IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

The Chicago Trust Company, as independent administrator of the estate of Kianna Rudesill, deceased,	)	
Plaintiff,	)	
v.	)	No. 19 L 12006
William Puga, M.D., individually and as agent of BHC Streamwood Hospital, Inc., BHC Streamwood Hospital, Inc., and Institute for Human Resources,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The statute of repose for medical malpractice is four years from the date of the defendant's conduct that forms the basis of the plaintiff's injury. After the running of the applicable statute of repose and voluntarily dismissing a prior complaint, the plaintiff re-filed a complaint and improperly named a new defendant for the first time. For that reason, the defendant's motion is granted and the defendant is dismissed with prejudice.

Facts

This case has a long history belied by the 2019 filing of the current complaint. Since the facts relevant to this court's ruling are entirely date driven, the following timeline is sufficient in lieu of a detailed statement of facts.

3/10/11 BHC Streamwood Hospital, Inc. and Dr. William Puga admit Kianna Rudesill for evaluation

3/17/11	Streamwood and Puga discharge Kianna, who is returned to her foster parents
5/2/11	Foster mother, Heather Lamie, beats Kianna, causing brain damage
5/4/11	Kianna dies
4/30/13	Previous administrator (biological father, James Rudesill) files suit in Kankakee County naming Baby Fold and Heather and Joshua Lamie as the only defendants (13 L 64)
1/28/15	Previous administrator voluntarily dismisses the suit
3/27/15	Previous administrator re-files suit in Cook County naming previous defendants and adding BHC and Puga for first time (15 L 3146); Puga is identified as employee of Streamwood for purposes of vicarious liability
3/8/16	This court denies defendants' motion to transfer to Livingston County
9/12/17	Appellate court affirms denial of motion to transfer
3/9/18	Case returns from interlocutory appeal and is renumbered (18 L 2525)
5/23/19	Current administrator, Chicago Trust Company (CTC), settles with Baby Fold only
5/23/19	Current administrator voluntarily dismisses 18 L 2525
10/30/19	Current administrator re-files suit in Cook County (19 L 12006) against previously remaining defendants and names Institute for Human Resources (IHR) for first time

Analysis

IHR's motion to dismiss presents multiple arguments, including one brought pursuant to Code of Civil Procedure 2-619(a)(5). *See* 735 ILCS 5/2-619(a)(5). A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski v. Lata*,

227 Ill. 2d 364, 369 (2008). A court considering such a motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See id.* Further, all well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995).

IHR argues that CTC failed to name IHR as a defendant within either the statutes of limitation or repose applicable to a medical malpractice case. Both limitations are contained in one code section that provides in relevant part:

> Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician . . . or hospital duly licensed under the laws of this State . . . arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death.

735 ILCS 5/13-212(a). The section 13-215 exception applies only if a party has fraudulently concealed the cause of action, *see* 735 ILCS 5/13-215, a scenario that neither party argues applies here.

It is well noted that statutes of limitation and repose serve distinct purposes. "[A] statute of limitations governs the time within which lawsuits may be commenced after a cause of action has accrued, while a statute of repose extinguishes the action itself after a fixed period of time, regardless of when the action accrued." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 61 (2006) (citing *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311 (2001)). A statute of

repose is, therefore, "intended to terminate the possibility of liability after a defined period of time, regardless of a potential plaintiff's lack of knowledge of his or her cause of action." *Id.*

IHR argues that it cannot now be named as a defendant more than nine years after Puga discharged Kianna and nearly nine years after her death because both the two-year statute of limitation and the four-year statute of repose have expired. CTC argues in response that naming IHR at this point is explicitly authorized by the savings provision contained in section 13-217. *See* 735 ILCS 5/13-217. That provision provides in relevant part that:

> In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited, if . . . the action is voluntarily dismissed by the plaintiff . . . then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators 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. . . .

Id. CTC's argument is wrong for at least four reasons.

First, there is the matter of statutory construction, the cardinal rule of which is to "ascertain and effectuate the legislature's intent. . . ." *McElwain v. Illinois Sec'y of State*, 2015 IL 117170, ¶ 12. The primary source from which to infer this intent is the statute's language. *See id.* "If the language of the statute is clear, the court should give effect to it and not look to extrinsic aids for construction." *Bogseth v. Emanuel*, 166 Ill. 2d 507, 513 (1995); *see also Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13. Words, clauses, and sentences are to be given a reasonable meaning and not rendered superfluous. *See Chicago Teachers Union v. Board of Ed.*, 2012 IL 112566, ¶ 15 (citing cases).

Section 13-217 cannot be read to permit CTC to name IHR for the first time in this re-filed action. The reason is that the statute permits a re-filing only if the time limitation expired "during the pendency of such action." That phrase plainly refers to the previous case; in other words, the case that the plaintiff voluntarily dismissed before re-filing the new action. Based on the timeline presented above, the four-year statute of repose for naming IHR expired on March 17, 2015, four years after Puga released Kianna from Streamwood on March 17, 2011. Yet Rudesill did not file the predecessor case – 15 L 3146 – until March 27, 2015, ten days after the statute of repose had expired. Since both the repose period had expired and the administrator had failed to name IHR in the prior case, IHR cannot now be named for the first time.

Second, the common-law exceptions to 13-217 do not apply. While the Supreme Court has interpreted the section to permit a single re-filing of the same cause of action, *see Timberlake v. Illini Hospital*, 175 Ill. 2d 159, 164 (1997) there are at least two recognized exceptions, if: "(1) . . . the parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein; or (2) the court in the first action expressly reserves the plaintiff's right to maintain the second action." *Rein v. David A. Noyes & Co.*, 271 Ill. App. 3d 768, 772 (1st Dist. 1995) (citing *Airtite v. DPR Ltd. Partnership*, 265 Ill. App. 3d 214, 219 (4th Dist. 1994)). *See also Camper v. Burnside Constr. Co.*, 2013 IL App (1st) 121589, ¶ 8 (voluntarily dismissal order expressly reserved plaintiff's right to maintain cause of action "upon refiling of this matter in accordance with [s]ection 13-217 of the Illinois Code of Civil Procedure (735 ILCS 5/13-217) and there shall be no *res judicata* effect upon any claim"). Here, IHR did not agree to terms or acquiesce to CTC's right to split its claims, and this court's May 23, 2019 order does not expressly permit CTC to name a new party. Although IHR does not challenge CTC's right to re-file as authorized by section 13-217, IHR properly focuses its argument on the fact that CTC has named IHR as a defendant after the running of the statute of repose.

Third, the cases on which CTC relies are unhelpful to its argument because both *Fiorito v. Bellocchio*, 2013 IL App (1st) 121505, and *Hinkle v. Henderson*, 85 F.3d 298 (7th Cir. 1996), address substantially different factual scenarios. In *Fiorito*, the plaintiff named the same defendant driver in the re-filed action who had been named in the original vehicle collision case. *See* 2013 IL App (1st) 121505, ¶¶ 3-4. Similarly, in *Hinkle*, the plaintiff named the same defendant doctor in the re-filed medical malpractice action who had been named in the original complaint. *See* 85 F.3d at 299-300. These holdings are consistent with other cases that present similar fact patters. *See, e.g., Jain v. Johnson*, 398 Ill. App. 3d 135, 137 (2d Dist. 2010) (same attorneys named in re-filed legal malpractice suit as named in the earlier suit); *Limer v. Lyman*, 241 Ill. App. 3d 125, 126 (4th Dist. 1993) (same defendant doctor named in re-filed medical malpractice suit as in earlier timely filed suit).

None of these cases addresses the situation presented here. It is one thing to name a defendant in a re-filed action after the expiration of the statute of limitations or repose if that defendant had been named in a previous complaint. It is quite another to interpret the general savings clause of 13-217 to permit, as in this case, the naming of an entirely new defendant in a medical malpractice case nine years after the alleged conduct on which the claim is based. To accept CTC's argument would eviscerate the statute of repose for medical malpractice actions contained in 13-212(a). That cannot be the correct result.

Fourth, CTC's argument reveals its implicit motivation is to have its most recent iterative pleading viewed as an amendment to its earlier actions rather than as a re-filed action. That attempt is legally unsupportable. Pleading amendments and the relation-back doctrine are governed exclusively by Code of Civil Procedure section 2-616. *See Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 18 (citing *Apollo Real Estate Invest. Fund IV, L.P. v. Gelber*, 398 Ill. App. 3d 773, 782 (1st Dist. 2009). "Section 2-616, entitled 'Amendments,' is 'concerned only with amendments and when

they should be permitted.'" *Id.* "Refilings are governed by section 13-217 of the Code, and not section 2-616." *Id.* (citations omitted). Here, it is uncontested that the 2019 L 12006 lawsuit is a re-filing following CTC's voluntary dismissal of the 18 L 2525 case on May 23, 2019. Since CTC acknowledges that the current case is a re-filing and not an amendment, only section 13-217 can apply to the current case, not section 2-616, but section 13-217 does not authorize the naming of a new defendant in a re-filed matter for the first time after the expiration of the statute of repose.

Conclusion

For the reasons presented above, it is ordered that:

1. The motion to dismiss Institute for Human Resources as a defendant is granted with prejudice;
2. The case remains pending as to all other defendants;
3. Pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delaying either the enforcement, the appeal, or both of this court's ruling; and
4. This case shall be heard for case management on a date to be scheduled by notification to the parties.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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