

2023 IL App (4th) 220429

NO. 4-22-0429

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 9, 2023

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

BARBARA MILLER, as Special Administrator of the	)	Appeal from the
Estate of Charmaine Wren, Deceased,	)	Circuit Court of
Plaintiff-Appellant,	)	Sangamon County
v.	)	No. 19L184
WILLIAM THOM, JoANN ADAMS, TAMMIE	)	
BLEVINS, RYAN LUEKING, CHRISTIE WEISS,	)	
TANYA WALKER, and ASSOCIATED PHYSICIANS	)	Honorable
GROUP,	)	Ryan M. Cadagin,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court, with opinion.  
Justices Lannerd and Knecht concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Barbara Miller, as special administrator of the estate of Charmaine Wren, deceased, appeals the Sangamon County circuit court’s April 27, 2022, orders dismissing defendants, William Thom, JoAnn Adams, Tammie Blevins, Ryan Lueking, Christie Weiss, Tanya Walker, and Associated Physicians Group, from the case. On appeal, plaintiff asserts the circuit court abused its discretion under Illinois Supreme Court Rule 9(d)(2) (eff. Dec. 12, 2018) by refusing to consider her complaint filed within the statute of limitations. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Decedent died on February 5, 2016, after receiving medical care from defendants in Swansea, Illinois, which is in St. Clair County. On February 5, 2018, plaintiff filed an action against defendants and Highland Park CVS, L.L.C. in Madison County. Miller v. Thom, No.

18-L-148 (Cir. Ct. Madison County). Defendants filed motions to dismiss plaintiff's complaint based on plaintiff's noncompliance with section 2-622 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-622 (West 2018)). Before the motions were ruled upon, plaintiff filed a motion for a voluntary dismissal, which the Madison County circuit court granted on August 17, 2018.

¶ 4 On August 14, 2019, plaintiff used the Odyssey e-filing system to file a complaint in St. Clair County against the same defendants except for Highland Park CVS, L.L.C. The filing was rejected on August 22, 2019, with the following notation: "Have to pay the fees for new case to be entered and jury demand that has been requested or there needs to be a waiver attached [*sic*]."

¶ 5 On August 23, 2019, plaintiff filed the medical malpractice complaint at issue in this appeal in Sangamon County. The caption of the complaint referred to St. Clair County and the Twentieth Judicial Circuit. The complaint set forth no ties to Sangamon County. The jurisdiction and venue statement alleged St. Clair County was the proper venue because the decedent received the medical care and treatment at issue in Swansea. Plaintiff's counsel's entry of appearance, notice of attorney's lien, and affidavit pursuant to Illinois Supreme Court Rule 222 (eff. Jan. 1, 2011) also referenced St. Clair County. The summons was issued by the clerk of the Sangamon County circuit court.

¶ 6 In December 2019, the attorneys for defendants entered their appearance in this case (defendants Blevins and Thom had their own attorneys while the other defendants had the same attorneys). Thereafter, defendants filed three separate motions to dismiss plaintiff's complaint, asserting the complaint failed to comply with section 2-622 of the Procedure Code (735 ILCS 5/2-622 (West 2018)) and was filed after the applicable statute of limitations. On February 18, 2020, plaintiff's attorney filed in Sangamon County the affidavit required by section 2-622.

¶ 7 On March 2, 2020, plaintiff filed a motion to transfer venue to correct an “inadvertent” error made at the time of filing the complaint. Plaintiff noted St. Clair County was listed as the county of venue in the complaint but alleged Sangamon County was inadvertently selected during the electronic filing process. Plaintiff asserted a transfer to St. Clair County was proper under the law and best served the interests of justice since the alleged malpractice occurred there. Defendants replied to the motion and objected to the change of venue. The circuit court held a telephone conference on plaintiff’s motion to transfer and denied the motion. The court also gave plaintiff seven days to file a *forum non conveniens* motion, and plaintiff did so. Defendants filed responses, again objecting to a change of venue. After a July 2020 hearing, the court granted plaintiff’s *forum non conveniens* motion.

¶ 8 Defendants filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Oct. 1, 2019). In September 2020, this court denied defendants’ petition. Defendants appealed our denial to the Illinois Supreme Court, which denied the petition but entered a supervisory order directing this court to vacate our September 2020 order, allow defendants leave to appeal, and consider the issues presented on the merits. *Miller v. Thom*, No. 126604 (Ill. Jan. 27, 2021) (supervisory order). We found plaintiff did not state a claim for relief under the doctrine of *forum non conveniens*, reversed the circuit court’s grant of plaintiff’s motion, and remanded the cause for further proceedings in Sangamon County. *Miller v. Thom*, 2021 IL App (4th) 200410, 198 N.E.3d 196.

¶ 9 In June 2020, during the proceedings on the matter of transferring venue, plaintiff filed a response to Thom’s motion to dismiss. Regarding the statute of limitations, plaintiff asserted her complaint was timely refiled, and the clerical error should not bar her claim. Plaintiff did not mention Illinois Supreme Court Rule 9(d)(2) (eff. Dec. 12, 2018).

¶ 10 On remand, defendants filed notices of hearing for their motions to dismiss. At a March 2022 hearing, the circuit court granted plaintiff's motion to file a supplemental brief on the motions to dismiss *instanter* and gave defendants leave to file supplemental briefs within 14 days. In her supplemental brief, plaintiff asserted for the first time her complaint should be considered timely filed because the untimely filing was due to the circuit clerk rejecting the complaint and respondent has shown good cause for relief under Illinois Supreme Court Rule 9(d)(2) (eff. Dec. 12, 2018). Defendants all filed briefs responding to plaintiff's supplemental brief. Among some of the contentions raised in defendants' supplemental briefs were: (1) plaintiff's failure to file a motion seeking relief under Illinois Supreme Court Rule 9(d) (eff. Dec. 12, 2018) and (2) the filing error was due to plaintiff's failure to pay the filing fee and not clerical error. Defendants also explained why the cases cited by plaintiff in her supplemental brief were distinguishable. On April 19, 2022, the circuit court heard arguments on defendants' motions to dismiss and took the matter under advisement. On April 27, 2022, the court entered three separate written orders granting the motions to dismiss with prejudice. The three orders resulted in all of defendants being dismissed from the litigation.

¶ 11 On May 23, 2022, plaintiff filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). Thus, this court has jurisdiction of plaintiff's appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 12 II. ANALYSIS

¶ 13 A. Motion to Strike

¶ 14 In her appellee brief, defendant Blevins asserts this court should strike plaintiff's brief for noncompliance with supreme court rules. Blevins notes the brief lacks a table of contents (Ill. S. Ct. R. 341(h)(1) (eff. Oct. 1, 2020)), an introductory paragraph (Ill. S. Ct. R. 341(h)(2) (eff.

Oct. 1, 2020)), and an appendix (Ill. S. Ct. R. 342 (eff. Oct. 1, 2019)). She also contends the statement of issues presented for review of plaintiff’s brief does not align with the actual issues in the argument section of the brief. We have reviewed plaintiff’s brief and find it is sufficient for us to review the actual issues raised on appeal. As such, we deny Blevins’s motion to strike plaintiff’s brief.

¶ 15 B. Motions to Dismiss

¶ 16 Defendants’ motions to dismiss were brought under section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2018)). In ruling on a section 2-619 motion to dismiss, the court “must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.” (Internal quotation marks omitted.) *Munoz v. Bulley & Andrews, LLC*, 2022 IL 127067, ¶ 19, 193 N.E.3d 1177. As such, the court must “accept as true all well-pleaded facts of the complaint and inferences that may be reasonably drawn in the plaintiff’s favor.” *Munoz*, 2022 IL 127067, ¶ 19. We review *de novo* a ruling on a section 2-619 motion to dismiss. *Munoz*, 2022 IL 127067, ¶ 19.

¶ 17 All three motions to dismiss asserted plaintiff’s action was untimely under section 13-217 of the Procedure Code (735 ILCS 5/13-217 (West 2018)). Thus, we will begin with that statute of limitations. Section 13-217 provides, in pertinent part, “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 the “action is voluntarily dismissed by the plaintiff.” 735 ILCS 5/13-217 (West 2018). In this case, the Madison County circuit court granted plaintiff’s motion to voluntarily dismiss her February 5, 2018, medical malpractice complaint on August 17, 2018. No parties assert any period of statute of limitations remained at the time of the voluntary dismissal. Accordingly, plaintiff had until August 19, 2019, to refile her medical

malpractice action (August 17, 2019, was a Saturday). See 5 ILCS 70/1.11 (West 2018) (providing the time period is computed by excluding the first day and including the last unless the last day is Saturday, which shall also be excluded as well as the succeeding Sunday). Plaintiff filed her complaint in this case on August 23, 2019.

¶ 18 Plaintiff recognizes her complaint in this case was filed after section 13-217's one-year period. However, she asserts the circuit court should have exercised its discretion under Rule 9(d)(2) and considered her complaint timely filed. Defendants disagree.

¶ 19 Illinois Supreme Court Rule 9 (eff. Dec. 12, 2018) was adopted in June 2017 and addresses e-filing in civil cases. Unless an exemption applies, the rule requires all documents in civil cases to be filed electronically with the circuit clerk. Ill. S. Ct. R. 9(a) (eff. Dec. 12, 2018). The rule was effective for circuit courts on January 1, 2018. Ill. S. Ct. R. 9(e) (eff. Dec. 12, 2018). Illinois Supreme Court Rule 9(d) (eff. Dec. 12, 2018) addresses the timely filing of documents in the case of e-filing. It states, unless otherwise provided by Illinois law, "a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due." Ill. S. Ct. R. 9(d) (eff. Dec. 12, 2018). If a document is submitted on a day when the circuit clerk's office is not open for business, the document will be file stamped as filed, unless rejected, on the next day the circuit clerk's office is open for business. Ill. S. Ct. R. 9(d) (eff. Dec. 12, 2018). Rule 9(d)(2) states, "[i]f a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown." Ill. S. Ct. R. 9(d)(2) (eff. Dec. 12, 2018).

¶ 20 The pleadings in this case show on August 14, 2019, plaintiff filed a complaint against defendants in the circuit court of St. Clair County. On August 22, 2019, the complaint was rejected with the following notation: "Have to pay the fees for the new case to be entered and jury

demand that has been requested or there needs to be a waiver attached [*sic*].” On August 23, 2019, plaintiff filed her complaint in this case in the circuit court of Sangamon County. Plaintiff first sought relief under Rule 9(d)(2) in her March 2022 supplemental brief in response to the motions to dismiss. In addition to asserting plaintiff failed to show good cause, defendants contend plaintiff’s request was (1) made to the wrong court, (2) untimely, and (3) improperly raised.

¶ 21 We review the circuit court’s determination of whether the movant showed good cause for purposes of Rule 9(d)(2) under the abuse of discretion standard. *Davis v. Village of Maywood*, 2020 IL App (1st) 191011, ¶ 13, 158 N.E.3d 741. A circuit court “abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would adopt its view.” *Hachem v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶ 34, 46 N.E.3d 879. However, with the interpretation of supreme court rules, our review is *de novo*. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 12, 39 N.E.3d 992. The interpretation of Rule 9(d)(2) is a matter of first impression for the Appellate Court, Fourth District.

¶ 22 The standards for interpreting supreme court rules are the same standards governing the interpretation of statutes. *Davis*, 2020 IL App (1st) 191011, ¶ 15.

“ ‘When construing a rule of the supreme court, a court’s primary goal is to ascertain and give effect to the intent of the drafters. The most reliable indicator of that intent is the language used, given its plain and ordinary meaning. In determining the plain meaning of the rule’s terms, a court must consider the rule in its entirety, keeping in mind the subject it addresses and the apparent intent of the drafters in enacting it. Courts will also interpret the rule so that no part of it is rendered meaningless or superfluous and will not depart from the plain language of the rule by reading into it exceptions, limitations, or conditions that conflict with

the expressed intent.’ ” *Davis*, 2020 IL App (1st) 191011, ¶ 15 (quoting *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 22, 90 N.E.3d 400).

¶ 23 Defendants first assert the “court” referred to in Rule 9(d)(2) is the circuit court of the county in which the circuit clerk rejected the e-filing. Plaintiff did not file a reply brief, but at oral arguments, her counsel argued a request for relief under Rule 9(d)(2) was to be made to the court that had jurisdiction of the case and noted the recent decision in *Waukegan Hospitality Group, LLC v. Stretch’s Sports Bar & Grill Corp.*, 2022 IL App (2d) 210179. However, the reviewing court in *Waukegan Hospitality Group* did not make that finding and ultimately never addressed the applicability of Rule 9(d)(2) because the appellant never made a request for relief under the rule. *Waukegan Hospitality Group*, 2022 IL App (2d) 210179, ¶¶ 13, 16. Thus, we do not find *Waukegan Hospitality Group* relevant to our analysis and begin by examining the plain language of Rule 9(d)(2).

¶ 24 Rule 9(d)(2) first refers to a rejection by the “clerk” and then allows the filer of the rejected document to seek relief from the “court.” A circuit clerk is “an officer of the court who has charge of the clerical part of its business.” (Internal quotation marks omitted.) *People v. Vara*, 2018 IL 121823, ¶ 15, 115 N.E.3d 53. It is logical the circuit court whose officer took clerical action and rejected a document should be the court to determine if relief should be granted for a collateral consequence of the clerk’s rejection. Moreover, the circuit court of the same county as the circuit clerk would be familiar with local rules governing e-filing and filing fees. Additionally, defendants point out, in the cases cited by plaintiff, the parties sought relief from the circuit court in which the rejection occurred. See *Davis*, 2020 IL App (1st) 191011, ¶ 5 (Cook County); *O’Gara v. O’Gara*, 2022 IL App (1st) 210013, ¶¶ 22-23 (Cook County). Thus, we find Rule 9(d)(2) is referring to the clerk and court of the same county.



¶ 25 In this case, plaintiff's complaint was rejected in St. Clair County. The day after the rejection, plaintiff refiled the complaint in Sangamon County, which she alleges was an e-filing error. Plaintiff then waited too long to address her venue error for this court to even consider construing the venue statute to allow a change of venue based on a plaintiff's electronic filing error that resulted in an improper venue. *Miller*, 2021 IL App (4th) 200410, ¶ 18. After this court's opinion on venue and remand for proceedings in Sangamon County, plaintiff then for the first time sought relief from the rejection of the original complaint by the St. Clair County circuit clerk in the Sangamon County circuit court. While we recognize a multitude of alleged filing errors resulted in the untimely filing in the wrong county, plaintiff was still obligated to seek relief from the rejection of the August 14, 2019, complaint in the St. Clair County circuit court. Thus, the denial of plaintiff's request for relief under Rule 9(d)(2) was proper on the basis it was filed in the wrong court.

¶ 26 Defendants also assert plaintiff's request for Rule 9(d)(2) relief was untimely. Rule 9(d) does not contain a time limit for seeking relief. However, the timing of the request for relief is clearly a circumstance the court can consider in addressing whether plaintiff has shown good cause. In *O'Gara*, 2022 IL App (1st) 210013, ¶ 22, the plaintiff filed the Rule 9(d)(2) request attempting to cure the untimeliness of her motion to reconsider within six days of the initial rejection. In *Davis*, the defendant filed a motion to dismiss plaintiff's complaint, arguing, in part, the complaint was untimely filed four days after the lapse of the statute of limitations. *Davis*, 2020 IL App (1st) 191011, ¶ 8. In response, the plaintiff filed both a response to the substance of the defendant's motion to dismiss and a separate motion seeking relief under Rule 9(d)(2) for the late filing of the complaint. *Davis*, 2020 IL App (1st) 191011, ¶ 8. Thus, both requests for Rule 9(d)(2) relief were made promptly in response to a notification the e-filing rejection resulted in an untimely

filing.

¶ 27 Here, defendants filed their motions to dismiss in late 2019 and early 2020, all of which asserted, in part, plaintiff's complaint should be dismissed because it was filed after the statute of limitations. However, plaintiff did not request relief under Rule 9(d)(2) until her March 2022 supplemental brief in response to defendants' motions to dismiss. We note, in this case, a request for Rule 9(d)(2) relief could have been a consideration in determining proper venue if plaintiff had filed a timely request for a change in venue. However, plaintiff failed to do so. As such, the circuit court could have considered plaintiff's lengthy delay in seeking relief as a basis for denying her relief.

¶ 28 Defendants last assert plaintiff improperly sought relief under Rule 9(d)(2) because she did not seek relief in a stand-alone motion. Again, Rule 9(d)(2) is silent on this issue. As long as the request for relief is set forth and supported by any necessary supporting evidence, we fail to see why it must be brought in a stand-alone motion. The fact the two cases cited by plaintiff involved stand-alone motions does not persuade us the rule requires a stand-alone motion. See *O'Gara*, 2022 IL App (1st) 210013, ¶ 22; *Davis*, 2020 IL App (1st) 191011, ¶ 8.

¶ 29 Since the circuit court's denial of plaintiff's request for Rule 9(d)(2) relief can be affirmed on the basis plaintiff filed it in the wrong court, we need not determine whether the court abused its discretion by finding no good cause shown for relief based on plaintiff's e-filing mistake. Accordingly, plaintiff's complaint was filed after the expiration of the statute of limitations, and the circuit court properly dismissed plaintiff's complaint on that basis. As such, we do not address any other issues raised by the parties.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

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***Miller v. Thom, 2023 IL App (4th) 220429***

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**Decision Under Review:** Appeal from the Circuit Court of Sangamon County, No. 19-L-184; the Hon. Ryan M. Cadagin, Judge, presiding.

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**Attorneys for Appellant:** Austin Riba, of Napoli Shkolnik, PLLC, of Edwardsville, for appellant.

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**Attorneys for Appellee:** Kara M. Burke, of Brown & James, P.C., of Belleville, for appellee William Thom.

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Jeffrey J. Brinker, Stephen J. Fields, and Claire C. Kates, of Brinker & Doyden, LLP, of Clayton, Missouri, for other appellee.

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