3d 630, 649 (2010). Pierce's own statements are evidence that she discovered defendants' fraud, if any, no later than November 3, 2011, when she received the POD 1 report detailing the "cottage industry" in child custody cases and came to believe defendants were participating in it. Thus, the trial court did not err in refusing to apply the five year statute of limitations under section 13-215 of the Code (735 ILCS 5/13-215 (West 2012)).

¶ 28 CONCLUSION

¶ 29 Pierce's failure to file her complaint before November 2, 2013 was grounds for dismissal under sections 2-619(a)(5) and 13-214.3(b) of the Code (735 ILCS 5/2-619(a)(5), 13-214.3(b) (West 2012)). The law requires that we affirm the circuit court's order granting defendants' motion to dismiss with prejudice.

¶ 30 Affirmed.