

FIRST DISTRICT
FIRST DIVISION
September 14, 2026

No. 1-25-0386

CECILIA JAMES, as Independent Administrator	)	Appeal from the Circuit Court of
of the Estate of Lionel James II,	)	Cook County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
LEXINGTON HEALTH CARE CENTER OF	)	
CHICAGO RIDGE INC. d/b/a Lexington of	)	
Chicago Ridge; IFENLOTA OJIAKO, M.D.;	)	
KAREN FIELDS, A.P.N.; MARIKAY	)	
FITZPATRICK A.P.N.; MARY BAKER N.P.;	)	
ADVOCATE HEALTH AND HOSPITALS	)	
CORPORATION, d/b/a Advocate Medical Group;	)	
MELISSA MCGUIRE LAINIE MILLER; JHC	)	No. 2023-L-40
ACQUISITION d/b/a Omnicare of Northern	)	
Illinois; CVS PHARMACY INC. d/b/a CVS	)	
Health,	)	
	)	
Defendants,	)	
	)	
	)	
	)	
(Advocate Health And Hospitals	)	
Corporation, d/b/a Advocate Medical Group,	)	Honorable Gerald Cleary and
	)	Honorable Stephanie Saltouros,
Defendant-Appellee).	)	Judges Presiding.

JUSTICE HOWSE delivered the judgment of the court, with opinion.
Justices Fitzgerald Smith and Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Cecilia James, as independent administrator of the estate of Lionel James II, appeals several rulings in this wrongful death action. The central issue is whether the doctrine of

equitable adoption confers “next of kin” status under the Wrongful Death Act (Wrongful Death Act or Act) (740 ILCS 180/0.01 *et seq.* (West 2024)) to permit an alleged equitably adopted child to recover damages under the Act. The circuit court entered summary judgment for defendant Advocate Health and Hospitals Corporation (Advocate Health) on this issue, concluding that equitable adoption—recognized in Illinois only as a probate remedy—does not create the legal relationship necessary to qualify as “next of kin” in a wrongful death case. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Lionel James II, a longtime Chicago Police Department employee, maintained a close, father-like relationship with Jeremy Overstreet from Jeremy’s infancy until Lionel’s death in 2017. Although Lionel consistently referred to Jeremy as his son and participated in major parenting decisions, he never initiated legal adoption proceedings. Jeremy’s birth certificate identifies Lucy Singleton and her then-husband, Alvin Overstreet, as his parents.

¶ 4 In December 2016, Lionel fractured his right ankle. He underwent surgery to repair the fracture but then developed a significant infection that required additional surgery. In March 2017, Lionel was admitted to a short-term rehabilitation center. However, his medical providers did not keep him on a blood thinning medication, and he developed deep vein thrombosis. A blood clot eventually lodged in his pulmonary artery between his lungs, which caused his death. Lionel died on May 3, 2017, at the age of 55. He died intestate and had no biological or legally adopted children.

¶ 5 For unstated reasons, Jeremy submitted to DNA testing shortly after Lionel’s death to determine if Lionel was his biological father. The DNA test concluded that Jeremy is not a blood relative of Lionel. Jeremy does not believe the accuracy of the DNA test results and states that he

has had a difficult time accepting them because they contradict what he has known his whole life. Lucy Singleton, Jeremy's mother, told him that the DNA test results are false and that Lionel is his biological father.

¶ 6 Plaintiff, Lionel's cousin and closest blood relative, filed a wrongful death action for statutory damages, alleging that Lionel had equitably adopted Jeremy Overstreet, with whom he shared a close familial relationship. Despite acting as a father figure during portions of Jeremy's childhood, representing to others that Jeremy was his son, and maintaining a familial bond, Lionel never initiated adoption proceedings.

¶ 7 In her complaint, plaintiff submitted that

“Lionel James II equitably adopted Jeremy Overstreet during his lifetime because he:

(1) consistently and routinely represented to Jeremy and the world at large that Jeremy was his natural child from Jeremy's tender years to the date of [Lionel's] death; and

(2) supported that holding out by forming a close and enduring familial relationship with Jeremy.”

Plaintiff settled her claims with the other defendants prior to trial leaving Advocate Health as the only remaining defendant at the time of trial.

¶ 8 Before trial, Advocate Health moved for summary judgment, arguing that equitable adoption does not create “next of kin” status under the Wrongful Death Act. The circuit court agreed and barred plaintiff from presenting evidence of Jeremy's loss of society. The case proceeded with plaintiff as the sole statutory beneficiary, and the jury awarded approximately \$100,000 plus burial expenses. The court also ruled that factual disputes about equitable adoption were for the court, not a jury; that Advocate Health was entitled to a setoff for prior settlements; and that prejudgment interest must be calculated after setoff.

¶ 9 We allowed the Illinois Trial Lawyers Association to file an amicus brief in support of plaintiff’s positions on appeal.

¶ 10 ANALYSIS

¶ 11 Cecilia James, acting as the independent administrator of the estate, appeals the summary judgment granted in favor of Advocate Health. Plaintiff specifically challenges the circuit court’s decision that Jeremy, who is alleged to be an equitably adopted person, is not eligible to recover damages under the Wrongful Death Act (*id.*). The core legal issue on appeal is whether the doctrine of equitable adoption—recognized in Illinois solely as a probate remedy—creates the legal relationship necessary to qualify someone as “next of kin” under the Wrongful Death Act.

¶ 12 Summary judgment is proper where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2024). When determining whether a genuine issue of material fact exists, this court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review the circuit court’s entry of summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 13 Plaintiff first challenges the summary judgment ruling that Jeremy, as an equitably adopted person, is not statutorily eligible to recover wrongful death damages. The question is purely legal: whether equitable adoption creates the legal relationship necessary to qualify as “next of kin” under the Wrongful Death Act.

¶ 14 Illinois does not recognize a common law cause of action for wrongful death. Instead, the Wrongful Death Act establishes a statutory cause of action that provides remedies to a

specifically defined group of individuals when a wrongful death occurs. As explained in *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 529 (2011), the Wrongful Death Act is explicit in its scope:

“Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person.” 740 ILCS 180/2(a) (West 2024).

Furthermore, the Illinois Supreme Court has defined “next of kin” as those blood relatives who are alive at the time of the decedent’s death and who would inherit the decedent’s personal property if the decedent died intestate. See *Holmgren v. National Big-4 Asbestos Removal Specialty, Inc.*, 228 Ill. App. 3d 433, 435 (1992).

¶ 15 Section 2(f) of the Wrongful Death Act expressly includes adopted children as parties eligible to sue under the Wrongful Death Act—meaning children adopted through the Adoption Act, (750 ILCS 50/0.01 *et seq.* (West 2024)). 740 ILCS 180/2(f) (West 2024). “For the purposes of this Section 2, next of kin includes an adopting parent and an adopted child, and they shall be treated as a natural parent and a natural child, respectively.” *Id.* However, nothing in the Act references equitable adoption.

¶ 16 Statutory Adoption Requirement for “Next of Kin” Status Under the Wrongful Death Act

¶ 17 Years ago, the Illinois appellate court held that only statutory adoption can create “next of kin” status for purposes of bringing an action under the Wrongful Death Act. This principle was established in *In re Estate of Edwards*, 106 Ill. App. 3d 635 (1982), a case involving the tragic death of a 13-year-old girl in an accident.

¶ 18 Following the child’s death, her foster parents sought to adopt her posthumously, arguing that an equitable adoption had occurred and that this should allow them to pursue damages under the Wrongful Death Act. *Id.* at 636. Their petition alleged that the child had been in their custody from three days after birth until her death, although no formal petition for adoption had ever been filed. *Id.* The natural mother had signed a consent to adopt, the natural father had deserted the child, and the child used the surname of the foster parents for all purposes. *Id.* at 638. The foster parents claimed they assumed full responsibility for the child, supported her financially, and cared for her as their own. *Id.*

¶ 19 The biological father, who had never participated in the child’s upbringing, moved to dismiss the adoption petition, and the trial court granted the motion. *Id.* at 636. The appellate court affirmed this dismissal, explaining that wrongful death damages in Illinois are recoverable exclusively for the benefit of the decedent’s surviving spouse and “next of kin.” *Id.* at 638-39. The court determined that, while the foster parents’ allegations may have been sufficient to allege a contract to adopt—a doctrine already recognized in Illinois—they did not establish a cause of action for the foster parents to sue for the wrongful death of the child. *Id.*

¶ 20 Specifically, the court noted that

“[p]roof of the elements of an oral contract to adopt merely permits the enforcement of contract rights; it does not create a parent-child relationship or afford all of the legal consequences of a statutory adoption. When the contract has not been performed, in fact becomes impossible to perform because of the death of the child, the foster parent does not come within the term ‘next of kin’ in the wrongful death statute.” *Id.* at 638.

Accordingly, the court found itself compelled by law to grant the natural father's motion to dismiss the petition. *Id.* at 639.

¶ 21 Equitable Adoption Recognized by the Illinois Supreme Court

¶ 22 In 2013, the Illinois Supreme Court formally acknowledged the concept of equitable adoption by adopting the California standard in the case of *DeHart v. DeHart*, 2013 IL 114137. This recognition established equitable adoption as an equitable remedy, which allows an equitably adopted child to inherit from a decedent through intestate succession.

¶ 23 The case of *DeHart* centered on a will contest brought by the plaintiff. The plaintiff alleged that the decedent's new wife had exerted undue influence, resulting in the execution of a will that excluded the plaintiff from the estate and left all assets to the wife. In response, the decedent's wife filed a motion to dismiss the will contest, arguing that the plaintiff lacked standing because he had never been legally adopted and was therefore a stranger to the will contest. *Id.* ¶ 70.

¶ 24 The plaintiff asserted that he had been equitably adopted by the decedent. In his petition, he alleged that, for more than 60 years, Donald had treated him as his son. *Id.* ¶ 21. This treatment included providing a birth certificate, listing him in funeral arrangements, and executing a prior will that named him as a beneficiary. *Id.* Despite these actions, the contested will stated, " 'I have no children.' " *Id.* ¶ 9. The court reversed the dismissal of the will contest, determining that James had standing to pursue the action. *Id.* ¶ 76.

¶ 25 The *DeHart* court recognized equitable adoption for the first time by adopting the standard previously announced by the California Supreme Court in *Estate of Ford v. Ford*, 82 P.3d 747, 754 (Cal. 2004). *DeHart*, 2013 IL 114137, ¶ 54. The court stated that equitable adoption should be acknowledged in Illinois under appropriate circumstances, even when there is

no statutory adoption or contract for adoption. The court found that the California Supreme Court had struck a proper balance in *Ford* regarding when to permit a finding of equitable adoption. *Id.* ¶ 59. According to the Illinois Supreme Court, a plaintiff seeking to establish an equitable adoption must demonstrate an intent to adopt, as described in *Ford*. *Id.* Additionally, the plaintiff must show that the decedent acted in accordance with that intent by forming a close and enduring familial relationship with the plaintiff. *Id.*

¶ 26 Two years later, the Illinois Supreme Court squarely limited the reach of the doctrine of equitable adoption. *In re Parentage of Scarlett Z.-D.*, 2015 IL 117904, ¶ 52. The supreme court stated that “[the doctrine of equitable adoption, as recognized in *DeHart*, is a probate concept to determine inheritance and does not apply to proceedings for parentage, custody, and visitation.” *Id.*

¶ 27 In that case, James, the former boyfriend of adoptive mother Maria Z., petitioned for custody, visitation, or child support regarding Scarlett, whom Maria had adopted alone under Slovakian law. *Id.* ¶¶ 4-8. Despite presenting substantial evidence that could have satisfied the *DeHart* standard for equitable adoption—including James living with Scarlett, acting as a father figure, and establishing a \$500,000 trust for her (*id.* ¶ 6)—the Illinois Supreme Court determined that James lacked standing to pursue the requested relief. *Id.* ¶ 60. The court held that equitable adoption, as recognized in *DeHart*, is strictly limited to probate and inheritance contexts and does not extend to custody or parentage proceedings. *Id.* ¶ 52.

¶ 28 Specifically, the court agreed with Maria Z. that equitable adoption is a probate concept intended to address inheritance issues and prevent unjust outcomes, not to confer statutory rights related to parentage, custody, or visitation. *Id.* ¶¶ 52-53. The court emphasized this limitation,

noting that equitable adoption does not apply to statutory rights unknown at common law, as reinforced in *In re Marriage of Mancine*, 2014 IL App (1st) 111138-B, ¶¶ 15, 22.

¶ 29 In this matter, plaintiff contends that the ruling in *Scarlett Z.-D.* is not decisive because that case addressed issues of custody and support, rather than wrongful death. Nevertheless, the Illinois Supreme Court’s opinion in *Scarlett Z.-D.* specifically and unequivocally restricted the doctrine of equitable adoption to inheritance cases. As stated in *Scarlett Z.-D.*, 2015 IL 117904, ¶ 52, the court clarified that equitable adoption does not create a legal status but operates solely as a remedy in applicable inheritance cases.

¶ 30 The court emphasized the limited purpose of equitable adoption, describing it as “a limited remedial doctrine devised by courts using their equitable powers” to allow an equitably adopted child to inherit by intestate succession from the putative equitably adopting parent(s). (Internal quotation marks omitted.) *Id.* The doctrine is intended to prevent injustice resulting from the rigid application of intestacy laws. It is not designed to establish the legal relationship of parent and child or to create a legal adoption, nor does it carry with it all the legal consequences associated with statutory adoption.

¶ 31 The supreme court’s decision in *Scarlett Z.-D.* makes it clear: “We hold that the doctrine of equitable adoption as recognized in *DeHart* is limited to the context of inheritance and does not apply to child custody.” *Id.* ¶¶ 52-54.

¶ 32 This guidance is conclusive. The supreme court expressly held that equitable adoption is confined to inheritance, and by extension, does not create a “next of kin” relationship as defined by the Wrongful Death Act. Therefore, the circuit court correctly granted summary judgment for Advocate Health on this issue, as equitable adoption cannot be used to establish “next of kin” status for wrongful death claims.

¶ 33

Constitutional Arguments

¶ 34 Plaintiff contends that omitting equitably adopted children from the definition of “next of kin” is unconstitutional, referencing the equal protection clauses of both the United States Constitution (U.S. Const., amend. XIV, § 1) and the Illinois Constitution (Ill. Const. 1970, art. I, § 2). These equal protection clauses serve to prevent decisionmakers from treating persons who are alike in all relevant respects differently. *Kopf v. Kelly*, 2024 IL 127464, ¶ 59.

¶ 35 Additionally, plaintiff asserts that this exclusion violates the special legislation clause, which prohibits the General Assembly from granting special benefits or privileges to a select group. *Cotton v. Cocco*, 2023 IL App (1st) 220788, ¶ 60. Both equal protection and special legislation challenges are reviewed under the same standard. *Id.*

¶ 36 Despite these arguments, plaintiff’s position is based on the legally incorrect assumption that Jeremy qualifies as an “heir” or “next of kin” under the Wrongful Death Act. Since Jeremy does not meet the statutory definition of “next of kin,” the constitutional claims presented by plaintiff lack a proper foundation and cannot support an equal protection or special legislation violation.

¶ 37 While equitable adoptees are recognized as heirs for probate purposes, this status does not extend to the definition of “next of kin” within the context of the Wrongful Death Act. Accordingly, the exclusion of equitably adopted children from the statutory definition does not violate constitutional protections.

¶ 38 In *Rallo v. Crossroads Clinic, Inc.*, 206 Ill. App. 3d 676, 683-85 (1990), the plaintiffs argued that the exclusion of certain potential beneficiaries from the protections provided by the Wrongful Death Act violated the equal protection clause. The Illinois Appellate Court addressed this issue and determined that the Act does not implicate fundamental rights. As a result, the

constitutionality of the Act's provisions is evaluated under the rational basis test, which is a deferential standard. Statutory classifications are presumed constitutional and are upheld unless they are entirely irrelevant to a legitimate government interest. *Id.*

¶ 39 The statute draws a clear distinction: individuals who satisfy the statutory definition of surviving spouse or next of kin are eligible for the benefits of the Wrongful Death Act. This distinction is rational and consistent with legislative intent. An adopted child gains a definitive legal status only when the adoption occurs pursuant to the requirements of the Adoption Act. In contrast, equitable adoption does not confer a statutory legal status; it is an equitable doctrine rooted in common law, intended to remedy injustices related to the application of intestacy laws, rather than to bestow legal recognition for purposes such as wrongful death claims. *Scarlett Z.-D.*, 2015 IL 117904, ¶¶ 52-54.

¶ 40 The General Assembly created the right of action for wrongful death (740 ILCS 180/1 (West 2024)), and it is entitled to restrict the statutory benefit it provides to legal next of kin. See *Baez*, 409 Ill. App. 3d at 529 (because the Wrongful Death Act is a statutory creation, as opposed to a common-law right, it is strictly construed and not rewritten to comport with a court's idea of orderliness and public policy); *Williams v. Manchester*, 228 Ill. 2d 404, 420 (2008) (the legislature, having conferred a cause of action for wrongful death, has determined who shall sue and the conditions under which the suit may be brought). In interpreting a statute, we cannot read into it words that are not within the intention of the legislature, nor can we enlarge the meaning of the statute. *Trigg v. Sanders*, 162 Ill. App. 3d 719, 727 (1987). Rather, we must look to the language of the statute and give the words their plain and ordinary meanings. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1047 (1999). The legislature is entitled to limit the statutory benefits to legal next of kin. Courts have consistently held that because the Wrongful

Death Act derives from statute rather than common law, it must be strictly interpreted and not modified to align with judicial notions of orderliness or public policy. In *Baez*, 409 Ill. App. 3d at 529, the court emphasized that statutory causes of action are interpreted narrowly and are not subject to judicial rewriting.

¶ 41 Similarly, *Williams*, 228 Ill. 2d at 420, reinforces the principle that the legislature, having created the wrongful death cause of action, retains the authority to determine who may bring suit and under what conditions.

¶ 42 When interpreting statutes, courts may not insert words or meanings not intended by the legislature, nor may they broaden the statute's scope beyond its plain language. In *Trigg*, 162 Ill. App. 3d at 726-27, it was made clear that the statutory language must be given its ordinary and customary meaning. This approach is further supported by *Anthony*, 304 Ill. App. 3d at 1047, which directs courts to rely on the plain language of the statute rather than expanding its meaning.

¶ 43 Excluding equitable adoptees from the statutory definition of "next of kin" does not violate constitutional protections. Equitable adoption was never intended to replace the formal, statutory adoption process, nor does it create a legal adoption or confer the rights and obligations associated with statutory adoption. This is affirmed in *Scarlett Z.-D.*, 2015 IL 117904, ¶ 53, which clarifies that equitable adoption is a limited doctrine and does not grant legal status for purposes such as wrongful death claims.

¶ 44 Plaintiff makes several other arguments, including that the court should reverse summary judgment that Jeremy was not Lionel's next of kin because the term "adopted child" should not be rewritten to say "legally adopted child"; the court should reverse summary judgment that Jeremy was not Lionel's next of kin because an equitably adopted child is a "next of kin," even if

he is not included by section 2(f) of the Wrongful Death Act because the Probate Act of 1975 (755 ILCS 5/1-1 *et seq.* (West 2024)) is liberally construed; and the court should reverse summary judgment that Jeremy was not Lionel’s next of kin because excluding equitably adopted children from the definition of next of kin would incentivize tortfeasors to direct tortious conduct towards the communities where equitable adoption predictably occurs most often.

¶ 45 While these arguments are interesting, even if we agreed with them, we do not have the authority to ignore the clear directive of our supreme court that the doctrine of equitable adoption is limited to inheritance. Accordingly, we conclude that the circuit court correctly held that equitable adoption does not create a “next of kin” relationship under the Wrongful Death Act.

¶ 46 Question for Judge or Jury

¶ 47 Plaintiff next argues the circuit court erred when it stated that any factual questions regarding equitable adoption should be decided by the court and not a jury. In this appeal, plaintiff argues that if the case is remanded for trial, we should reverse the court order and hold that all factual questions regarding equitable adoption ought to be decided by a jury. Because we have found that the court correctly granted summary judgment on plaintiff’s claims, there are no factual questions required to be determined at a hearing. Even if plaintiff is deemed to have been equitably adopted, it does not follow that he is next of kin for purposes of the Wrongful Death Act. Therefore, resolution of this issue is not required for us to dispose of this appeal.

¶ 48 Advocate Health Was Entitled to a Setoff

¶ 49 The trial court ruled that Advocate Health was entitled to a setoff from the earlier settlements reached between plaintiff and the other defendants. Plaintiff argues that the defendant was not entitled to a setoff because the settlements were for the benefit of Jeremy, while the verdict was for the benefit of Cecilia James only. The statute on contribution provides:

“When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.” 740 ILCS 100/2(c) (West 2024).

Whether a defendant is entitled to a setoff is a question of law, which we review *de novo*. *Thornton v. Garcini*, 237 Ill. 2d 100, 115-16 (2009).

¶ 50 The settlements paid by Lexington Health Care Center of Chicago Ridge Inc. (Lexington) and the pharmacy defendants were for the same wrongful death claim. Lexington settled for \$163,000, and the pharmacy defendants settled for \$435,000. Cecilia James, in her individual capacity, is the only legally cognizable statutory beneficiary. The settlements were attributable to a single, indivisible injury—Lionel’s wrongful death. For Lexington’s settlement, the trial court indicated that 100% of the net proceeds are to be allocated to the wrongful death action and distributed according to the provisions of the Wrongful Death Act. Likewise, similar language regarding the allocation and distribution of proceeds was included in the settlement agreement with the pharmacy defendants, ensuring that the settlements were properly directed to satisfy the wrongful death claim under the applicable statute. Both settlements were attributable to Lionel’s death and were not separated into distinct claims or beneficiaries.

¶ 51 While the settlements identified Jeremy Overstreet as Lionel’s only statutory next of kin, that statement was a misstatement of the law likely induced by Jeremy’s representations to the court that he was Lionel’s son and sole heir. Even if those representations were an innocent

mistake, it is clearly apparent that the settlements were directed to satisfy a single wrongful death claim for Lionel’s statutory next of kin. See *Thompson v. Centegra Management Services, Inc.*, 2026 IL App (2d) 240667, ¶ 52. Once the settlements are correctly construed to be allocated to the wrongful death action and distributed according to the Wrongful Death Act, as indicated by their own terms, it is clear that the settlements were for the same wrongful death claim and for the same statutory beneficiary—plaintiff. Plaintiff is the only person that had an actionable claim for Lionel’s wrongful death, and the settlements were directed to satisfy her claim as the statutory beneficiary.

¶ 52 Under *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337 (1995), a defendant is entitled to a setoff for settlements arising from the same injury. Furthermore, a nonsettling defendant may claim as a setoff any amount that the plaintiff recovered in a prior settlement with settling defendants, even if the resulting judgment is reduced to zero dollars. *Id.* at 368.

¶ 53 Plaintiff’s argument that Jeremy suffered separate pecuniary loss is irrelevant because Jeremy is not a statutory beneficiary. The circuit court correctly granted Advocate Health a setoff for the prior settlements reached by plaintiff as part of this case.

¶ 54 Prejudgment Interest Must Be Calculated After the Setoff

¶ 55 Plaintiff contends that she is entitled to prejudgment interest on the entire amount of the judgment before any setoff is applied. Section 2-1303(c) of the Code of Civil Procedure requires prejudgment interest in a wrongful death action to be added to the “amount of the judgment.” 735 ILCS 5/2-1303(c) (West 2024). The “judgment” is the net amount after setoff. See *Thompson*, 2026 IL App (2d) 240667, ¶ 66; *Shackelford v. Allstate Fire & Casualty Insurance Co.*, 2017 IL App (1st) 162607, ¶ 16 (“[I]nterest accrued only on the amount of the award minus the appropriate setoffs, from the date of the award until Allstate paid Shackelford \$14,000.”)

¶ 56 The Illinois Supreme Court has stated that the assessment of prejudgment interest is neither a penalty nor a bonus, but instead a preservation of the economic value of an award from diminution caused by delay. *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill. 2d 282, 301 (1993). The purpose of statutory prejudgment interest is to “preserve[] the value of the liquidated obligation by compensating the judgment creditor for delays in payment.” *Id.* at 295. Here, plaintiff was paid these amounts by the settling defendants prior to trial. Allowing plaintiff to recover prejudgment interest on the jury award for the same damages represented by funds she already received in a pretrial settlement would be to allow plaintiff an improper windfall.

¶ 57 Plaintiff’s claim that the application of the setoff was “untimely” lacks merit. The process of applying a setoff is an essential step in the trial court’s entry of judgment. Specifically, the setoff serves to reduce the plaintiff’s damages before the judgment is finalized. This ensures that only the net damages, after accounting for any amounts previously recovered through settlement, are reflected in the final judgment.

¶ 58 According to the Code of Civil Procedure, prejudgment interest is awarded based on the amount of the judgment, not on the amount of the jury’s verdict. This distinction is important because it means that prejudgment interest should be calculated solely on the portion of the verdict that remains after any setoff is applied. In this case, the circuit court properly calculated prejudgment interest on only that portion of the verdict that was not subject to a setoff, thereby adhering to the statutory requirements and established legal principles.

¶ 59

CONCLUSION

¶ 60 Equitable adoption does not create “next of kin” status under the Wrongful Death Act.

Advocate Health was entitled to a setoff, and prejudgment interest must be calculated on the net judgment. The circuit court’s judgment is affirmed.

¶ 61 Affirmed.

James v. Lexington Health Care Center of Chicago Ridge Inc., 2026 IL App (1st) 250386

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 2023-L-40; the Hon. Gerald Cleary and the Hon. Stephanie Saltouros, Judges, presiding.

Attorneys for Nicholas Nepustil, of Morgan & Morgan, PA, of Chicago, for appellant.

Appellant:

Attorneys for Catherine Basque Weiler, of Hinshaw & Culbertson LLP, and Gretchen M. Powell and Samantha M. D'Anna, of Smith Blake Hill LLC, both of Chicago, for appellee.

Appellee:

Amicus Curiae: Leslie J. Rosen, of Chicago, for *amicus curiae* Illinois Trial Lawyers Association.
