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

Lakeisha Brandon, as independent administrator of the estate of Aaron Brandon, deceased; Lakeisha Brandon, individually, and Dakuarie Brandon, Plaintiffs, v. City of Chicago, the estate of Officer Brandon Krueger, deceased, in his individual capacity and as a former employee of City of Chicago, Village of Hazel Crest, Detective Farkas, individually and as an employee of the Village of Hazel Crest, Officer K. Meletis, individually and as an employee of the Village of Hazel Crest, former Sergeant David Nelson, individually and as an employee of the Village of Hazel Crest, Defendants.	)	No. 18 L 9247

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure is liberally construed to authorize amended pleadings so cases may be resolved on their merits. Although the plaintiff's complaint named a decedent's estate that had not yet been opened, an amended pleading filed after the estate had been opened cured any defect and related back to the original compliant. For those reasons, the defendants' motion to dismiss must be denied.

Facts

On August 29, 2017, off-duty City of Chicago police officer Brandon Krueger shot and killed Aaron Brandon and shot and

injured Dakuarie Brandon during an alleged attempted robbery in Hazel Crest. On July 8, 2018, Krueger committed suicide by gunshot while sitting in his squad car at the 5th District police station. On August 23, 2018, Lakeisha Brandon filed her complaint against the defendants, including Krueger's estate. In April 2019, a petition was filed in the Probate Division to open Krueger's estate. On June 3, 2019, Judge Terrence J. McGuire issued letters of office to Lakeisha as an independent administrator to collect on behalf of Krueger's estate. On August 10, 2020, Sanchez Daniels & Hoffman LLP entered an appearance on behalf of Krueger's estate.

Analysis

Krueger's estate brings this motion to dismiss based on Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. 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). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). As has been stated: "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." *Id.*

Two enumerated grounds for a section 2-619 motion to dismiss are a court's lack of jurisdiction, 735 ILCS 5/2-619(a)(1), and the failure to file within the applicable statute of limitations, 735 ILCS 5/2-619(a)(5). Krueger's estate raises both bases. In essence, Krueger's estate argues that the case against it is a nullity since a probate judge did not issue letters of office until after Lakeisha filed her complaint and the statute of limitations had expired.

The parties' arguments focus on various statutes, the relative import of which is contested. When faced with the job of interpreting statutes, courts invariably turn to the tools 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). That admonishment extends even to legislative history. *See O'Casek v. Children's Home & Aid Soc'y*, 229 Ill. 2d 421, 446 (2008) (if statute is unambiguous, resort to legislative history is inappropriate). It is also plain that a court may not, "depart from plain statutory language by reading into [a] statute exceptions, limitations, or conditions not expressed by the legislature." *McElwain*, 2015 IL 117170, ¶ 12.

The rules of statutory construction further provide that a statute is to be viewed as a whole, and that a court is to construe words and phrases in light of other relevant statutory provisions. *See Chicago Teachers Union v. Board of Ed.*, 2012 IL 112566, ¶ 15 (citing cases). Words, clauses, and sentences are to be given a reasonable meaning and not rendered superfluous. *See id.* (citing cases). In construing a statute, a court may consider, "the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.* A court should attempt to construe potentially conflicting provisions together, *in pari materia*, if it is reasonable to do so, *see id.*, keeping in mind that a court is to presume that the legislature did not intend to create absurd, inconvenient, or unjust results. *See Price v. Phillip Morris, Inc.*, 2015 IL 117687, ¶ 30.

The first statute to be addressed is the Local Government and Governmental Employees Tort Immunity Act (TIA). The TIA includes a one-year limitation period for all actions against local public entities and their employees (except for actions arising out of patient care). As stated, in part:

> No civil action . . . may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the

> date that the injury was received or the cause of action accrued.

745 ILCS 10/8-101(a). The limitations period applies to negligence as well as willful and wanton claims. *Luciano v. Waubonsee Comm. Coll.*, 245 Ill. App. 3d 1077, 1086 (2d Dist. 1993). There is no exception to the one-year period even if a plaintiff can show an absence of prejudice from the delay. *Henderson v. Jones Bros. Constr. Corp.*, 234 Ill. App. 3d 871, 874 (1st Dist. 1992) (citing *Lerner v. Zipperman*, 104 Ill. App. 3d 1098, 1102 (1st Dist. 1982)). Importantly, section 8-101 does not contain an "except as otherwise provided by statute" provision that could qualify its application based on other statutes. *See, e.g.*, 745 ILCS 10/2-201 & 10/2-204. *See Murray v. Chicago Youth Cntr.*, 224 Ill. 2d 213, 232 (2007) (legislature intended "except as otherwise provided by statute" phrase to be contingent on other statutory provisions creating exceptions or limitations).

It is uncontested that Lakeisha filed her complaint six days before the running of one-year statute of limitations in section 8-101; therefore, she timely filed her complaint for purposes of the TIA. It is, however, impossible to read anything more into section 8-101. For example, the section says nothing about who may be named as a defendant or whether a complaint may be amended to name additional parties. It is known, however, that amending a complaint to add additional claims after the running of the statute of limitations is permissible. *See Stevanovic v. City of Chicago*, 385 Ill. App. 3d 630, 635-36 (2008) (applying relation-back doctrine in 735 ILCS 5/2-616(b)).

Krueger's estate focuses on a narrower issue not addressed in section 8-101—whether the estate could be named in the complaint at all, given the uncontested fact that Judge McGuire did not issue letters of office until June 3, 2019, approximately 10 months after Lakeisha filed her complaint and well after the one-year statute of limitations had expired. The answer to this issue rests on two other statutes, one addressing the death of a party

and the other addressing amended pleadings. As to the death of a party, the Code of Civil Procedure (CCP) provides:

> (b) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, and is not otherwise barred:
>
> (1) an action may be commenced against his or her personal representative after the expiration of the time limited for the commencement of the action, and within 6 months after the person's death;
>
> (2) if no petition has been filed for letters of office for the deceased's estate, the court, upon the motion of a person entitled to bring an action and after the notice to the party's heirs or legatees as the court directs and without opening an estate, may appoint a special representative for the deceased party for the purposes of defending the action. If a party elects to have a special representative appointed under this paragraph (2), the recovery shall be limited to the proceeds of any liability insurance protecting the estate and shall not bar the estate from enforcing any claims that might have been available to it as counterclaims.

735 ILCS 5/13-209(b)(1) & (2).

Section 13-209(b)(1) plainly provides that a cause of action may be filed within six months after a defendant-decedent's death. Lakeisha met that requirement because it is uncontested she filed her complaint within six weeks after Krueger's suicide. But section 13-209(b)(1) also states the suit is to be brought against the defendant-decedent's "personal representative." Neither the CCP nor section 13-209 defines the term "personal representative." *Relf v. Shatayeva*, 2013 IL 114925, ¶ 32. The *Relf* court concluded, nonetheless, that "[i]ssuance of letters of office would . . . appear to be a hallmark of a 'personal representatives' as that term is commonly understood when

applied to situations involving estates which must be settled and distributed following a person's death." *Id.* at ¶ 33.

It is uncontested that Lakeisha did not sue Krueger's personal representative in her August 23, 2018 complaint because one did not exist until Judge McGuire's June 3, 2019 order. The ultimate issue is, therefore, whether naming a non-existent estate as a defendant makes Lakeisha's complaint against Krueger's estate a nullity from the day she filed suit. The Supreme Court has plainly held that a case in which a named party is deceased cannot invoke a circuit court's jurisdiction; consequently, any judgment entered in the case would be a nullity. *See Relf*, 2013 IL 114925, ¶ 22 (citing *Danforth v. Danforth*, 111 Ill. 236, 240 (1884); *Bricker v. Borah*, 127 Ill. App. 3d 722, 724 (5th Dist.1984)). Section 13-209(b)(1) appears, therefore, to make Lakeisha's complaint a nullity since Krueger's estate did not exist at the time of filing.

Section 13-209(b)(2) points to a different result. This subsection authorizes a court to appoint a defendant-decedent's special representative to defend the action even if no petition for letters of office has been filed. *Relf*, 2013 IL 114925, ¶ 26. In contrast to subsection (b)(1), subsection (b)(2) contains no time limit for the filing a petition for letters of office. The plain language of section 13-209(b)(2) means that a petition for letters of office may be may be sought and obtained at any time before or after the filing of a complaint. Lakeisha, therefore, timely obtained letters of office within the scope of section 13-209(b)(2).

Obtaining letters of office is, however, a distinct issue from naming a party after a statute of limitations has expired. As to that hurdle, it is necessary to refer to the relation-back doctrine statutorily authorized in CCP section 2-616(d). As stated:

> (d) A cause of action against a person not originally named a defendant is not barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted,

> if all the following terms and conditions are met: (1) the time prescribed or limited had not expired when the original action was commenced; (2) the person, within the time that the action might have been brought or the right asserted against him or her plus the time for service permitted under Supreme Court Rule 103(b), received such notice of the commencement of the action that the person will not be prejudiced in maintaining a defense on the merits and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her; and (3) it appears from the original and amended pleadings that the cause of action asserted in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery when the condition precedent has in fact been performed, and even though the person was not named originally as a defendant. For the purpose of preserving the cause of action under those conditions, an amendment adding the person as a defendant relates back to the date of the filing of the original pleading so amended.

735 ILCS 5/2-616(d).

The Supreme Court has interpreted section 2-616(d) to provide that an action against a decedent is not a nullity under all circumstances. *See Vaughn v. Speaker,* 126 Ill. 2d 150, 157-60 (1988). In *Vaughn,* the court addressed whether section 2-616(d) authorized naming the decedent's executors as defendants in an amended complaint. *Id.* at 126 Ill. 2d at 157-60. The court initially explained that the amended complaint's replacement of the decedent with executors was untimely because the plaintiff filed after the statute of limitations had expired, no other provision extended the limitations period, and the executors'

substitution did not correct a misnomer. *Id.* at 156-57. On those facts, the *Vaughn* court concluded section 2-616(d) did not apply because one of the requirements was not met. The court, nonetheless, reversed the trial court's dismissal and remanded the case for the trial court to address the plaintiff's argument that the defendants were estopped from raising a statute of limitations defense. *Id.* at 160, 167.

In this case, the first and third requirements of section 2-616(d) are easily met. First, it is undisputed that Lakeisha timely filed her original complaint. Third, the original and amended complaint grew out of the same transaction or occurrence. As to the second requirement, and in contrast to *Vaughan*, the plain language of section 2-616(d) makes evident that, under these facts, the requirement is either inapplicable or has been met.

The second requirement is inapplicable because Lakeisha did not mistakenly identify an improper party; rather, she knew Krueger had died before she filed her complaint as evidenced by the fact that she named Krueger's estate as a defendant. At the same time, the second requirement is met because Krueger's estate forfeited any notice requirement under Illinois Supreme Court Rule 103(b). Ill. S. Ct. R. 103(b). Rule 103(b) provides that, a court may dismiss a claim with prejudice "[i]f the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations . . . ." *Id.* A Rule 103(b) defense may, however, be forfeited if the defendant fails to raise an objection during the initial stages of the litigation. *See Muskat v. Sternberg*, 211 Ill. App. 3d 1052, 1057 (1st Dist. 1991). Here, Judge McGuire issued letters of office on June 3, 2019, but Sanchez Daniels & Hoffman did not file an appearance on behalf of Krueger's estate until August 10, 2020. Moreover, the first motion brought by Krueger's estate was to dismiss based on substantive legal issues, not Rule 103(b).

Apart from the plain language of section 2-616(d), Illinois courts have considered the statute and acknowledged that an administrator "should be appointed first and the wrongful-death

action filed subsequently." *Nagel v. Inman*, 402 Ill. App. 3d 766, 770 (5th Dist. 2010) (citing *Lindsey v. Special Administrator of Estate of Phillips*, 219 Ill. App. 3d 372, 377 (4th Dist. 1991). "However, a failure to follow this procedure is not necessarily fatal to a cause of action. Numerous cases have found that where an administrator is appointed after the suit is filed, the appointment will relate back to the time when the suit was filed." *Id.* (citing *Jablonski v. Rothe*, 287 Ill. App. 3d 752, 755 (2d Dist. 1997), *Hardimon v. Carle Clinic Ass'n*, 272 Ill. App. 3d 117, 122 (4th Dist. 1995), and *Pavlov v. Konwall*, 113 Ill. App. 3d 576, 579 (1st Dist. 1983)). And although section 2-616 relates to amended pleadings, the plaintiff need not file an amended complaint after an administrator is appointed. *Id.* at 771-72.

In sum, section 13-209(b)(1) is not controlling here. Rather, section 13-209(b)(2) permits a personal representative to be named at any time, while section 2-616(d) authorizes the late filing of an administrator to relate back to the filing of the original complaint.

Conclusion

For the reasons presented above, it is ordered that:

1. The motion to dismiss filed by Krueger's estate is denied; and
2. Krueger's estate will file its answer to the amended complaint no later than March 24, 2021.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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