

2026 IL App (1st) 250424-U
Nos. 1-25-0424 & 1-25-0545 (cons.)
Order filed September 30, 2026

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GUY CODY CALDWELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS CENTRAL RAILROAD COMPANY,	)	
	)	
Defendant-Appellee.	)	Nos. 22 L 2479
	)	24 L 3533
ILLINOIS CENTRAL RAILROAD COMPANY,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
L&T SERVICES, LLC,	)	Honorable
	)	Kathy M. Flanagan,
Third-Party Defendant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Quish and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* (1) We affirm the circuit court’s denial of plaintiff’s motion under section 2-1301 of the Code of Civil Procedure to set aside the dismissal for want of prosecution of his original FELA lawsuit (DWP order) because this motion was not filed within 30 days of the DWP order.

(2) We reverse the circuit court’s denial of plaintiff’s petition under section 2-1401 of the Code of Civil Procedure to vacate the DWP order, finding that the circuit court erroneously denied this petition as moot. We remand this matter to the circuit court for further proceedings on plaintiff’s requests in his 2-1401 petition for equitable tolling or estoppel.

(3) We reverse the circuit court’s dismissal of plaintiff’s refiled FELA lawsuit, which was based in part on the circuit court’s erroneous denial of plaintiff’s 2-1401 petition as moot. We remand this matter to the circuit court for further proceedings.

(4) We direct that on remand these matters be reassigned from the circuit court judge who denied plaintiff’s 2-1401 petition and dismissed his refiled FELA lawsuit.

¶ 2 Plaintiff Guy Cody Caldwell was injured during his employment with defendant Illinois Central Railroad Company (Railroad) and sued the Railroad under the Federal Employers’ Liability Act (FELA) (45 U.S.C. § 51, *et seq.*) to recover damages for the Railroad’s alleged negligence.

¶ 3 The circuit court, over the objections of both Caldwell and the Railroad, dismissed Caldwell’s lawsuit for want of prosecution (DWP order).

¶ 4 When Caldwell refiled his FELA claims, the Railroad moved to dismiss his refiled lawsuit as time-barred under FELA’s three-year limitation period. Thereafter, Caldwell filed in his original lawsuit a motion to set aside the DWP order under section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2022)), and, alternatively, petitioned to vacate the DWP order under section 2-1401 of the Code (*id.* § 2-1401).

¶ 5 The circuit court denied Caldwell’s 2-1301 motion and denied as moot his 2-1401 petition. Thereafter, the circuit court dismissed Caldwell’s refiled lawsuit, finding that the Railroad’s motion to dismiss therein was moot based on the court’s denial of Caldwell’s 2-1301 motion and 2-1401 petition.

¶ 6 On appeal, Caldwell argues (1) his 2-1301 motion established his entitlement to relief and was timely because determining the finality of DWP orders based on section 13-217 of the Code (735 ILCS 5/13-217 (West 2022)), *i.e.*, the “saving statute,” is not inconsistent with established precedent that saving statutes cannot extend FELA’s three-year limitation period, (2) his 2-1401 petition is not moot so this court should remand it for further proceedings and direct that it be reassigned to a different circuit court judge, (3) alternatively, this court should grant his 2-1401 petition because section 2-1401 of the Code is not a saving statute like section 13-217 of the Code, so FELA’s limitation period should not determine the timeliness of his 2-1401 petition, and (4) alternatively, the court should apply equitable tolling or estoppel in assessing the timeliness of his 2-1301 motion, 2-1401 petition, and refiled FELA lawsuit.

¶ 7 For the reasons that follow, we affirm the circuit’s court’s denial of Caldwell’s 2-1301 motion because it was not filed within 30 days of the DWP order. We reverse, however, the circuit court’s denial of his 2-1401 petition and dismissal of his refiled FELA lawsuit because his requests for equitable tolling or estoppel were not moot. We remand these matters to the circuit court for further proceedings on his 2-1401 petition and refiled FELA lawsuit. We direct that on remand

these matters be reassigned from the circuit court judge who denied plaintiff's 2-1401 petition and dismissed his refiled FELA lawsuit.¹

¶ 8

I. BACKGROUND

¶ 9 Caldwell was employed by the Railroad and was injured in a work-related accident in Tennessee on December 19, 2017. He sued the Railroad in a Mississippi state court, his home forum, on November 25, 2020, which was within the three-year limitation period for asserting his FELA claims. The Railroad successfully moved for dismissal on personal jurisdiction grounds, and the Mississippi court's dismissal order became final on March 3, 2022.

¶ 10 On March 14, 2022, Caldwell filed case No. 22-L-2479 in the Circuit Court of Cook County, alleging his claims were timely brought because the three-year limitation period for filing FELA claims was tolled during the pendency of the Mississippi action pursuant to equitable tolling under the federal common law. The case was assigned to a motion call of the circuit court's law division for case management, discovery, and motion practice.

¶ 11 In May and June of 2022, the Railroad moved to dismiss the lawsuit (1) under section 2-619(5) of the Code (*id.* § 2-619(5)) as time-barred, and (2) under Illinois Supreme Court Rule 187 (eff. Jan. 1, 2018) on *forum non conveniens* grounds.

¶ 12 In April 2023, the circuit court denied the Railroad's 2-619(5) motion to dismiss, finding that FELA's limitation period had been tolled during the pendency of Caldwell's Mississippi lawsuit.

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 13 In June 2023, the circuit court entered a standing order, which allowed the parties to adjust certain discovery deadlines set forth in a case management order by means of an agreed order so long as the adjustment did not affect the date of the final case management conference and trial certification proceeding.

¶ 14 In July 2023, the circuit court entered the case management order, which set deadlines requiring, *inter alia*, that (1) written discovery be propounded on or before October 26, 2023, and completed on or before January 26, 2024; (2) Supreme Court Rule 213(f)(1) (eff. Jan. 1, 2018) depositions be completed by May 28, 2024; (3) Rule 213(f)(2) depositions be completed by June 28, 2024; and (4) Rule 213(f)(3) depositions be completed no later than January 7, 2025. This order also set the final case management conference and trial certification proceeding for March 4, 2025. Caldwell timely propounded discovery on the Railroad in June and July 2023.

¶ 15 In September 2023, the circuit court denied the Railroad's Rule 187 *forum non conveniens* motion to dismiss.

¶ 16 The Railroad did not propound any discovery on Caldwell by the October 26, 2023, deadline in the case management order. Instead, the Railroad first served Caldwell with written discovery on November 15, 2023. According to the record, the Railroad initially took the position following receipt of Caldwell's written discovery that the Railroad would not participate in any substantive discovery prior to the resolution of its *forum non conveniens* motion. And although the Railroad subsequently agreed to start working on discovery responses, the Railroad did not serve responses to Caldwell's discovery until February 21, 2024, which was after the January 26, 2024, case management order deadline. The parties, however, communicated about unforeseen delays and agreed to extend the deadlines for their written discovery responses, as memorialized in an

e-mail exchange between counsel on February 27, 2024, including extending the completion of written discovery to April 2024.

¶ 17 On March 5, 2024, the circuit court *sua sponte* issued an e-mail notice to the parties, directing them to appear in person on Monday, April 1, 2024, on a trial setting call. The notice advised the parties that they should be prepared to suggest reasonable trial dates and cases may be returned to the assigned motion judge for “in-person Focused Case Management depending on the trial date assigned.”

¶ 18 A few days later, the Railroad filed on the motion call an emergency motion (which Caldwell did not oppose) to file a third-party complaint against a maintenance contractor whose employees were involved in the accident giving rise to Caldwell’s claims. The circuit court granted this motion on March 12, 2024. The Railroad thereafter filed its third-party complaint and served the third-party defendant on March 25, 2024.

¶ 19 After the close of business on Friday, March 29, 2024, the Railroad filed a motion to compel and amend the case management order. The Railroad asked the court to compel Caldwell to provide discovery responses by April 15, 2024, amend certain discovery deadlines in the case management order as agreed upon by the parties, and leave in place the remaining deadlines. The Railroad scheduled this motion for presentment on April 10, 2024, before the judge on the motion call.

¶ 20 The trial setting call on Monday, April 1, 2024, was held before Cook County Circuit Court Judge Kathy M. Flanagan, who had not previously issued any orders in this case or decided any motions. Over the objections of counsel for both Caldwell and the Railroad, Judge Flanagan *sua sponte* entered the DWP order. At the time, the Railroad’s motion to compel was not before Judge

Flanagan, the third-party defendant had not yet appeared or answered the Railroad's recently filed third-party complaint, and 11 months remained before the March 4, 2025, final case management conference set by the case management order.

¶ 21 On April 2, 2024, Caldwell refiled his FELA claims (case No. 24-L-3533). This case was assigned to a motion call.

¶ 22 The Railroad moved to dismiss the refiled case under section 2-619 of the Code, arguing the refiled case should be dismissed on *res judicata* grounds because the DWP order was a final order when entered and preclusive effect should be accorded to it. Alternatively, the Railroad argued that the refiled case was time-barred by the three-year limitation period to file FELA claims. The Railroad also argued neither equitable tolling nor the saving clause of section 13-217 of the Code could extend FELA's limitation period.

¶ 23 In response, Caldwell argued *res judicata* did not apply because the DWP order was neither a decision on the merits nor a final order given the application of section 13-217. His response included the July 2024 sworn declaration of his counsel. According to this declaration, counsel stated that Judge Flanagan also entered DWP orders at the April 1, 2024, trial setting call in "several other lawsuits that she stated were not progressing fast enough." Counsel believed that Judge Flanagan exceeded her authority in entering the DWP order and violated Caldwell's constitutional due process and other rights. Based on his experience, counsel stated that any motion to vacate Judge Flanagan's DWP order would have entailed time for briefing, argument, and appeal and thus would have delayed a decision on the merits of Caldwell's claim by far more than three months and greatly exceeded the costs he incurred in refiling his lawsuit.

¶ 24 On October 1, 2024, Cook County Circuit Court Judge Eileen M. O'Connor, who was the assigned motion judge presiding over case No. 24-L-3533, ruled on the Railroad's motion to dismiss. She found that the April 1, 2024, DWP order in case No. 22-L-2479 was a final order and Caldwell did not timely seek relief from it under section 2-1301 of the Code. Judge O'Connor also found, based on *Burnett v. New York Central Railroad Co.*, 380 U.S. 424 (1965), and Illinois case law following it, that Caldwell could not invoke section 13-217 to lengthen FELA's three-year limitation period to refile his FELA claims. Judge O'Connor, however, denied the portion of the Railroad's motion to dismiss that was based on *res judicata* grounds, finding that the DWP order was not an adjudication on the merits. Judge O'Connor also reserved ruling on the Railroad's argument that the refiled case was time-barred and stayed the matter so Caldwell could file a petition before Judge Flanagan in case No. 22-L-2479 to vacate her DWP order.

¶ 25 On October 21, 2024, Caldwell filed, in case No. 22-L-2479, a motion under section 2-1301 of the Code to set aside the DWP order. Caldwell argued that this motion was timely and relief under section 2-1301 was proper because, with irrelevant exceptions, Illinois law holds that a DWP order is interlocutory and does not become final until one year after its entry.

¶ 26 On October 24, 2024, Caldwell also filed, in case No. 22-L-2479, alternatively, a 2-1401 petition to vacate the DWP order. He argued the petition was timely filed within two years of the DWP order. He also argued he showed by a preponderance of the evidence the existence of a meritorious claim, due diligence in presenting the claim in the underlying action, and due diligence in filing this 2-1401 petition. Further, he argued his FELA claims were not time-barred because the court should apply equitable tolling during the time the original and refiled cases were pending

Nos. 1-25-0424 & 1-25-0545 (cons.)

and the Railroad should be equitably estopped from invoking FELA's filing limitation period due to the unique circumstances of this case. Both matters were noticed before Judge Flanagan.

¶ 27 Judge Flanagan ordered the Railroad to respond only to Caldwell's 2-1301 motion by January 2, 2025, indicated she would rule on the 2-1301 motion on or before January 31, 2025, and entered and continued Caldwell's 2-1401 petition to January 31, 2025.

¶ 28 In its response, the Railroad argued that Caldwell's 2-1301 motion, filed on October 21, 2024, was not timely because he failed to file it within 30 days of the April 1 2024, DWP final order. The Railroad, relying on *Burnett*, argued state saving clauses cannot be invoked to extend a court's jurisdiction beyond FELA's three-year limitation period.

¶ 29 In February 2025, Judge Flanagan denied Caldwell's 2-1301 motion and denied his 2-1401 petition as moot. Thereafter, she dismissed his refiled FELA claims in case No. 24-L-3533, ruling that the Railroad's motion to dismiss was moot based on her denial of Caldwell's 2-1301 motion and denial of his 2-1401 petition as moot in case No. 22-L-2479.

¶ 30 Caldwell timely appealed the order denying his 2-1301 motion and 2-1401 petition in case No. 22-L-2479. He also timely appealed the dismissal of his refiled FELA claims in case No. 24-L-3533. This court consolidated these appeals.

¶ 31 II. ANALYSIS

¶ 32 Regarding Caldwell's 2-1301 motion to set aside the DWP order, he argues the circuit court should have found that it was timely and established that he was entitled to relief. Regarding timeliness, he argues the time limit to file a section 2-1301 motion within 30 days after entry of a final order did not apply here because the April 2024 DWP order was not a final order when he filed his 2-1301 motion. Specifically, he argues the DWP order was not final because section

13-217 provides that such orders do not become final until one year after entry. He asserts that determining the finality of DWP orders in FELA cases based on section 13-217 is not inconsistent with established precedent that state saving statutes cannot extend FELA's three-year limitation period.

¶ 33 A DWP order generally is not considered final because section 13-217 operates as a savings statute, allowing the plaintiff to refile his action within one year of the entry of the DWP order or within the remaining limitation period, whichever is greater. When this refiling period expires, the DWP order becomes a final judgment because, at this point, the order effectively “ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.” *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 502 (1998).

¶ 34 The United States Supreme Court, however, limited the application of section 13-217 in FELA cases by rejecting the argument that state saving statutes could allow plaintiffs to refile FELA actions after the three-year limitation period. *Burnett*, 380 U.S. at 432-33. Specifically, the Supreme Court reasoned that incorporating state saving statutes into FELA's time limitation “would produce nonuniform periods of limitation in the several states” and consequently “defeat the aim of a federal limitation provision designed to produce national uniformity.” *Id.* at 433. Further, this court has since held that “*Burnett* constrains us to hold that section 13-217 cannot protect plaintiff's cause of action under the FELA” when it is filed after FELA's three-year limitation period. *Noakes v. National Railroad Passenger Corp.*, 312 Ill. App. 3d 965, 968 (2000).

¶ 35 We conclude, under *Burnett* and *Noakes*, that section 13-217 is not applicable here because it cannot be used to allow Caldwell to refile his FELA action outside FELA's uniform, three-year limitation period. Because section 13-217 did not “save” Caldwell's complaint from the running

of FELA's limitation period, the DWP order was final when it was entered on April 1, 2024, meaning Caldwell had 30 days from that date to file his section 2-1301 motion. But he filed it in October 2024, more than 30 days after the entry of the DWP order. Therefore, his 2-1301 motion was not timely and the circuit court correctly denied it.

¶ 36 Regarding Caldwell's 2-1401 petition to vacate the DWP order, he argues that his petition is timely because section 2-1401 of the Code is not a saving statute, so FELA's limitation period does not determine the timeliness of his 2-1401 petition.

¶ 37 Because this particular argument by Caldwell about the timeliness of his 2-1401 petition presents a purely legal challenge to the circuit court's denial of his petition, the standard of review is *de novo*. *Stolfo v. Kindercare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 22. Our review of this issue is informed by three cases: *Noakes*, 312 Ill. App. 3d 965; *Kulhavy v. Burlington Northern Santa Fe Railroad*, 337 Ill. App. 3d 510 (2003); and *Klancir v. BNSF Railway Co.*, 2015 IL App (1st) 143437.

¶ 38 In *Noakes*, the plaintiff sued his employer under FELA and later voluntarily dismissed the case. *Noakes*, 312 Ill. App. 3d at 966. The plaintiff later tried to resurrect his case by filing a new lawsuit, which the circuit court dismissed under FELA's three-year limitation period. *Id.* On appeal, the plaintiff argued FELA's limitation period did not bar his new lawsuit because section 13-217 gave him the right to file the new lawsuit within one year of his voluntary dismissal of his original action. *Id.* at 967.

¶ 39 Following *Burnett*, this court held that section 13-217 did not save the plaintiff's cause of action under FELA. *Id.* at 971. Noting that federal law controls the application of FELA's limitation period (*id.*), this court cited *Burnett*'s holding that state saving statutes like section

13-217 could not operate to protect the rights of plaintiffs to refile FELA actions after FELA's three-year limitation period (*id.* at 967-68).

¶ 40 In *Kulhavy*, the plaintiff filed his FELA complaint against his employer, which the circuit court later dismissed for want of prosecution. *Kulhavy*, 337 Ill. App. 3d at 511-12. The plaintiff filed a section 2-1401 petition to vacate the dismissal, which the circuit court denied because it was filed after FELA's three-year limitation period. *Id.* at 513.

¶ 41 On appeal, this court noted that the filing of a 2-1401 petition is considered a new proceeding, not a continuation of the old one, and the plaintiff had filed his 2-1401 petition nine months after FELA's three-year limitation period had expired. *Id.* at 517. This court cited *Noakes's* and *Burnett's* holdings that a saving statute such as section 13-217 could not provide a plaintiff with the right to refile an action after expiration of FELA's three-year limitation period. *Id.* This court held that section 2-1401 serves the same "saving" function as section 13-217 and, pursuant to *Noakes* and *Burnett*, did not provide the plaintiff with the right to file his FELA suit after the expiration of the three-year limitation period. *Id.* Accordingly, this court affirmed the denial of the plaintiff's 2-1401 petition. *Id.* at 518.

¶ 42 In *Klancir*, the trial was starting on the plaintiff's FELA complaint against his employer, but the plaintiff's expert witness had a scheduling conflict and the trial judge stated that he did not have the power to grant a continuance under the circumstances. *Klancir*, 2015 IL App (1st) 143437, ¶¶ 1, 5-7. The plaintiff voluntarily dismissed his complaint after the trial judge told the plaintiff's counsel that the plaintiff could voluntarily dismiss his claim and refile it within one year. *Id.* The plaintiff refiled his complaint almost one year later, but the circuit court granted the defendant's

motion to dismiss because the complaint was filed outside FELA's three-year limitation period and section 13-217 did not apply. *Id.* ¶¶ 12, 13.

¶ 43 On appeal, this court referred to *Burnett's* and *Noakes's* rulings that section 13-217 did not apply to save FELA claims filed after the expiration of FELA's limitation period. *Id.* ¶ 17. The plaintiff did not dispute that his refiled FELA complaint was filed after the expiration of FELA's limitation period and section 13-217 did not save his refiled complaint. *Id.* Rather, the plaintiff argued that equitable tolling applied because the defendant misled him to believe the defendant would not assert the FELA limitation period defense. *Id.* ¶ 18.

¶ 44 Here, Caldwell filed his 2-1401 petition, which is considered a new proceeding, not a continuation of the old one, after FELA's three-year limitation period. Section 2-1401 serves the same "saving" function as section 13-217 and, as such, pursuant to *Burnett*, *Noakes*, *Kulhavy*, and *Klancir*, which held that saving statutes are not applicable to provide a plaintiff with the right to refile FELA actions after the three-year limitation period, Caldwell's petition was not timely.

¶ 45 Caldwell cites *Lingerman v. Elgin, Joliet & Eastern Railway Co.*, 24 Ill. App. 2d 1 (1959), which affirmed the trial court's application of the predecessor to section 2-1401 to vacate an order dismissing an FELA action. *Lingerman*, however, is not persuasive because it predates the Supreme Court decision in *Burnett* and the appellate court opinions in *Noakes*, *Kulhavy*, and *Klancir*.

¶ 46 We agree with Caldwell, however, that Judge Flanagan erred by denying his 2-1401 petition as moot after her denial of his 2-1301 motion. In *Burnett*, the Supreme Court applied equitable tolling to the FELA limitation period, and Caldwell asked Judge Flanagan in his 2-1401 petition to do the same. Specifically, *Burnett* addressed whether FELA's three-year limitation

period should be considered to have been equitably tolled during the pendency of the state court action when a plaintiff begins a timely FELA action in a state court of competent jurisdiction, service of process is made on the opposing party, and the state court action subsequently is dismissed because of improper venue. *Burnett*, 380 U.S. at 428.

¶ 47 In its analysis, the Supreme Court noted that statutes of limitation are primarily designed to assure fairness to the defendants, and that such statutes promote justice by preventing the revival of claims that were allowed to slumber until evidence was lost, memories faded, and witnesses disappeared. *Id.* The Supreme Court recognized, however, that this policy designed to protect the defendants is outweighed where the interests of justice require vindication of the plaintiff's rights. *Id.* The Supreme Court cited examples of when FELA actions were held not to be barred because the plaintiffs had not slept on their rights, but, instead, had been prevented from asserting them, such as where a defendant misled the plaintiff into believing he had more than three years in which to bring the action, or where war prevented a plaintiff from bringing his suit. *Id.* at 428-29 (citing *Glus v. Brooklyn Eastern District Terminal*, 359 U.S. 231 (1959); *Osbourne v. United States*, 164 F.2d 767 (2d Cir. 1947); and *Frabutt v. New York, Chicago & St. Louis Railroad Co.*, 84 F. Supp. 460 (W.D.Pa. 1949)).

¶ 48 In *Burnett*, the Supreme Court found that the plaintiff
“did not sleep on his rights but brought an action within the statutory period in the state court of competent jurisdiction. Service of process was made upon the [defendant] notifying him that [the plaintiff] was asserting his cause of action. *** [The plaintiff], then, failed to file an FELA action in the federal courts, not because he was disinterested, but solely because he felt that his state action was sufficient.” *Id.* at 429.

¶ 49 The Supreme Court noted that federal and state jurisdictions have recognized the unfairness of barring a plaintiff's action solely because a prior timely action is dismissed for improper venue after the applicable statute of limitations has run. *Id.* at 430. The Supreme Court also noted the "nonuniform limitation provision" that results between federal and state jurisdictions that allow for cases the plaintiffs timely filed in the wrong federal district or state courts to be subsequently transferred to the correct courts even after the statute of limitations has run, as opposed to states without such transfer statutes. *Id.* at 430-34. To avoid such nonuniformity, the Supreme Court concluded that "when a plaintiff brings a timely FELA action in a state court having jurisdiction, and serves the defendant with process and plaintiff's case is dismissed for improper venue, the FELA limitation is tolled during the pendency of the state suit." *Id.* at 434-35.

¶ 50 Judge Flanagan's order denying Caldwell's 2-1301 motion and denying his 2-1401 petition as moot states no basis for her rulings. Further, her correct ruling denying Caldwell's 2-1301 motion, which is time-barred, does not address or resolve the equitable tolling and estoppel claims he raised in his 2-1401 petition, which were specifically reserved by Judge O'Connor in case No. 24-L-3533. Nor are these claims ripe for this court's review of whether the doctrines of equitable tolling (under the clearly erroneous standard) and equitable estoppel (under the abuse of discretion standard) apply under the facts of this case. See *Williams v. Board of Review*, 241 Ill. 2d 352, 370 (2011); *In re Marriage of Duerr*, 250 Ill. App. 3d 232, 237 (1993).

¶ 51 In addition, the Railroad was not allowed to file any response in the circuit court to Caldwell's 2-1401 petition. The standard of review for a fact-dependent challenge to a section 2-1401 petition is an abuse of discretion (*Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 37, 47), and the appellate record here is not adequate for an abuse of

discretion review of the facts to support or reject the petition. As a result, we reverse Judge Flanagan's denial of Caldwell's 2-1401 petition and remand this matter to the circuit court for briefing and argument on his 2-1401 petition, and for a full and fair evidentiary hearing if there are disputes of fact. See *id.* ¶ 38; *Smith v. Airoom*, 114 Ill. 2d 209, 223 (1986).

¶ 52 Further, we reverse Judge Flanagan's dismissal of Caldwell's refiled FELA claims in case No. 24-L-3533 because the Railroad's motion to dismiss therein was not before her. Moreover, her ruling that the denial of Caldwell's 2-1301 motion and 2-1401 petition in case No. 22-L-2479 somehow mooted the Railroad's motion to dismiss in case No. 24-L-3533, resulting in its dismissal, was erroneous. We remand case No. 24-L-3533 to the circuit court for further proceedings.

¶ 53 Finally, Caldwell requests that on remand these matters be reassigned from Judge Flanagan.

¶ 54 Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) permits a reviewing court, in its discretion, to make any order or grant any relief that a particular case may require. This authority includes the power to reassign a matter to a new judge on remand. *In re Marriage of Smoller*, 218 Ill. App. 3d 340, 346-47 (1991). A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 339 (2001). Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant (*In re Marriage of Hartian*, 222 Ill. App. 3d 566, 569 (1991)), but judicial bias or prejudice can stem from the facts adduced or the events occurring at trial (*Liteky v. United States*, 510 U.S. 540, 551 (1994)).

¶ 55 Caldwell argues Judge Flanagan exhibited unexplained hostility and an egregious abuse of discretion by *sua sponte* entering the DWP order over the objection of both parties. Only about six months had elapsed from the motion judge’s September 2023 denial of the Railroad’s *forum non conveniens* motion to Judge Flanagan’s entry of the DWP order in April 2024, and the third-party defendant had not even appeared and answered the Railroad’s March 2024 third-party complaint, let alone served or responded to any discovery. The parties still had ample time to complete discovery under the court’s July 2023 case management order. That order also set the case for trial certification nearly a year later, on March 4, 2025. There was no evidence that Caldwell was not diligently pursuing his claims or that any party was delinquent in discovery.

¶ 56 It is well established that “[a] complaint should not be dismissed for want of prosecution unless the plaintiff has been guilty of inexcusable delay.” *Polowick v. Meredith Construction Co.*, 29 Ill. App. 3d 1092, 1097 (1975).

“While *** courts have the inherent power to dismiss actions for want of prosecution in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the progress of trial calendars [citation], it must be remembered that a dismissal of a valid cause of action is error unless the plaintiff is guilty of an inexcusable delay in litigating the controverted matter.” *Crawford v. Crawford*, 39 Ill. App. 3d 457, 463 (1976).

There is no evidence of any such delay in this case.

¶ 57 Nevertheless, Judge Flanagan thereafter denied Caldwell’s 2-1401 petition as moot without reason or argument and without considering Caldwell’s equitable tolling or estoppel arguments or allowing a full and fair hearing on any disputed relevant facts. See *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 38. While erroneous findings and rulings are insufficient

Nos. 1-25-0424 & 1-25-0545 (cons.)

to show judicial bias against a litigant, reassignment on remand is warranted where the trial judge gave the impression that she was unwilling to consider any facts concerning the progression of the case or any argument concerning equitable tolling or estoppel principles. Under these circumstances, we believe the interests of justice are best served by remanding the matters in case Nos. 22-L-2479 and 24-L-3533 for reassignment from Judge Flanagan to remove any suggestion of unfairness. Further, reassignment would not entail waste and duplication out of proportion to the gain in preserving the appearance of fairness because there was no briefing of the 2-1401 petition, argument, or evidentiary hearing.

¶ 58

III. CONCLUSION

¶ 59 For the foregoing reasons, the judgment of the circuit court is affirmed regarding the denial of Caldwell's 2-1301 motion in case No. 22-L-2479. However, the circuit court's denial of his 2-1401 petition in case No. 22-L-2479 and dismissal of his refiled FELA claims in case No. 24-L-3533 are reversed. We remand these matters to the circuit court for further proceedings on Caldwell's 2-1401 petition and refiled FELA lawsuit. Further, we direct that on remand these matters be reassigned from Judge Flanagan.

¶ 60 Affirmed in part, reversed in part, and remanded with directions.