

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

Ebony Henry, individually and as special
administrator of the estate of Na'Santi Williams,
a deceased minor,

Plaintiff,

v.

The University of Chicago Medical Center d/b/a
UChicagoMedicine; The University of Chicago
Hospitals and Health System; Timothy Wyman, M.D.;
Christine Ann Babcock, M.D.; Brian Matthew
Steiner, M.D.; Romeen Lavani, M.D.; Meghan
Nolan, R.N.; and Kelsey Deegan, R.N.;

Defendants.

No. 21 L 1095

MEMORANDUM OPINION AND ORDER

The two-year statute of limitations applicable to medical negligence claims begins when a plaintiff knows or reasonably should know of the injury and that it was wrongfully caused. In this case, the plaintiff learned that the decedent's death was wrongfully caused on receipt of a physician's report stating that the plaintiff had a meritorious claim. As the plaintiff filed her amended complaint naming a new defendant within two years of receiving the physician's report, the amended complaint naming the new defendant is timely and, therefore, the defendant's motion to dismiss must be denied.

Facts

On January 20, 2019, Ebony Henry took her daughter, Na'Santi Williams, a nine-month-old infant, to the University of Chicago Medical Center (UCMC) emergency department. Williams's symptoms included an upper respiratory infection, cough, two days of fever, tachycardia, fussiness, and sonorous breathing. Various medical personnel provided care and treatment to Williams, who tested positive for leukocytosis. Later that day, doctors discharged Williams without antibiotics and instructed Henry to follow up with a primary care physician in five days.

On January 21, 2019, Henry, once again, took Williams to the UCMC emergency department. Doctors diagnosed Williams with tachypnea, a

retropharyngeal abscess, acute respiratory distress, and mediastinitis. Doctors drained the abscess, intubated Williams, and admitted her to the pediatric intensive care unit. On January 23, Williams self-extubated and was re-intubated on an emergent basis. By January 30, 2019, doctors had placed Williams on an oscillator; thereafter, her respiratory status improved.

On February 2, 2019, doctors sedated and neuromuscularly blocked Williams subject to a physician's order that Williams's endotracheal tube be pulled back one centimeter. After Nurses Meghan Nolan and Kelsey Deegan pulled back the endotracheal tube, Williams began having oxygen desaturation. A chest X ray showed that the endotracheal tube was above the thoracic inlet, but no attempt was made to reintubate Williams. Williams became bradycardic, suffered respiratory and cardiac arrest, and died.

Shortly before January 29, 2021, Henry received a report from a reviewing physician stating that she had a meritorious cause of action for medical negligence. On January 29, 2021, Henry filed a complaint against various defendants and respondents in discovery (RIDs); Henry did not name Deegan in either capacity. The parties then undertook extensive RID discovery. The medical records produced in discovery did not contain any notations that Deegan had been involved in Williams's care on February 2, 2019. Further, UCMC did not identify Deegan in response to Henry's interrogatory seeking the names of all persons who had treated Williams. On March 23, 2022, Henry's attorneys deposed Nolan. In her deposition, Nolan testified that Deegan had treated Williams on February 2, 2019 and assisted in moving Williams's endotracheal tube.

The RID discovery led to a July 19, 2022, court order converting two doctors and Nolan from RIDs to defendants, discharging four physicians as RIDs, and granting Henry leave to file an amended complaint adding Deegan as a defendant. On August 11, 2022, Henry filed a first amended complaint naming Deegan as a defendant for the first time. Counts 15 and 16 of the first amended complaint are directed against Deegan under the Wrongful Death Act and the Family Expense Act, respectively.

On October 7, 2022, Deegan filed a motion to dismiss counts 15 and 16. Attached as an exhibit to the motion is a verified declaration by Kelsey Deegan (now Kelsey Courtney). Deegan stated that she left UCMC in July 2020, approximately six months before Henry filed her original complaint, and that she is now a nurse in the State of Arizona. Deegan stated that she first received notice in May 2022 that a lawsuit had been initiated against UCMC. On September 7, 2022, Deegan received notice of "the above captioned lawsuit and the specific allegations therein. . . ." Deegan stated that she had

no knowledge or information that a claim had been made against her prior to that date.

Analysis

Deegan brings her motion to dismiss pursuant to Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. A section 2-619 motion 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). 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). 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.” *Czarobski*, 227 Ill. 2d at 369.

Deegan’s motion to dismiss is grounded procedurally on Henry’s alleged failure to bring her causes of action in counts 15 and 16 until after the statute of limitations had expired. The running of the statute of limitations is an absolute defense that bars a plaintiff’s claim from proceeding further. 735 ILCS 5/2-619(a)(5); *Ciolino v. Simon*, 2021 IL 126024, ¶ 20. Deegan substantively relies on the two-year statute of limitations applicable in medical negligence cases. The controlling statute provides, in part, that:

no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, 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 application of the statute of limitations is subject to the so-called discovery rule, originally a common law exception. The purpose of discovery rule’s purpose is to “ameliorate the potentially harsh effect of a mechanical

application of the statute of limitations that would result in it expiring before a plaintiff even knows of his cause of action.” *Henderson Square Condo. Ass’n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 52. As codified, the discovery rule provides that:

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 5/13-616(d). The discovery rule applies equally to injury and wrongful death claims. *Moon v. Rhode*, 2016 IL 119572, ¶ 27.

The discovery rule delays the start of a limitations period. *See Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360 (1995). The Illinois Supreme Court has explained that the two-year limitations period in section 13-212(a) “starts to run when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused.” *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981). At that point, “the burden is upon the injured person to inquire further as to the existence of a cause of action.” *Id.* Put another way, a plaintiff is said to know or reasonably should know of a wrongfully caused injury on receipt of sufficient information to put a reasonable person on notice to determine whether

actionable conduct has occurred. See *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (1st Dist. 2002). To rely on the discovery rule, a plaintiff must plead specific facts that “support the late discovery of the injury.” *Ogle v. Hotto*, 273 Ill. App. 3d 313, 323 (5th Dist. 1995) (internal citations omitted), including the date of discovery. See *Solis v. BASF Corp.*, 212 IL App (1st) 110875, ¶ 28.

Deegan does not argue that Henry filed her original complaint late or that Henry’s amended causes of action against Deegan did not arise out of the same events that occurred on February 2, 2019. Deegan focuses, instead, solely on the discovery rule’s second factor—that Deegan had no knowledge of the lawsuit until May 2022, as she explained in her verified declaration attached to her motion. In support of her argument, Deegan relies on Federal Rule of Civil Procedure 15(c)(1)(C)(II), which asks “what the prospective *defendant* knew or should have known . . . not what the *plaintiff* knew or should have known at the time of filing her original complaint.” *Krupski v. Costa Corciere S.p.A.*, 560 U.S. 538, 548 (2010) (emphasis in original); see also *Borchers v. Franciscan Tertiary Province of Sacred Heart, Inc.*, 2011 IL App (2d) 101257, ¶ 45 (acknowledging application of cases interpreting similarly grounded federal rules). According to Deegan, because she learned of the lawsuit in May 2022—well after the two-year statutory period had concluded—Henry’s amendment is untimely and counts 15 and 16 must be dismissed.

In contrast, Henry argues that Deegan’s reliance on the discovery rule is entirely misplaced. According to Deegan, the foundational legal principal that resolves the current dispute is the date on which Henry knew that Williams’s injury was wrongfully caused. Henry argues that the two-year statutory period began to run only on receipt of the required physician’s report stating that she had a meritorious cause of action. See 735 ILCS 5/2-622. Henry received that report just before she filed her original complaint on January 29, 2021.

The singular factual issue that resolves the current dispute is determining when the two-year statute of limitations began. The answer is found in various opinions in which courts have held as a matter of law that the two-year statute of limitations in medical malpractice cases begins to run when a physician’s report indicates that the plaintiff has a meritorious cause of action. *Young v. McKieque*, 303 Ill. App. 3d 380, 389 (1st Dist. 1999); *Heredia v. O’Brien*, 2015 IL App (1st) 141952, ¶ 31; *Castello v. Kalis*, 352 Ill. App. 3d 736, 752 (1st Dist. 2004). The reason for the distinction is that: “when a party knows or reasonably should know that her injury was wrongfully caused does not mean when a party is suspicious that her injury was wrongfully caused.” *Young*, 303 Ill. App. 3d at 389-90 (citing *LaManna*

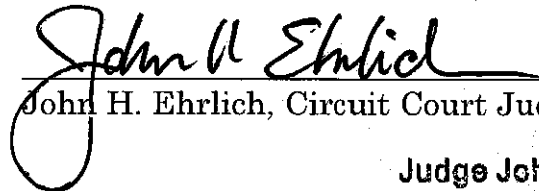
v. C.D. Searle and Company, 204 Ill. App. 3d 211, 218 (1st Dist. 1990).
“Thus, the statute of limitations is not triggered during that period in which the party is attempting to discover whether her injury is wrongfully caused.”
Id. at 390 (citing *LaManna*, 204 Ill. App. 3d at 218).

In this case, Henry may have been suspicious of the cause of Williams’s death soon after she died on February 2, 2019. It is obvious that, at some later point, Henry’s suspicions prompted her to retain an attorney who could investigate further into Williams’s cause of death. Yet as *Young* and *LaManna* provide, the attorney’s investigatory period does not fall within the statute of limitations. In sum, the two-year statute of limitations did not begin to run with Williams’s death on February 2, 2019. Rather, the period began to run on receipt of the reviewing physician’s report stating that Henry had a meritorious cause of action for medical negligence, which occurred shortly before January 29, 2021. That commencement date means the two-year statutory of limitation expired approximately on January 29, 2023. Henry’s August 11, 2022, filing of her first amended complaint naming Deegan for the first time as a defendant was, therefore, well within the two-year statutory period. It is also worth noting that, assuming the alleged medical negligence occurred on February 2, 2019, Henry’s August 11, 2022 filing against Deegan was also within the four-year statute of repose for filing a medical negligence claim since that statutory period did not end until February 2, 2023. See 735 ILCS 5/13-212(a).

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant Deegan’s motion to dismiss is denied; and
2. Deegan has until April 10, 2023 to answer counts 15 and 16.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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