

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

Erick Mosby, as special administrator of the	)	
estate of Rhonda Baker Mosby, deceased,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 4531
	)	
Fresenius□Chicagoland, LLC, a foreign limited	)	
liability company d/b/a Fresenius Medical Care	)	
and Fresenius Kidney Care, LLC, a foreign	)	
limited liability company d/b/a Fresenius Medical	)	
Care and Fresenius Kidney Care, Fresenius	)	
Medical Care Oak Forest LLC, d/b/a Fresenius	)	
Kidney Care Oak Forest, Robert Beard, R.N.,	)	
Tracy N. Hart, R.N., Wioletta Samara, R.N.,	)	
	)	
Defendants.	)	

**MEMODANDUM OPINION AND ORDER**

The relation-back doctrine permits under certain conditions the filing of an amended complaint after the expiration of a statute of limitation. The statute authorizing the re-filing of a complaint after a voluntary dismissal does not invalidate the doctrine's application. In the current dispute, the plaintiff's re-filed complaint merely corrected a date error known to the defendant in the preceding case. For that reason, the defendants' motion to dismiss must be denied.

**Facts**

On April 22, 2016, Rhonda Mosby went to an Oak Forest dialysis center the defendants owned and operated. Soon after her dialysis treatment, Rhonda suffered a seizure. The facility called 9-1-1, and paramedics transported Rhonda to a hospital.

On April 25, 2016, Rhonda returned to the Oak Forest facility for another dialysis treatment. The defendants allegedly knew Rhonda was a high-risk fall patient but, nonetheless, had her walk unaccompanied to a scale so she could be weighed. While walking, Rhonda fell and hit her head on floor, allegedly causing a subdural hematoma and a traumatic brain injury. On October 8, 2017, Rhonda died.

On April 20, 2018, Erick Mosby, as the administrator of Rhonda's estate, filed a four-count complaint bringing negligence causes against each of the institutional and individual defendants based on Rhonda's injuries suffered from the fall. *See* 18 L 4020. The complaint identified April 22, 2016 as the date of injury. Erick's attorney attached to the complaint an affidavit indicating he had not yet obtained a physician's report concluding Erick had a meritorious cause of action. *See* 735 ILCS 5/2-622. On September 12, 2018, the defendants filed a motion to dismiss based, in part, on the lack of a section 2-622 report.

This court never ruled on the defendants' motion to dismiss. Rather, on April 25, 2019, Erick sought and this court granted a motion for a voluntary dismissal pursuant to Code of Civil Procedure sections 2-1009 and 13-217. *See* 735 ILS 5/2-1009 & 5/13-217. On April 23, 2020, Erick re-filed his complaint with the current case number. The 20 L complaint mirrors the 18 L complaint except that Erick corrected an allegation to reflect that Rhonda's fall and injury had occurred on April 25, 2016, not April 22, 2016, as alleged in the 18 L case.

The defendants filed a motion to dismiss the current complaint, arguing that the 20 L complaint arises out of a different occurrence on a different date. The defendants attached to their motion various medical records confirming Rhonda's seizure on April 22, 2016 and her fall on April 25, 2016. Erick responded, arguing that the re-filed action is authorized by the relation-back doctrine contained in Code of Civil Procedure section 2-616(b) and the language of the dismissal order, granting him

leave to “refile all matters that were raised or could have been raised in this case.” The defendants filed a reply brief reiterating their position.

### Analysis

The defendants’ motion to dismiss is based on Code of Civil Procedure section 13-217. 735 ILCS 5/13-217. The statute explicitly provides, in part, that “if . . . the action is voluntarily dismissed by the plaintiff. . . , 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. . . .” *Id.* The defendants argue, in essence, that Erick’s 20 L filing must be dismissed because it arises out of a different occurrence on a different date and is, therefore, not a re-filing of the 18 L complaint.

Erick’s response relies on the relation-back doctrine provided in Code of Civil Procedure section 5/2-616(b). That statute states, in part:

The cause of action . . . shall not be barred by lapse of time . . . if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear 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 . . . some fact or some other matter which is a necessary condition precedent to the right of recovery. . . .

735 ILCS 5/2-616(b).

The statutes’ purposes are distinct. Section 2-616 governs amendments to pleadings in existing cases. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 18. In contrast, section 13-217 governs re-filed actions. *Id.* As the *Mabry* court explained, section 13-

217 operates as a savings statute to facilitate the disposition of litigation on the merits and avoid issues unrelated to the merits. *Id.* at ¶ 16. Section 2-616(b), in contrast, does not allow the relation back of new claims by new and independent parties. *Metzger v. New Century Oil & Gas Supply Corp. Income & Dev. Program-1982*, 230 Ill. App. 3d 679, 699 (1st Dist. 1992) (citing cases).

The distinction between sections 2-616(b) and 13-217 explains why the defendants' argument is unavailing. The plain language of section 13-217 does create an exception making the relation-back doctrine inapplicable after a case has been re-filed. Absent such language, there is no reason why the relation-back doctrine should not apply in an original or a re-filed case. Consider the following two scenarios. First, had Erick sought to amend the 18 L case to correct the pleading error, the relation-back doctrine would have permitted such an amendment. Second, after re-filing 20 L case with the identical date error as in the 18 L complaint, Erick could have filed a motion for leave to amend the 20 L complaint to correct the date of Rhonda's fall. Such a motion would have been granted pursuant to section 2-616(b) because the 20 L complaint did not add new claims by new and independent parties; rather, it merely corrected a date error. Further, the defendants have not been prejudiced by the corrected date allegation. Indeed, the defendants' own documents establish conclusively they knew before the 18 L filing that Rhonda's fall had occurred on April 25, 2016, not April 22, 2016. In short, Erick's re-filing with the corrected date allegations arrives at the same end point.

The defendants' argument that Erick's re-filed complaint addresses a different occurrence on a different date is not factually correct. The 20 L complaint addresses the same occurrence, but merely corrects the occurrence date. The defendants go further afield by arguing next that Erick cannot correct the date in his re-filed complaint because he has a potential medical negligence cause of action based on Rhonda's April 22, 2016 seizure. That argument is procedurally incorrect because Erick's 18 L complaint

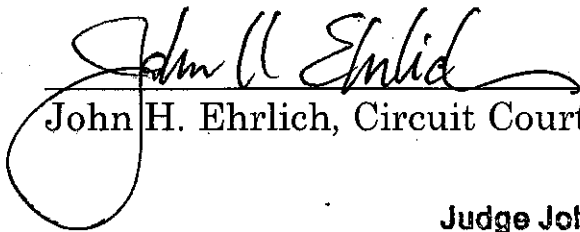
did not bring a negligence cause of action based on the Rhonda' seizure and, at this point, the statute of limitation for that event has long expired and would not relate back.

It is also not lost on this court that the defendants in the 18 L case filed a motion to dismiss for lack of a section 2-622 physician's report. They did not file a motion to dismiss based on the incorrect date and, apparently, did not inform Erick's attorney early on of the pleading error. To grant the defendants' motion to dismiss at this point would encourage defendants with knowledge of date errors to wait and bring a motion to dismiss based on a date pleading error after the expiration of the statute of limitation. That is precisely the type of procedural disposition courts are to avoid.

### Conclusion

For the reasons presented above,

1. The defendants' motion to dismiss is denied; and
2. The defendants shall answer the complaint no later than June 1, 2021.

  
John H. Ehrlich, Circuit Court Judge

**Judge John H. Ehrlich**

**MAY 03 2021**

**Circuit Court 2075**