2026 IL App (1st) 252008
No. 1-25-2008
Opinion filed November 20, 2026

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

EDDIE BURTON, Plaintiff-Appellant,

v.

UNION PACIFIC RAILROAD COMPANY, Defendant-Appellee.

Appeal from the Circuit Court of Cook County.
Honorable Kevin Lee, Judge, Presiding.
No. 24 L 64034

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Justices C.A. Walker and Donnelly concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff Eddie Burton appeals the dismissal of his negligence suit, which he brought against his employer, defendant Union Pacific Railroad Company. The complaint was dismissed for violating the statute of limitations. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 On October 8, 2024, plaintiff filed a one-count complaint that stated "[t]his is an action based upon the Federal Employers Liability Act, 45 U.S.C. § 51 *et seq.*" The complaint alleged that the Employers' Liability Act (1908) (Railroads) (Act) (45 U.S.C. § 51 *et seq.* (2024)) provided that, when an employee of a railroad, such as plaintiff, is injured during the course of his

employment, the railroad shall be liable in damages, if the injury was due in whole or in part to the railroad's negligence. The complaint alleged that, on September 18, 2021, plaintiff was working for defendant when he tore his rotator cuff because of a defective hand brake.

¶ 4 A little over a month later, on November 18, 2024, defendant's counsel filed appearances and a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2024)). The motion sought dismissal on the ground that the applicable three-year statute of limitation under the Act had expired. There is no dispute on appeal that, on November 18, 2024, when this complaint was filed, more than three years had elapsed since the date of injury.

¶ 5 Defendant's motion acknowledged that plaintiff had previously filed an almost identical complaint on December 29, 2021, only a few months after the injury. However, the original complaint was dismissed for want of prosecution (DWP) on November 1, 2023. The DWP order is attached to defendant's motion, and plaintiff acknowledges that his original action was dismissed for want of prosecution on November 1, 2023. Plaintiff subsequently refiled his action, and it is this refiled complaint that is the subject of this appeal.

¶ 6 On March 4, 2025, plaintiff responded to defendant's motion. Plaintiff alleged that, while the initial complaint was pending, the parties had completed most of the relevant discovery. On September 27, 2023, an order had been entered in the initial action that required discovery to be completed by November 1, 2023. This order is attached to plaintiff's response, and it also states that there will be an "Interim FMC" at 11 a.m. A handwritten note added: "All parties must appear." Another handwritten note at the bottom struck the "trial cert. date" of January 8, 2024. Plaintiff attached a subsequent "Case Management Order," dated November 1, 2023, that stated, "parties failed to appear" and "Case is DWP'D."

¶ 7 Plaintiff's response details the communications between attorneys that took place after the DWP on November 1, 2023, and it includes copies of their text messages. Plaintiff's response alleges that plaintiff's attorney and defendant's attorney "had a professional relationship dating back to when they both worked for the Cook County State Attorney's Office" and that they had "long had each other's personal cell phone contact information."

¶ 8 Plaintiff alleges that both parties had inadvertently docketed the case management date as January 8, 2024, and, thus, both had failed to appear for the November 1, 2023, conference. Plaintiff's counsel attached a copy of his text message to defendant's counsel on January 8, 2024, at 8:21 a.m. which stated:

> "Hey I just checked the docket as we're up today on Eddie Burton. Docket says DWP'd on 11/1, do you remember what happened? I thought we hadn't all [*sic*] covered but I could be wrong. Either way it's not up today, I'll have to file a motion."

¶ 9 Plaintiff attached defense counsel's text response on January 22, 2024:

> "Hey Brother. Sorry it's been a hell of a month getting back on track. Won't be able to do the inspection this week in Burton. Will standby to assist on the motion to reinstate or to refile."

Plaintiff alleges that the inspection referred to in the above text was the inspection of the subject locomotive, which was needed to permit each party's expert to examine the hand brake that was the subject of plaintiff's claim. With respect to the "hell of a month" comment above, defendant's appellate brief clarifies that "the parties had communications about rescheduling the inspection of the handbrake in light of [defendant's] counsel's mother passing away on January 8, 2024."

¶ 10 Plaintiff's counsel's text response on January 22, 2024, said:

> "Hey man, no worries at all, hope all is as well as it can be.

I'm gonna just refile Burton, that's gonna give us the time we need. I'll have Cathy reach out for some inspection dates tomorrow. Thank you."

¶ 11 A week later, on January 29, 2024, plaintiff's counsel sent defense counsel a text stating:

"Hey Pat, hope things are going a little better this week. Can we pin down dates for this inspection on Eddie Burton? I wanna refile it this week but I was hoping we could have it done before we're back up in court as to avoid the judge giving us a hard time. Let me know when you can, thank you."

¶ 12 Later that same day, defense counsel responded by text: "10-4. I will circle with Aaron from risk and our employees and get you some dates this week." Over a week later, on February 7, 2024, plaintiff's counsel texted: "Hey brother, any word on getting this inspection set up?" Approximately a week later, on February 13, 2024, defense counsel responded: "Hey Hoss. Sorry for the delay. My trial got continued so I will give you a shout tomorrow."

¶ 13 Over a month later, on April 4, 2024, plaintiff's counsel texted: "Hey brother, any movement on that Burton inspection? Let me know when you can. Thank you." Almost three weeks later, on April 23, 2024, plaintiff's counsel texted again: "Hey brother, any word about setting up that inspection on Eddie Burton." On April 23, defense counsel responded:

"Brother. I'm sorry for the delay. Got assigned out on this trial on April 8th, and the case just went to the jury and [*sic*] hour ago. Alleged TBI and asked the jury for $5.7M. Been tied up with this but as a Pat to Pat promise, I will get that inspection locked down."

Plaintiff's counsel responded: "No worries man totally get it. Good luck my man, sounds like a big one!"

¶ 14 On April 29, 2024, plaintiff's counsel sent yet another text saying: "Hey brother you got a minute this week to connect on this Burton inspection? Thank you." Defense counsel responded:

> "Yessir. Done with trial so getting unburied. Should be wide open tomorrow afternoon so I will be sure to give you a shout."

¶ 15 However, on May 1, 2024, plaintiff's counsel texted in the morning: "Hey brother, you got time to chat at some point today? Sorry, my client keeps calling and I'm running out of things to tell him. Thank you." Defense counsel promised: "You are my first call after lunch." On May 30, 2024, plaintiff's counsel texted:

> "Hey brother, sorry to keep being a thorn about this. On Burton the client is all over us the last few weeks. I'm gonna have to refile it next month. any move money on the inspection?"

¶ 16 Plaintiff counsel's May 30, 2024, text saying that he was "gonna have to refile" next month was the last text attached to plaintiff's response, in the appellate record. However, plaintiff's response alleges that defense counsel followed up with a text that said: "My dude! On the train in. Will check in with my people on dates for Burton." Plaintiff's response acknowledges that no date for the inspection was ever provided. Over four months later, on October 8, 2024, plaintiff refiled his complaint. Plaintiff's response alleges that this was only 20 days "after the expiration of the underlying [three-year] statute of limitations." Plaintiff alleges that the name of the counsel who sent the text messages is also the name appearing on defendant's motion to dismiss. On March 25, 2025, defendant filed a reply in support of its dismissal motion. Defendant's reply did not dispute the authenticity of the text messages that plaintiff had attached, and it did not attach any other fact materials.

¶ 17 On April 8, 2025, the trial court heard oral argument. Defendant orally argued, among other things, (1) that equitable tolling, which is available under *Burnett v. New York Central R.R. Co.*, 380 U.S. 424 (1965), is not available in DWP cases and (2) that none of the text messages cited by

plaintiff constituted an express waiver of defendant's statute-of-limitations defense, when none of the messages mentioned the statute of limitations and the statute itself did not run until months after the messages. Similar to defendant's written filings, defendant did not orally dispute at the in-person argument either the authenticity or the accuracy of plaintiff's factual materials.

¶ 18 Plaintiff orally responded, among other things, (1) that, under *Burnett*, the federal 3-year "limitation provision is tolled until the state court order dismissing the state action becomes final by the running of the time during which an appeal may be taken" (*id.* at 435), (2) that the DWP order entered in this case was an interlocutory order rather than a final one, (3) that the interlocutory DWP order did not become final until September 18, 2024, when the 3-year period ran, and (4) that defendant still had another 30 days "during which an appeal may be taken" and, thus, per *Burnett*, his time had not run. Plaintiff stated that this was "really the main argument in the case." Plaintiff argued that the DWP order being nonfinal is what makes this case "different" from "every other case the defendant cites." Plaintiff's counsel also reviewed the text messages and asserted that defendant was using his good nature "as a sword against" him. In reply, defendant argued that the point of *Burnett* was uniformity and that plaintiff was asking this court to "broadly extend *Burnett* more than it's ever been done in nearly 60 years."

¶ 19 After listening to oral argument, the trial court then entered a brief typed order, which stated (1) that it was taking the matter under advisement, (2) that "[c]ounsel" was directed to provide the court with a transcript of the April 8, 2025, proceedings when a transcript became available, and (3) that the parties were to return on May 15, 2025, via "Zoom" for a ruling.

¶ 20 On May 15, 2025, the trial court entered a six-page typed order granting defendant's motion to dismiss. The order summarized the issues before it as follows:

> "The critical question before the Court, then, is (1) whether the Illinois saving statute[1] tolls the statute of limitations set by [the Act] and, (2) additionally, if Defendant's actions prior to its Motion to Dismiss amount to a waiver—or sufficient grounds for equitable estoppel—of the statute of limitations defense to which it now appeals."

To these questions, the trial court answered (1) that equitable tolling applied only in limited circumstances, such as improper venue, and this was "not a case of improper venue" and (2) that plaintiff failed to show by clear and unequivocal evidence that defendant "unmistakably and with marked, deliberate intent relinquished their right to said defense." For these reasons, the trial court granted defendant's motion to dismiss.

¶ 21 On June 13, 2025, plaintiff filed a motion to reconsider the trial court's May 15, 2025, written dismissal order. First, plaintiff argued that the court had misunderstood his *Burnett* argument. In its order, the trial court had stated that "the critical question before the Court, then, is whether the Illinois saving statute tolls the statute of limitations set by" the Act. Plaintiff argued that the court misunderstood because he "need not avail himself" of the Illinois savings clause to succeed under *Burnett*. Second, plaintiff claimed "that defense counsel was baiting plaintiff's counsel in to waiting to refile." Defendant filed its response on July 8, 2025, essentially arguing that the court's order was correct. Plaintiff filed a reply on July 15, 2025, which proclaimed first, in all caps, "PLAINTIFF NEED NOT RELY ON THE ILLINOIS SAVINGS CLAUSE FOR *BURNETT* TO APPLY TO THIS MATTER AND PROVIDE EQUITABLE TOLLING." Plaintiff also argued regarding "defense counsel's repeated and deliberately false statements to plaintiff's counsel."

[1]The Illinois savings statute to which the trial court referred provides litigants with a year to refile after a dismissal in certain circumstances. 735 ILCS 5/13-217 (West 2024).

¶ 22 On September 11, 2025, the trial court entered a one-line order denying plaintiff's motion to reconsider. On October 2, 2025, plaintiff filed a timely notice of appeal, and appellate briefs were filed. As noted above, the last text in the appellate record between the two attorneys occurred on May 30, 2024. In plaintiff's appellate brief, plaintiff alleged that "[b]etween May 30, 2024, and October 8, 2024, there were multiple in person and telephonic conversations between the two counsels." In response to this factual point, defendant responded in its appellate brief:

> "Plaintiff argues without citation to the record, that 'Between May 30, 2024, and October 8, 2024, there were multiple in person and telephonic conversations ***.' [Citation.] Those conversations are not of record and, although they were discussed at the August 5, 2025, oral argument on Plaintiff's motion to reconsider, Plaintiff failed to retain a court reporter or otherwise make his record."

¶ 23 ANALYSIS

¶ 24 I. Section 2-619

¶ 25 The trial court dismissed plaintiff's complaint pursuant to section 2-619. A dismissal under this section is reviewed *de novo* on appeal. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). *De novo* review means that we perform the same analysis a trial court would perform and that we owe no deference to the trial court. *Macomb Post Acute Care Center, LLC v. Department of Public Health*, 2026 IL App (1st) 250301, ¶ 38.

¶ 26 A motion to dismiss under section 2-619 admits the legal sufficiency of the plaintiff's claim but asserts a defect or defense arising outside of the pleading that defeats the claim. *Solaia*, 221 Ill. 2d at 579. With a section 2-619 motion, a court must accept as true all well-pled facts in the plaintiffs' complaint, as well as any reasonable inferences that may be drawn from those facts. *Macomb*, 2026 IL App (1st) 250301, ¶ 39.

¶ 27 By filing a section 2-619 motion, "the movant is essentially saying ' "Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim." ' " *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31 (quoting *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008)); *Macomb*, 2026 IL App (1st) 250301, ¶ 40. In ruling on a section 2-619 motion to dismiss, a court must interpret the pleadings, as well as any supporting materials, in the light most favorable to the nonmoving party. *Macomb*, 2026 IL App (1st) 250301, ¶ 40; *In re Parentage of Miller*, 2023 IL App (1st) 210774, ¶ 23. With a section 2-619 motion, the defendant, who is seeking an involuntary dismissal, has the burden of proof. *Macomb*, 2026 IL App (1st) 250301, ¶ 40; *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. The affirmative matter asserted by the defendant must be apparent on the face of the complaint; otherwise, the defendant must support its motion with affidavits or other evidentiary materials. *Macomb*, 2026 IL App (1st) 250301, ¶ 40; *Reynolds*, 2013 IL App (4th) 120139, ¶ 37. In the case at bar, defendant did not attach affidavits or other evidentiary materials, thus resting its motion on the argument that the alleged defects were apparent on the face of the complaint.

¶ 28 II. Applicable Statute of Limitations

¶ 29 As noted above, plaintiff brought this action pursuant to a federal statute that provides, in relevant part, "[e]very common carrier by railroad *** shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." 45 U.S.C. § 51. The railroad is liable "for such injury *** resulting in whole or in part *** by reason of any defect ***, due to its negligence, in its cars *** or other equipment." *Id.* The alleged negligence and injury are not at issue in this appeal.

¶ 30 There is no dispute on appeal that the applicable statute of limitation is set forth in the federal Act and that it is three years. The Act states: "No action shall be maintained under this

chapter unless commenced within three years from the day the cause of action accrued." *Id.* § 56. As already noted, the cause of action accrued on the day of the accident, which was September 18, 2021, and it is undisputed that the complaint at issue was not filed within three years of this accrual date. Section 56 permits an action to be brought in federal court or in state court, as plaintiff did.

¶ 31 III. *Burnett* and Equitable Tolling

¶ 32 Defendant argues that the applicable three-year statute of limitation was tolled pursuant to the United States Supreme Court's decision in *Burnett*, 380 U.S. 424. In *Burnett*, the plaintiff filed an action under the Act in Ohio state court, but the Ohio state court dismissed it because venue was improper under Ohio state law. *Burnett*, 380 U.S. at 424-25. A mere eight days later, the plaintiff brought an identical action in federal court in Ohio, where the suit was again dismissed. Although the Ohio state court suit had been timely, the federal court found that the federal action was now barred by the Act's three-year limitation provision. *Id.* at 425. The United States Supreme Court noted that this would never have happened to a plaintiff who had filed in federal court, because the federal court would have simply transferred the case to a court where venue was proper. *Id.* at 431. Thus, the *Burnett* Court held that, "when a plaintiff begins 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 [three-year] FELA limitation is tolled during the pendency of the state suit." *Id.* at 434-35.

¶ 33 The *Burnett* Court then defined precisely the period of time during which the limitation would be tolled and exactly what it meant by "the pendency of the state suit." *Id.* at 435. The Court explained:

> "We further hold, under familiar principles which have been applied to statutes of limitations, that the limitation provision is tolled until the state court order dismissing the

state action becomes final by the running of the time during which an appeal may be taken or the entry of a final judgment or appeal." *Id.* at 435.

The Court conceded that "this rule produces a minor nonconformity since the time allowed for taking an appeal is not the same in all States." *Id.* at 435. However, it "conclude[d] that a uniform rule tolling the federal statute for the period of the pendency of the state court action and until the state court dismissal order becomes final is fair to both plaintiff and defendant." *Id.* at 435-36.

¶ 34 On appeal, plaintiff seeks to decouple the "we further hold" quote from the underlying holding on venue. In other words, plaintiff argues that, first, there was a holding that tolled a case that was dismissed for improper venue—full stop—and then there was a freestanding second holding that applies to any case, including his. In his appellate brief, plaintiff argues that "the main dispute between the parties" is whether the *Burnett* holding is limited to improper venue or whether *Burnett* should be interpreted more "expanisve[ly]." Plaintiff argues that "[t]he inclusion of the term, 'we further hold,' suggests adoption of the more expansive view."

¶ 35 Plaintiff then applies the words of just the second holding to the facts of his case to find his limitation period tolled. Plaintiff argues that, pursuant to this quote, "the state court order dismissing the state action" (*Id.* at 435) was the DWP order in his case and that this order was not a final order but an interlocutory order when entered. Plaintiff argues that it was interlocutory, because he could have refiled the action without any obstacle before September 18, 2024, when his three years was up. Hence, the DWP order was not a final order. Per the quote, plaintiff argues that "the limitation provision [was] tolled" until the DWP order "bec[ame] final." *Id.* Again, applying the words of the quote, plaintiff argues that the DWP order did not become final until "the running of the time during which an appeal may be taken." *Id.* Plaintiff argues that, although his three years were up on September 18, 2024, he still had an extra 30 days, under Illinois law, to

"take[ ]" an appeal. See *id.* The *Burnett* Court acknowledged that its holding would produce "minor nonuniformity since the time allowed for taking an appeal is not the same in all States," but the Court found that the rule was still sufficiently uniform, certain, and fair to both plaintiffs and defendants. *Id.* at 435-36. Thus, per this quote, plaintiff argues that his filing on October 8, 2024, was within the tolled period.

¶ 36 The problem with this whole argument is that the second holding is not divorced from the first one; rather the second holding is an explanation of the first. After finding that tolling applied to an instance of improper venue, the Court then explained just how long this tolling—due to improper venue—would last. See *id.*

¶ 37 To argue that *Burnett* should be given a more expansive reading, plaintiff quotes the preliminary language that led up to, and served as the underpinning, for its improper-venue holding. The court observed that "[t]he basic question to be answered in determining whether, under a given set of facts, a statute of limitations is to be tolled, is one 'of legislative intent.' " *Id.* at 426 (quoting *Midstate Horticultural Co. v. Pennsylvania R.R. Co.*, 320 U.S. 356, 360 (1943)). The court stated "that the basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances." *Id.* at 427. However, plaintiff offers no explanation of how the congressional purpose would be served by extending the *Burnett* holding to dismissals for want of prosecution, where a plaintiff knew his case had to be refiled, and he had eight months to do it, but he did not. Plaintiff does not cite a single case where the *Burnett* holding was extended to a DWP case. In addition to improper venue, *Burnett* itself lists two examples where an action under the Act is allowed although more than three years had elapsed: (1) "when war has prevented a plaintiff from bringing his suit" (*Id.* at 428-29) and (2) "where a defendant misled the plaintiff into believing that he had more than three years in which to bring the action"

(*Id.* at 428). Nothing approaching war happened in this case. As for alleged misrepresentation by the opposing party, this is more aptly discussed under equitable estoppel, which we discuss in the next subsection. See *Klancir v. BNSF Ry. Co.*, 2015 IL App (1st) 143437, ¶ 21 ("[W]hen equitable tolling is sought under circumstances where it is alleged the defendant misled the plaintiff into filing outside the applicable statute of limitation, as is the case here, the relief actually sought is equitable estoppel.").

¶ 38 Plaintiff's appellate brief makes arguments based on both *Noakes v. National R.R. Passenger Corp.*, 312 Ill. App. 3d 965 (2000), and *Klancir*, 2015 IL App (1st) 143437. As we noted above, *Klancir* is an equitable estoppel case, which will be discussed in the next section. As for *Noakes*, the court found that equity did not warrant tolling the limitations period, where the plaintiff claimed that he voluntarily dismissed his lawsuit in order to add claims for subsequent injuries but he never sought leave to simply amend his complaint to add those claims. *Noakes*, 312 Ill. App. 3d at 968-69. The *Noakes* court found that equity offered no respite where the "plaintiff made a tactical decision to [voluntarily] dismiss his complaint without fully recognizing the consequences." *Id.* at 969. Similarly, in the case at bar, plaintiff made a tactical decision to wait for an inspection without fully recognizing the consequences.

¶ 39 Plaintiff argues that *Noakes* is distinguishable because the voluntary-dismissal order entered in *Noakes* was not an interlocutory order as it was in his case. First, the interlocutory nature of the voluntary-dismissal order was unrelated to the *Noakes* court's rejection of equitable tolling in that case. As noted above, the *Noakes* court rejected the plaintiff's appeal for tolling when the issue arose from his own tactical decision. *Id.* Second, the *Noakes* court found that the voluntary-dismissal order *was* an interlocutory order with respect to the plaintiff. It was final and appealable

for defendant, but not appealable by plaintiff who had sought the order in the first place. *Id.* at 969-70. To the extent that the *Noakes* case applies, it does not further plaintiff's argument.

¶ 40 IV. Equitable Estoppel and Waiver

¶ 41 In addition to equitable tolling, which we discussed above, plaintiff makes a second and independent argument for equitable estoppel. To support this argument, plaintiff's appellate brief relies almost exclusively on *Klancir*, 2015 IL App (1st) 143437. *Klancir* teaches that "the doctrine of equitable tolling" may apply when "the circumstances which led to the expiration of the statute of limitations" were not "the fault of the defendant." *Id.* ¶ 21. When no fault by the defendant is alleged, the plaintiff must show he was prevented from asserting his rights due to an unusual circumstance (*id.*), such as the inability to transfer an improper venue case, as in *Burnett*, or because of war, also mentioned in *Burnett*. See *supra* ¶¶ 32, 37. However, when a plaintiff alleges that "the defendant misled the plaintiff into filing outside the applicable statute of limitations, as is the case here, the relief actually sought is equitable estoppel." *Klancir*, 2015 IL App (1st) 143437, ¶ 21.

¶ 42 Plaintiff's appellate brief comingles the concepts of equitable estoppel and waiver. For example, he argues that opposing counsel's "January 22, 2024, text message amounts to a waiver of the statute of limitations, of which it should have been equitably estopped from asserting." However, *Klancir* also teaches that, although the terms "equitable estoppel" and "waiver" are often used interchangeably, they are, in fact, distinct concepts. *Id.* ¶ 26. Waiver is a voluntary relinquishment by a party of a known right, while equitable estoppel may occur even when a party had no intent to relinquish any right. *Id.* The key element of equitable estoppel is the misrepresentation or concealment of a material fact by defendant. *Id.* ¶ 23. A conscious intent by the defendant to mislead, deceive or delay is not necessary. *Id.* ¶ 22. However, the plaintiff bears

the burden to establish the misrepresentation or concealment. *Id.* ¶ 23. The trial court's decision regarding equitable estoppel will not be disturbed on appeal, unless the decision is against the manifest weight of the evidence. *Id.* ¶ 22. We review the decision *de novo* only when the trial court was resolving a legal question. *Id.*

¶ 43 First, like the trial court, we cannot find a waiver, either express or implied, from the January 22, 2024, text. An implied waiver may occur when a party pursues a course of action or acts in such a way that demonstrates its intent to waive a right or is inconsistent with any intention other than waiver. *Id.* The text message at issue made no reference to a statute of limitations or to waiving any defense. See *id.* ¶ 28 (finding no equitable estoppel where "[t]here was no discussion regarding the statute of limitations"). At the time the text was sent, there was no defense to waive, since plaintiff still had plenty of time—a whole eight months—to refile.

¶ 44 Second, we cannot find the misrepresentation of a material fact that prevented plaintiff from refiling. True, defense counsel dragged his heels about setting a time for the inspection, after plaintiff's counsel had indicated a preference for holding the inspection before refiling. However, the inspection was not a prerequisite for refiling, and in the end, plaintiff filed without it, indicating that it was clearly not a prerequisite. Plaintiff's text messages kept indicating an intent to refile forthwith and then not following through. After defense counsel's January 22, 2024, e-mail that he would "standby on the motion to reinstate or to refile," plaintiff's counsel responded on the same day: "I'm gonna just refile." A week later, on January 29, 2024, plaintiff's counsel indicated his intent to "refile it this week." On May 30, 2024, plaintiff's counsel texted: "I'm gonna have to refile it next month." Refiling anytime in June 2024, as plaintiff's counsel told defense counsel he was going to do, would have eliminated any issues. The May 30, 2024, text is the last one in the appellate record, and we are left with no indication regarding what happened in June, July, or

September to preclude the timely filing that the May 30, 2024, text indicated was about to happen. Based on this record, we cannot find that plaintiff has satisfied his burden to establish equitable estoppel.

¶ 45 Plaintiff has a third argument in his brief, which is that Illinois courts have a preference for deciding cases on the merits, and this is undoubtedly true. However, that preference must be balanced against the equal desire of all courts "to be relieved of the burden of trying stale claims." *Burnett*, 380 U.S. at 428. It is this difficult balance that the three-year statute of limitations tries to strike. In the case at bar, we have examined the doctrines of equitable tolling, equitable estoppel, and waiver, and we cannot find in them a reason to override the clear and express statutory demand in this case.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, we cannot find equitable tolling, equitable estoppel, or waiver present in this case and, thus, must affirm the trial court.

¶ 48 Affirmed.