

No. 126101

**IN THE
SUPREME COURT OF ILLINOIS**

STANLEY EIGHNER,)	Appeal from the Illinois Appellate Court
)	First District, Case No. 19-1369
Plaintiff-Appellant,)	
)	On appeal from the Circuit Court of Cook
vs.)	County, Illinois, Case No. 2018 L 011146
)	
PATRICIA TIERNAN,)	Honorable Moira S. Johnson
)	Judge Presiding
Defendant- Appellee)	

**BRIEF AND ARGUMENT FOR DEFENDANT-APPELLEE
PATRICIA TIERNAN**

Attorneys for Defendant-Appellee Patricia Tiernan
Michael J. Ripes (#6203995)
Keith J. Rhine (#6278314)
Ripes, Nelson, Baggot & Kalobratsos, P.C.
205 W. Randolph Street, Suite 2110
Chicago, IL 60606
Tel: 312.263.9600
Fax: 312.263.8718
mripes@rnbk.com
krhine@rnbk.com

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Carolyn Taft Grosboll
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POINTS AND AUTHORITIES**

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ISSUE PRESENTED FOR REVIEW

In this case, the sole issue before this Court is, “Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?”

STANDARD OF REVIEW

Certified questions, by definition, are questions of law that this court reviews de novo. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 25 (2017); *Moore v. Chicago Park Dist.*, 2012 IL 112788, ¶ 9 (2012).

STATUTES INVOLVED

This appeal involves 735 ILCS 5/13-217 that reads:

Reversal or dismissal. 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 judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, 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 such judgment is reversed or entered against the plaintiff, or after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue. 735 ILCS 5/13-217 (West 2004).

This appeal also involves 735 ILCS 5/2-1009 that reads:

Voluntary dismissal.

(a) The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

(b) The court may hear and decide a motion that has been filed prior to a motion filed under subsection (a) of this Section when that prior filed motion, if favorably ruled on by the court, could result in a final disposition of the cause.

(c) After trial or hearing begins, the plaintiff may dismiss, only on terms fixed by the court (1) upon filing a stipulation to that effect signed by the defendant, or (2) on motion specifying the ground for dismissal, which shall be supported by affidavit or other proof.

(d) A dismissal under subsection (a) of this Section does not dismiss a pending counterclaim or third party complaint.

(e) Counterclaimants and third-party plaintiffs may dismiss upon the same terms and conditions as plaintiffs. 735 ILCS. 5/2-1009 (West 2004).

STATEMENT OF FACTS

On November 3, 2014, Plaintiff, STANLEY EIGHNER, filed a Complaint at Law against Defendant, PATRICIA TIERNAN, for damages allegedly sustained in a November 5, 2012, motor vehicle accident, in case number 2014 L 11428. *See Plaintiff's 2014 Complaint at Law, Plaintiff's Table of Contents 1-4.*

On May 18, 2017, Plaintiff voluntarily dismissed this case pursuant to 735 ILCS 5/2-1009. *See May 18, 2017, Order of Dismissal, Plaintiff's Table of Contents 5-6.*

On April 23, 2018, Plaintiff filed a document with the circuit clerk in the previously dismissed action 2014 L 11428 entitled "Plaintiff's Notice Of Refiling Complaint Being Reinstated Within One Year of Voluntary Dismissal." *See Plaintiff's Notice of Refiling Complaint in 2014 L 01142, Plaintiff's Table of Contents 7-14.* Defendant disputes Plaintiff's claim in his Statement of Facts that the case was reinstated on this date.

On October 15, 2018, Plaintiff refiled his case under court number 2018 L 011146. *See Plaintiff's 2018 Complaint at Law, Plaintiff's Table of Contents 15-18.* On March 7, 2019, Defendant filed her appearance and jury demand. *See Appearance and Jury Demand, Plaintiff's Table of Contents 19-20.* On March 7, 2019, Defendant filed her Motion to Dismiss Pursuant to 725- ILCS 5/2-619(5). *See Motion to Dismiss, Plaintiff's Table of Contents 21-41.*

On May 29, 2019, Judge Johnson denied Defendant's Motion to Dismiss and gave the Defendant until June 26, 2019, to file a Motion pursuant to Supreme Court Rule 308. *See Order of May 29, 2019, Plaintiff's Table of Contents 96.* On June 19, 2019, Defendant filed her Motion for an Illinois Supreme Court Rule 308(a) statement

regarding the trial court's May 29, 2019 order. *See Motion, Plaintiff's Table of Contents 119-145*. On June 26, 2019, Judge Johnson granted Defendant's Motion, and entered an order finding that, "The Court's order of May 29, 2019, denying Defendant's Motion to Dismiss Plaintiff's complaint presents a question of law to which there is substantial ground for difference of opinion and an immediate appeal from the order will materially advance the ultimate termination of the litigation." *See Order of June 26, 2019, Plaintiff's Table of Contents 146*.

As the Court's order did not state the certified question at law, Defendant filed an Emergency Motion to Modify the June 26, 2019, Order that was heard by the court On June 28, 2019. *See Emergency Motion, Plaintiff's Table of Contents 147-149*. Judge Johnson granted the motion and entered an order finding that the specific certified question at law is, "Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?" *See Order of June 28, 2019, Plaintiff's Table of Contents 150*.

ARGUMENT

I. Plaintiff Misstates the Issue Presented For Review

In his Petition for Leave to Appeal, Plaintiff argues there are two issues before this Court, while in his Statement of Issue filed after his election to stand on his petition, Plaintiff lists four issues. However, the Trial Court only certified a single question for review and that is “Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?” *See Order of June 28, 2019, Plaintiff’s Table of Contents 150.*

This Court has held on multiple occasions when reviewing an Appellate Court’s decision regarding an appeal pursuant to Illinois Supreme Court Rule 308, the issue before this Court for review is limited to the certified question. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048 ¶ 25 (2017); *Moore v. Chicago Park Dist.*, 2012 IL 112788, ¶ 9 (2012). This Court may go beyond answering the certified question only to give direction to the trial court. “We generally limit our review to the certified questions, but in the interests of judicial economy and the need to reach an equitable result we may also consider the propriety of the circuit court order giving rise to these proceedings.” *Simmons v. Homatas*, 236 Ill. 2d 459, 466 (2010).

However, this Court may not consider other issues beyond the certified question.

As this Court explained in *Vision Point of Sale, Inc. v Haas*:

We also note that defendants attempt to raise other issues in their brief to this court. While we have reviewed the circuit court’s orders to the extent that those orders gave rise to the certified question (*Bright*, 166 Ill.2d at 208, 209 Ill.Dec. 735, 652 N.E.2d 275), we find that the other proposed issues fall outside the proper scope of our review of the certified question under Rule 308. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 358 (2007).

Plaintiff did not object to the question certified by the trial court, nor did he request the trial court certify any other questions of law. Therefore, this Court should only consider the question of law certified by the Trial Court, and not the Issues Presented for Review as argued by the Plaintiff.

II. This Court Should Answer the Certified Question in the Negative

The certified question before this Court is, “Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?”

735 ILCS 5/13-217, provides in an action that is voluntarily dismissed the Plaintiff may commence a new action within one year, which expired on May 18, 2018, or within the remaining period of limitation, which is 2 years and expired on November 5, 2014. 735 ILCS 5/13-217 (West 2004).

There is no case law, statute, or Illinois Supreme Court rule that allows a Plaintiff to refile a complaint within a previously dismissed lawsuit.

This Court has held that:

Section 13–217 provides in pertinent part that if the Plaintiff-Appellee voluntarily dismisses a cause of action, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the Plaintiff-Appellee * * * may commence a new action within one year or within the remaining period of limitation, whichever is greater * * * after the action is voluntarily dismissed by the Plaintiff-Appellee. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 44, (2016).

This Court added, “A refiled action pursuant to section 13–217 is not a restatement of the old action, but an entirely new and separate action. *Id.* at ¶ 48.

Therefore, “new” means a new case number, new filing fee, and new summons.

As the Appellate Court in this matter said:

This interpretation is supported by our supreme court's statement in *Richter* that “[a] refiled action pursuant to section 13-217 is not a restatement of the old action, but an entirely new and separate action.” *Richter*, 2016 IL 119518, ¶ 48, 402 Ill.Dec. 870, 53 N.E.3d 1. Indeed, our supreme court has traditionally found a distinction between original and refiled actions when considering section 13-217. See *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 504, 227 Ill.Dec. 389, 687 N.E.2d 871 (1997) (“The original and refiled actions are completely distinct actions.”). This distinction has also been made by other courts. See *Wilson v. Brant*, 374 Ill. App. 3d 306, 311, 311 Ill.Dec. 805, 869 N.E.2d 818 (2007) (the commencement of a new action under section 13-217 is not a “re-commencement” of the original action); *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 85, 372 Ill.Dec. 564, 992 N.E.2d 103 (same); *Wells Fargo Bank v. Zajac*, 2017 IL App (1st) 160787, ¶ 17, 2017 WL 1019323 (“Section 13-217 pertains to refiling; it does not apply to reinstatement.”). *Eighner v. Tiernan*, 2020 IL App (1st) 191369, ¶ 13, *appeal allowed*, No. 126101, 2020 WL 5939840 (Ill. Sept. 30, 2020).

Though the Plaintiff attempted to refile his cause of action in the previously dismissed case within one year of the voluntary dismissal, this cause of action was not properly refiled pursuant to statute and case law set forth by this Court within one year of the voluntary dismissal.

This Court should find the answer to the certified question “Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff-Appellee may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?” is “No”, and the trial court’s order of May 29, 2019, denying Defendant Motion to Dismiss should be reversed, and Plaintiff’s case should be dismissed with prejudice.

III. Trial Court Did Not Retain Jurisdiction and 735 ILCS 5/2-1009 Does Not Provide Terms for Reinstating or Refiling a Dismissed Case

In answering a certified question pursuant to Illinois Supreme Court Rule 308 this

Court has held it must not seek an application of the law to the facts of a specific case. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 20 (2017). The facts of the underlying litigation are not necessary, and should not be considered by this Court to answer the certified question. This Court need only decide whether refiling a complaint in a previously dismissed lawsuit, as opposed to filing a new action, satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009. However, as Plaintiff has introduced the specific facts of this case, Defendant will address Plaintiff's arguments.

Plaintiff incorrectly argues because the trial court retained jurisdiction by granting leave to reinstate the action when the original action was voluntarily dismissed, the certified question should be answered in the affirmative.

In section A of his argument, Plaintiff cites two appellate cases that state the language of a dismissal order must be examined to determine the circuit court's intent as to whether it intended to retain jurisdiction of a case or not. *Dir. of Ins. v. A&A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 726 (2d Dist. 2008); *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 1020 (1st Dist. 1989). *See page 9 of Plaintiff's Petition for Leave to Appeal.*

In *Director of Insurance*, the trial court's dismissal order specifically stated the court retained jurisdiction and the Appellate Court held the trial court had jurisdiction to enforce the settlement agreement. *Dir. of Ins. ex rel. State v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 725, (2nd Dist. 2008).

While in *Brigando*, the dismissal order stated "This cause coming to be heard upon the regular call of cases for pre-trial, and it appearing to the court that the said cause

has been settled by agreement of the parties. IT IS HEREBY ORDERED, adjudged and decreed that the above entitled cause be and the same is hereby dismissed with prejudice—and without costs”. *Brigando v. Republic Steel Corp.*, 180 Ill. App. 3d 1016, 1021, (1st Dist.1989). The Appellate Court held the trial court's order was only an order of dismissal, and, accordingly, 30 days after the entry of the dismissal order, the trial court's jurisdiction over the matter ended. *Id.*

The dismissal order in the instant matter is more like the order in *Brigando* than the dismissal order in *Director of Insurance*, as the trial court in the case at bar never stated that it retained jurisdiction over the case.

The Trial Court’s order of May 18, 2017 granting Plaintiff’s Motion for Voluntary Dismissal states:

It Is Hereby Ordered that the above-captioned cause is voluntarily dismissed as to defendant, Patricia J. Tiernan, without prejudice and with leave to reinstate within one year of the date of this order pursuant to the terms of Section 5/2-1009 of the Illinois Code of Civil Procedure, Plaintiff to pay the defendant’s costs for filing an appearance and jury demand upon the refiling of the case. *See May 18, 2017, Order of Dismissal, Plaintiff’s Table of Contents 5-6.*

There is nothing in this order stating the trial court retained jurisdiction over this matter. The order allows Plaintiff to reinstate the case pursuant to the terms of Section 5/2-1009. However, there is no language in 735 ILCS 5/2-1009 allowing for the reinstatement of a voluntarily dismissed case. 735 ILCS 5/2-1009 reads:

Voluntary dismissal.

(a) The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

(b) The court may hear and decide a motion that has been filed prior to a motion filed under subsection (a) of this Section when that prior filed motion, if favorably ruled on by the court, could result in a final disposition of the cause.

(c) After trial or hearing begins, the plaintiff may dismiss, only on terms fixed

by the court (1) upon filing a stipulation to that effect signed by the defendant, or (2) on motion specifying the ground for dismissal, which shall be supported by affidavit or other proof.

(d) A dismissal under subsection (a) of this Section does not dismiss a pending counterclaim or third party complaint.

(e) Counterclaimants and third-party plaintiffs may dismiss upon the same terms and conditions as plaintiffs. 735 ILCS 5/2-1009 (West 2004).

The only terms 5/2-1009 discusses is Plaintiff is to provide notice to each party and the payment of costs to the party being dismissed. Plaintiff provided notice of the Motion for Voluntary Dismissal, but did not pay Defendant's costs. Though Plaintiff failed to pay Defendant's costs, the Plaintiff's motion was granted as the trial court ordered Plaintiff to pay Defendant's costs upon refiling of the case.

The fact 5/2-1009 does not provide any terms for reinstating the case, along with the trial court's order stating Plaintiff is to pay costs upon refiling, demonstrates that the proper course of action open to the Plaintiff was to refile his case as a new action and not reinstate his lawsuit.

Not only does 5/2-1009 not provide any terms or conditions for reinstating a case, the statute does not even mention refiling a case. The only statute that addresses what a Plaintiff may do with a voluntarily dismissed case is 735 ILCS 5/13-217, and this statute does not mention reinstating a case. 735 ILCS 5/13-217 states in relevant part:

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 . . . may commence a new action within one year or within the remaining period of limitation, whichever is greater, . . . after the action is voluntarily dismissed by the plaintiff . . . 735 ILCS 5/13-217 (West 2004).

This brings us back to the certified question as to what constitutes a "new action" under the statute. The fundamental rule of statutory construction is to ascertain and give

effect to the legislature's intent. The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. (2011).

In section B of his argument, Plaintiff focuses on the word “may” rather than “new”, but Plaintiff misunderstands the meaning of the word “may”. Plaintiff is correct that 5/13-217 does not provide plaintiff “must” commence a new action, the Plaintiff can choose to let the dismissal stand. This is the obvious conclusion to be reached in reading the language of the statute, and not, as Plaintiff suggests, that there are other avenues available to the Plaintiff for reasserting a voluntarily dismissed claim. 5/13-217 does not provide any other avenues for a plaintiff to recommence his case other than filing a new action.

Plaintiff then argues any limitations on a court’s power to allow for the refiling of a complaint must come from 5/2-1009. Though as discussed above, 5/2-1009 makes no mention of refiling or reinstating a claim whatsoever, so we are again left solely with 5/13-217.

Plaintiff next argues that dismissals under 5/2-1009 are not final and a circuit court has the power to modify or vacate a non-final order. However, Plaintiff never asked the court to modify or vacate the dismissal order of May 18, 2017. Plaintiff incorrectly argues that because Judge Johnson’s order gave Plaintiff leave to reinstate he did not need to file a motion to vacate the dismissal or a motion to reinstate his case.

The dismissal order gave Plaintiff leave to reinstate “pursuant to the terms of 5/2-1009” so Plaintiff’s right to reinstate was limited. As discussed above, 5/2-1009 provides no terms for reinstating a cause of action so Plaintiff must take some action in order to be

allowed to reinstate his case. As Plaintiff points out, Judge Johnson even said, “. . .the other instance is when someone before the one year Statute has run **moves** to reinstate the claim.” *See page 11 of Plaintiff Petition for leave to appeal, emphasis added.* Yet Plaintiff filed no motion to reinstate his case or to vacate the dismissal, he simply filed a notice of refiling a complaint in the dismissed cause of action.

Even if this Court finds that refiling a complaint in a previously dismissed case is proper, Plaintiff failed to comply with the terms of 5/2-1009 and the trial court’s order. 5/2-1009 requires a plaintiff pay a party’s costs upon dismissal, and Judge Johnson’s dismissal order requires Plaintiff to pay the Defendant’s costs upon refiling. By failing to pay Defendant’s costs, Plaintiff has failed to comply with both 5/2-1009 and Judge Johnson’s order, and therefore, Plaintiff’ filing of complaint in the dismissed lawsuit should not be allowed.

IV. Appellate Court Properly Remanded the Case to the Trial Court With Directions to Dismiss Plaintiff’s Complaint.

In a Rule 308 appeal, the Appellate Court has the authority to remand a case to the trial court with directions. “If the questions so certified require limitation in order to materially advance the ultimate termination of the litigation, such limitation is proper . . . In addition, in the interests of judicial economy and the need to reach an equitable result, we may consider the propriety of the circuit court order that gave rise to these proceedings.” *Crawford Cty. Oil, LLC v. Weger*, 2014 IL App (5th) 130382, ¶ 11 (5th Dist. 2014) (remanded proceedings to the circuit court with directions that its order be amended to require that the answer be in writing and contain a verification in accordance with section 2–605 of the Code). Therefore, it was proper for the Appellate Court to

reverse the judgment of the circuit court and remand this cause to the circuit court with direction to grant the motion to dismiss.

V. Equitable Tolling Should Not Apply

Defendant reiterates this Court has held on multiple occasions that when reviewing an Appellate Court's decision regarding an appeal pursuant to Illinois Supreme Court Rule 308, the issue before this Court for review is limited to the certified question. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048 ¶ 25 (2017); *Moore v. Chicago Park Dist.*, 2012 IL 112788, ¶ 9(2012). Therefore, this Court should not consider Plaintiff's argument regarding Equitable Tolling as it is unrelated to the certified question. However, Defendant shall address Plaintiff's argument.

Under Illinois law, equitable tolling is recognized, however it is rarely applied. "Equitable tolling of a statute of limitations may be appropriate if the defendant has actively misled the plaintiff, or if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or if the plaintiff has mistakenly asserted his or her rights in the wrong forum." *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000).

It is clear from the facts of this case Plaintiff has not been misled by the Defendant or prevented from asserting his rights. The only prong of the Equitable Tolling analysis left is that Plaintiff mistakenly asserted his rights in the wrong forum, and that is not the case in the instant matter. Plaintiff admits in his Petition he did not file his case in the wrong forum. *See Petition for Leave to Appeal page 18.*

Even under Federal law, Equitable Tolling would not apply in this case.

"Generally, the doctrine of equitable tolling permits a court to excuse a plaintiff's failure

to comply with a statute of limitations where ‘because of disability, irremediable lack of information, or other circumstances beyond his control,’ the plaintiff cannot reasonably be expected to file suit on time.” *Williams v. Bd. of Review*, 241 Ill. 2d 352, 360–61, (2011) *quoting Miller v. Runyon*, 77 F.3d 189, 191 (7th Cir.1996). Plaintiff was under no disability, had no lack of information as the relevant statutes were available to his attorney, and there were no circumstance beyond Plaintiff’s control as he had the ability to refile a new cause of action prior to the tolling of the statute of limitations.

There is no case law in Illinois, even under a Federal interpretation of Equitable Tolling, which applies when Plaintiff “mistakenly asserted his rights under the wrong case number.” *See Petition for Leave to Appeal page 18*. Therefore, this Court should not apply the doctrine of Equitable Tolling and accept the Plaintiff’s filing of a new cause of action beyond the limitation period provided by 735 ILCS 5/13-217.

CONCLUSION

As discussed above, when reviewing an Appellate Court’s decision regarding an appeal pursuant to Illinois Supreme Court Rule 308, the issue before this Court is limited to the certified question. Further, in a Rule 308 appeal, the facts of the underlying litigation are not necessary to answer the certified question.

Both Plaintiff and Defendant are in agreement that there is no case law that directly addresses the certified question before this Court. However, as this Court has held, the primary objective in interpreting a statute is to ascertain and give effect to the intent of the legislature. *Blum v. Koster*, 235 Ill.2d 21, 29, 335 (2009). The most reliable indicator of such intent is the language of the statute, which is to be given its plain and

ordinary meaning. *Id.* 735 ILCS 5/13-217 plainly states that a plaintiff may commence a “new action” within one year of a dismissal. A “new action” is not refiling a complaint in a previously dismissed lawsuit, but requires the filing of a new lawsuit with the Circuit Clerk, including paying a new filing fee and issuing a summons.

The certified question before this Court is “Whether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a Plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009?” Defendant prays that this honorable Court answer the Certified question as “No” as refiling a complaint in a previously dismissed lawsuit does not satisfy the language of 735 ILCS 5/13-217. Therefore, case 2018 L 011146 was filed after the statute of limitations period had expired and should be dismissed with prejudice.

Respectfully submitted,

Patricia Tiernan

By: Michael J Ripes

Michael J. Ripes (#6203995)
 Keith J. Rhine (#6278314)
 Attorneys for the Defendant
 Patricia Tiernan
 Ripes, Nelson, Baggot & Kalobratsos, P.C.
 205 W. Randolph Street, Suite 2110
 Chicago, IL 60606
 312.263.9600
mripes@rnbk.com
krhine@rnbk.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 18 pages.

Michael J Ripes

Michael J. Ripes (#6203995)
Keith J. Rhine (#6278314)
Attorneys for the Defendant
Patricia Tiernan
Ripes, Nelson, Baggot & Kalobratsos, P.C.
205 W. Randolph Street, Suite 2110
Chicago, IL 60606
312.263.9600
mripes@rnbk.com
krhine@rnbk.com

No. 126101

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PATRICIA TIERNAN,)	Honorable Moira S. Johnson
)	Judge Presiding
Defendant- Appellee)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: John P. DeRose
 John P. DeRose & Associates
 15 Spinning Wheel Rd., Suite 428
 Hinsdale, IL 60521
 Email: john@johnderoselaw.com

I hereby certify that on November 17, 2020, I electronically filed the foregoing Defendant-Appellee Patricia Tiernan's Brief and Argument, with the Clerk of the Supreme Court using Odyssey eFileIL and served a copy thereof upon the attorney of record listed above via electronic mail.

/s/ Michael J. Ripes

Under penalties as provided by law pursuant to Illinois Code of Civil Procedures (735 ILCS 5/1-109), I certify that the statements set forth herein are true and correct.

Michael J. Ripes (#6203995)
 Keith J. Rhine (#6278314)
 Ripes, Nelson, Baggot & Kalobratsos, P.C.
 205 W. Randolph Street, Suite 2110
 Chicago, IL 60606
 Tel: 312.263.9600
 Fax: 312.263.8718
 mripes@rnbk.com
 krhine@rnbk.com

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 Carolyn Taft Grosboll
 SUPREME COURT CLERK