

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

Verunika Dujmovic,)	
)	
Plaintiff,)	
)	
v.)	No. 18 L 3117
)	
Cook County,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure authorizes the filing of a new lawsuit within one year from the date the plaintiff voluntarily dismissed the previous lawsuit. In this instance, the plaintiff failed to file her new lawsuit within one year but, instead, filed a motion for an extension of time to file. Since such a motion fails to comport with the statute, this court lacks jurisdiction to consider the plaintiff's motion and extend any filing deadline.

Facts

On October 23, 2018, Verunika Dujmovic filed, *pro se*, a lawsuit against Cook County for medical malpractice that had allegedly occurred during a March 27, 2017 oral surgery at John H. Stroger, Jr. Hospital. Dujmovic's complaint did not attach a physician's report indicating her case had merit as required by the Code of Civil Procedure. *See* 735 ILCS 5/2-622. The parties vigorously disputed the existence and production of documents; specifically, Dujmovic claimed a video recording existed of the procedure. This court granted numerous extensions of time to complete written discovery and for the submission of a physician's section 2-622 report given Dujmovic's insistence that a video existed.

The county ultimately produced an affidavit from a hospital administrator averring that the county had produced all records in its possession and that no video existed. This court offered Dujmovic the opportunity to depose the affiant, but she informed this court that she did not have the funds to pay for the deposition. Given the uncontradicted affidavit, this court concluded the county had produced all documents in its possession. This court then gave Dujmovic time to procure a physician's report. After several delays for the lack of a report, this court recommended that Dujmovic voluntarily dismiss her case and use the intervening year to obtain the necessary physician's report. On February 11, 2020, Dujmovic sought and this court granted a voluntary dismissal pursuant to Code of Civil Procedure section 2-1009.

On February 11, 2021, Dujmovic filed a motion pursuant to Illinois Supreme Court Rule 183 for an extension of time to file her new case. To be clear, at that time Dujmovic did not file her new cause of action against Cook County. On February 25, 2021, the county filed an objection to Dujmovic's motion for an extension of time, arguing this court lacked jurisdiction to consider the motion since Dujmovic had failed to file her new case. On April 1, 2021, Dujmovic provided this court with a response. On April 2, 2021, the county filed its reply.

Analysis

The current dispute implicates three Code of Civil Procedure provisions. First, the code explicitly authorizes a plaintiff "to dismiss his or her action . . . without prejudice." 735 ILCS 5/2-1009(a). Second, the code provides that "if . . . [an] action is voluntarily dismissed by the plaintiff, . . . the plaintiff . . . may commence a new action within one year or within the remaining period of limitation, whichever is greater. . . ." 735 ILCS 5/13-217. Third, the Code of Civil Procedure provides: "On good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment." 735 ILCS 5/2-1007.

Dujmovic's motion rests on Illinois Supreme Court Rule 183, which explicitly applies only to acts required by the rules, not the Code of Civil Procedure. That error is by no means fatal as section 2-1007 provides similar language: "for the doing of any act or the taking of any step or proceeding prior to judgment." *Id.* It is that language, however, that exposes the essential flaw in Dujmovic's motion for an extension of time.

Doing an act or taking any step prior to judgment presumes there is a case to go to judgment. Here, there is no such case. Dujmovic filed her motion under number 18 L 3117, a case that no longer exists because she voluntarily dismissed it. In other words, this court cannot grant an extension of time for filing a new case under section 13-217 because there is currently no case to go to judgment.

Apart from the procedural error inherent in Dujmovic's motion, there are substantial jurisdictional impediments. A court must have both personal jurisdiction over the parties and subject-matter jurisdiction over the type of case brought. *In re M.W.*, 232 Ill. 2d 408, 414 (2009). "Personal jurisdiction refers to the court's power to bring a person into its adjudicative process." *People v. Castleberry*, 2015 IL 116916, ¶ 12; see *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989) ("[p]ersonal jurisdiction may be acquired either by the party's making a general appearance or by service of process as statutorily directed"). Subject-matter jurisdiction "refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Subject-matter jurisdiction "is conferred entirely by our state constitution," *id.*, and extends jurisdiction to all "justiciable matters." Ill. Const. 1970, art. VI, § 9. "[T]o invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter." *Belleville Toyota*, 199 Ill. 2d at 334. "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as

opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Id.* at 335.

Given those general principles, it is plain this court lacks both personal and subject matter jurisdiction to consider Dujmovic’s motion for an extension of time. First, this court lacks personal jurisdiction because Dujmovic has not served Cook County with a new complaint and summons. In other words, Dujmovic is not a plaintiff and Cook County is not a defendant. Second, this court lacks subject matter jurisdiction because Dujmovic has not filed a new complaint presenting a justiciable matter.

The current dispute concerning Dujmovic’s motion echoes the issues addressed in *Jain v. Northwestern Memorial Hospital*, 2011 Ill. App. Unpub. LEXIS 1433.¹ In *Jain*, the plaintiff sued for injuries allegedly sustained during a kidney transplant. *Id.* at *2. Jain’s attorney then withdrew and Jain voluntarily dismissed his lawsuit. *Id.* Nearly two months before the statutory one-year re-filing period expired, Jain wrote a letter to the clerk of the circuit court requesting an additional year to find an attorney and file a new complaint. *Id.* Jain also wrote a letter to the judge seeking the appointment of counsel and an extension of time to file his new complaint. *Id.* at *3. Ultimately, Jain served the defendant-hospital after the one-year re-filing period had expired, and the hospital then filed a motion to dismiss. *Id.* at *4. The court granted the motion. *Id.*

On appeal, the court focused on whether Jain had timely re-filed his complaint. *Id.* at *4-5. The court first recognized that section 13-217 is a savings statute and that a lawsuit re-filed pursuant to that statute is new action, not a reinstatement of the old lawsuit. *Id.* at *5 (citing *Dubina v. Mesirrow Realty Dev., Inc.*, 178 Ill. 2d 496, 504 (1997)). The court found Jain’s letters to

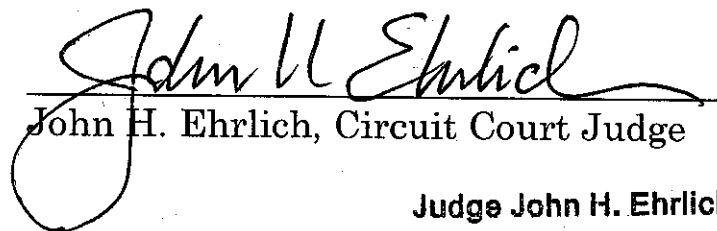
¹ Unpublished opinions may be cited for “persuasive purposes.” Ill. S. Ct. R. 23(e)(1).

the clerk and judge did not constitute the filing of a complaint because the letters did not contain a "plain and concise statement of the pleader's cause of action." *Id.* at *6 (citing 735 ILCS 5/2-201). The court acknowledged that Jain had proceeded *pro se* and had difficulty acquiring new counsel. *Id.* at *7. "Nevertheless, *pro se* litigants must comply with the same rules of procedure as would be required of litigants with counsel." *Id.* (citing *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001)). Since the record failed to show that Jain had filed a new action within one year of the voluntary dismissal, the circuit court had properly granted the hospital's motion to dismiss with prejudice. *Id.*

Just as Jain's letters were insufficient to constitute the filing of a new cause of action under section 13-217, Dujmovic's filing a motion for an extension of time does not constitute a new cause of action. Without a new lawsuit on file, this court lacks jurisdiction to consider Dujmovic's motion for an extension of time. In sum, Dujmovic's motion must be denied.

Conclusion

For the reasons presented above, it is ordered that Dujmovic's motion for an extension of time to file a new complaint is denied.


John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

APR 06 2021

Circuit Court 2075