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).

2026 IL App (4th) 260277-U

NO. 4-26-0277

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 2, 2026
Carla Bender
4th District Appellate
Court, IL

BILLY RAY ADAMS,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Winnebago County
THE WINNEBAGO COUNTY JAIL, SHERIFF GARY CARUANA, CORRECTIONAL OFFICER ANDRE ALLEN, UNKNOWN MEDICAL STAFF, and UNKNOWN CORRECTIONAL STAFF,	)	No. 23LA465
Defendants-Appellees.	)	Honorable Ronald Anthony Barch, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: A failure to exhaust administrative remedies bars plaintiff's action under section 1983 (42 U.S.C. § 1983 (2018)), and the expiration of a one-year statute of limitations (745 ILCS 10/8-101(a) (West 2022)) bars his common-law action for negligence.

¶ 2 At the time he brought this civil lawsuit in the Winnebago County circuit court, plaintiff, Billy Ray Adams, was in the county jail, awaiting trial on criminal charges. He sued the county sheriff, Gary Caruana, and a correctional officer at the jail, Andre Allen, on the grounds that they had refused to allow a splint to be placed on his broken finger. (The splint was made at least partly of metal, which, under a policy in force at the jail, inmates were not permitted to have.) Plaintiff also named, as defendants, "Unknown Medical Staff," "Unknown Correctional Officers," and the "Winnebago County Jail." Defendants and the court construed the complaint as raising two claims: a claim under section 1983 (42 U.S.C. § 1983 (2018)) and a common-law

claim of negligence. Plaintiff did not disagree with that construction. Defendants raised affirmative defenses of a failure to exhaust administrative remedies (see 42 U.S.C. § 1997e(a) (2018)) and the expiration of a one-year statutory period of limitations (see 745 ILCS 10/8-101(a) (West 2022)). The court granted defendants' motion for summary judgment on those affirmative defenses. Plaintiff appeals.

¶ 3 In our *de novo* review, we conclude that there is no genuine issue of material fact and that, given the affidavits, depositions, and admissions in the record, defendants were entitled to a judgment as a matter of law on their affirmative defenses. Therefore, we affirm the circuit court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In his complaint, which he filed on December 21, 2023, plaintiff alleged essentially as follows. On July 31, 2022, he was involved in a car accident. The Rockford, Illinois, police took him to UW Health SwedishAmerican Hospital, where he was diagnosed as having, among other injuries, a torn tendon in the middle finger of his right hand. From the hospital, he was taken to the Winnebago County jail, where he was placed in the "general population instead of the medical Pod" (to quote the complaint).

¶ 6 On August 26, 2022, "Allen and another officer" took plaintiff to OSF Saint Anthony Medical Center (St. Anthony), where "the medical staff *** advised they were putting a splint on the finger so it could properly heal." Allen told the medical staff, however, that plaintiff "could not have a splint even though it was needed so [his] finger could heal properly and even though Allen [was] not part of any medical staff."

¶ 7 "Around the end of September" 2022, plaintiff was taken back to St. Anthony, where he "was again denied by the unknown officer that took [him]" there.

¶ 8 "During a 3rd visit to St. Anthony"—which, plaintiff clarified in his deposition, was in October 2022 and was actually a visit to OrthoIllinois—he "was told there was nothing more they could do."

¶ 9 "During all this time," plaintiff's "finger was wrap[p]ed in an Ace bandage and taped instead of a splint," the complaint alleged. Because of the lack of splinting, his "finger did not heal properly." Scar tissue "built up," his finger healed crookedly, and he could not straighten it.

¶ 10 In his deposition, plaintiff testified that, on November 14, 2022, during his fourth appointment at OrthoIllinois, he was diagnosed with boutonniere deformity. "[A]t this point in time, [he] did splint," as he agreed the medical records stated. A physician's assistant, Kasey Pontarelli, recommended that plaintiff "work on flexion of [his] finger as there were not a lot of great options for [his] finger conservatively at this point," and "surgery was not recommended."

¶ 11 According to his complaint, plaintiff suffered from "everyday pain and discomfort in this finger and also a lack of sleep at times." He alleged that "[e]veryday task[s] [were] also difficult such as cooking, bathing[, etc.] because this finger [would] lock up." He sought a total of $150,000 in damages.

¶ 12 In support their motion for summary judgment on their affirmative defenses, defendants submitted an affidavit by Major Justin Egler, a correctional officer at the Winnebago County jail. According to Egler's affidavit, plaintiff was placed in the jail on July 31, 2022, and as of that date and continuously thereafter, the corrections bureau had grievance procedures, of which new inmates were routinely informed during orientation. As was further explained to new inmates, the grievance procedures could be found in the Winnebago County Sheriff's Office Corrections Bureau Inmate Handbook (Inmate Handbook), which was accessible both at a kiosk

in each pod of the jail and on digital tablets issued to the inmates. Inmates were to use the kiosk or their tablets (as they chose) to make requests and file grievances and to check on the status of their requests or grievances.

¶ 13 The Inmate Handbook provided that, if correctional staff did not resolve a problem informally to the inmate's satisfaction, the inmate had the right to file a grievance. "All grievances" had to be filed, however, "as soon as possible but not later than 5 days after the incident." Grievances related to medical care were to be "submitted under the medical tab." In the grievance, the inmate had to set forth "a thorough explanation of the problem and relief sought." Within seven days after filing a grievance, the inmate would receive, "via Kiosk or tablet," a response or decision. There was a right of administrative appeal, but the appeal had to be submitted, again via kiosk or tablet, "within 72 hours of receipt of the response [or] decision." The jail superintendent or his or her designee would review the appeal and decide it within five days after it was filed. The decision on the appeal would be final.

¶ 14 Egler averred, on information and belief, that, ever since the kiosks were installed in the jail, all grievances were "maintained permanently on a computer system," "nor have they been deleted from that computer system." As a senior officer of the jail, Egler had access to all the grievances stored in the computer system. Egler had ascertained, from his review of these records, that it was not until November 1, 2023, that plaintiff "filed a request or grievance about not being allowed into the Jail with a splint."

¶ 15 The medical grievance that plaintiff filed on that date, grievance No. 382437751, read as follows:

> "The day I was arrested I was in a car accident but [it] took this facility about 3 weeks or longer to send me to the hospital, when I finally got to the

hospital my middle finger on my right hand was still broke and swollen. At the hospital they said its supposed to be in a splint. the jail said I can't have the[ ]splint so now my finger is permanently stuck in a bent position[.] I am asking to go to the hospital to get my finger broke back in place and a splint put on it[.] I would [also] like 100 thousand dollars for my injuries and pain and suffering."

¶ 16 The staff responded as follows that same day, on November 1, 2023:

"You were seen at the hospital on the day of your arrest, 7/31/22. You had an x-ray done here on 8/1/22. You were scheduled for an outside orthopedic appt on 8/10/22 but you refused this visit and signed the refusal form. You were seen by our provider and again scheduled an outside orthopedic appointment which you went to. You had multiple other orthopedic appointments, physical therapy referrals, and clinic visits with our provider. If you want to be seen in clinic for an exam, please fill out a medical request to schedule the visit."

The staff designated this grievance as "CLOSED."

¶ 17 On November 6, 2023, plaintiff administratively appealed, stating as follows:

"I requested my[ ]splint the hospital said I need when I first got here and was again denied, my finger is stuck in a bent position and will not move, I have been denied medical treatment and my splint. I want 100 thousand for my finger injury and 100 thousand for pain and suffering and to see a outsider Dr asap."

On November 13, 2023, the staff responded to the administrative appeal as follows:

"I reviewed the records from your last appointment with ortho. At that visit you had weaned your self out of the splint. Dr. Schwartz recommended you

continue to work on stretching the finger but there were not [a] lot of options and he did not recommend surgery. He did not need to see you back in clinic. I will place you on the clinic list to discuss further but there were no orders for a splint."

The staff changed the status of the grievance "[f]rom 'Open' to 'Closed.' "

¶ 18 II. ANALYSIS

¶ 19 A. Plaintiff's Motion to Strike Defendants' Statement of Facts

¶ 20 Under Illinois Supreme Court Rule 341(h)(6) and (i) (eff. Oct. 1, 2020), the appellee's brief must include a "Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." Plaintiff has moved that we strike, in whole or in part, the statement of facts in defendants' brief because the section of defendants' statement of facts titled "The Trial Court's Summary Judgment Decision and Order" is argumentative.

¶ 21 We deny the motion. "[W]here violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted." (Internal quotation marks omitted.) *Carter v. Carter*, 2012 IL App (1st) 110855, ¶ 12. Given that our standard of review is *de novo* (see *Sameer v. Butt*, 343 Ill. App. 3d 78, 85 (2003)), any argumentativeness in defendants' description of the circuit court's summary judgment decision and order would not hinder or preclude review.

¶ 22 B. Plaintiff's Argument That He "Stated a *Monell* Claim"

¶ 23 Plaintiff raises two issues in this appeal. The first issue is whether he "stated a **** claim" under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), "when he stated Defendant, Sheriff Gary Caruana, was being sued because he supervises the jail." Plaintiff maintains that, because "the policies that controlled Officer Allen

caused [plaintiff] injury," plaintiff "sufficiently pled a *Monell* claim."

¶ 24 For three reasons, we have difficulty understanding why plaintiff raises this pleading issue.

¶ 25 First, in the introduction of his brief, plaintiff assures us that "[a] question has not been raised on the pleadings." See Ill. S. Ct. R. 341(h)(2)(ii) (eff. Oct. 1, 2020) ("The appellant's brief shall contain the following parts ***: An introductory paragraph stating *** whether any question is raised on the pleadings and, if so, the nature of the question.").

¶ 26 Second, plaintiff appeals the summary judgment in defendants' favor on their affirmative defenses. Therefore, any pleading controversy should have long ago disappeared in the rearview mirror. A "motion for summary judgment assumes that a cause of action has been stated." (Internal quotation marks omitted.) *Mydlach v. DaimlerChrysler Corp.*, 226 Ill. 2d 307, 315 (2007). Not only that, but an affirmative defense "admits the legal sufficiency of" the plaintiff's "cause of action." *Vroegh v. J & M Forklift*, 165 Ill. 2d 523, 530 (1995). Plaintiff explains, in his reply brief, that he invoked *Monell* "to respond to Defendants' argument that the Sheriff could not be sued in his individual capacity for failure to supervise." It is difficult to understand why the parties are still wrangling over pleadings. By raising affirmative defenses and moving for a summary judgment, Caruana admitted the legal sufficiency of plaintiff's cause of action against him. It is a given, for purposes of the affirmative defenses, that plaintiff has pleaded a cause of action against defendants, including Caruana. It seems pointless to use *Monell* to establish what is already a given, that Caruana is validly a defendant. By raising affirmative defenses, Caruana basically confessed plaintiff's case against him while raising new matters that defeated his liability. See *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 16.

¶ 27 Third, it is unclear what *Monell* has to do with this case. In *Monell*, the Supreme Court held:

> "Local governing bodies *** can be sued directly under [section] 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690.

Plaintiff, however, has not sued a local governing body. We do not see Winnebago County in the caption. Instead, plaintiff has sued two individuals, Caruana and Allen. Nowhere in his complaint did plaintiff plead he was suing them in their official capacities. That plaintiff put "Sheriff" before Caruana's name and "Correctional officer" before Allen's name did not signify he was suing them in their official capacities; those titles were merely descriptive language. Also, plaintiff has sued "Unknown Medical staff" and "Unknown Correctional staff," thereby suing no one in particular. Finally, he has sued the "Winnebago County Jail," which, as he now concedes, is merely a building rather than a legal person and, hence, is not subject to suit (see *Jackson v. Village of Rosemont*, 180 Ill. App. 3d 932, 937-38 (1988) ("The Rosemont Horizon Stadium is not a legal entity—it is merely a building operated by the village—and is therefore not subject to suit.")).

¶ 28 For all those reasons, we are unclear why plaintiff is asking to decide whether he has "sufficiently pled a *Monell* claim." Procedurally, this case has moved beyond any question about the sufficiency of the pleadings. Plaintiff's appeal is from a summary judgment pursuant to section 2-1005(b) of the Code of Civil Procedure (735 ILCS 5/2-1005(b) (West 2022)), not from a motion for dismissal pursuant to section 2-615 (*id.* § 2-615).

¶ 29 C. Section 1983

¶ 30 The second and remaining issue that plaintiff raises in this appeal is "[w]hether [he] properly exhausted his administrative remedies when he filed his grievance outside of the administrative window but also alleges a continuing tort." This issue challenges the summary judgment on defendants' first affirmative defense: that he failed to exhaust his administrative remedies as the Reform Act (42 U.S.C. § 1997e(a) (2018)) required him to do. The Reform Act provides, "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." *Id.*

¶ 31 The Reform Act applies to claims under federal law, not to claims under state law. *People v. Conley*, 2020 IL App (2d) 180953, ¶ 14. A claim under section 1983 is a claim under federal law. The first affirmative defense presupposed that plaintiff pleaded a legally sufficient cause of action against defendants under section 1983 for deprivation of a constitutional right under color of law. See *Vroegh*, 165 Ill. 2d at 530. Although the complaint did not specifically invoke section 1983, it accused defendants of "deliberate indifference" to his medical need for a splint on his finger and alleged, in that respect, a "14th Amendment Due Process Violation." See U.S. Const., amend. XIV. Case law recognizes such a cause of action by pretrial detainees. See *Langella v. County of McKean*, No. 09-CV-311E, 2010 WL 3824222, at *13 (W.D. Pa. Sept. 23, 2010)).

¶ 32 Even though, as we assume to be true (see *Triple R*, 2012 IL App (4th) 100956, ¶ 16), defendants showed deliberate indifference to plaintiff's medical need by refusing to allow his finger to be splinted and thereby caused his conditions of pretrial confinement to be punishing before he was found guilty (see *id.*), plaintiff had no right to sue right away. Before

bringing his action under section 1983, he had to exhaust his administrative remedies by following all the steps in the grievance procedure. See 42 U.S.C. § 1997e(a) (West 2018); *Jones v. Bock*, 549 U.S. 199, 202 (2007); *Filmore v. Walker*, 2013 IL App (4th) 120533, ¶ 31. The first affirmative defense was that plaintiff's grievance was untimely and that he, therefore, failed to exhaust his administrative remedies for the refusals to allow his finger to be splinted.

¶ 33 Failure to exhaust administrative remedies is a recognized affirmative defense. See *Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 254 (2003). An affirmative defense, instead of contesting the elements of the plaintiff's cause of action, admits the legal sufficiency of that cause of action and asserts a "new matter by which the plaintiff's apparent right to recovery is defeated." *Vroegh*, 165 Ill. 2d at 530. Or, as the appellate court has put it, "[a]n affirmative defense basically confesses the plaintiff's case but asserts new matter that avoids liability." *Triple R*, 2012 IL App (4th) 100956, ¶ 16. Essentially, defendants took this position in their first affirmative defense: "Yes, plaintiff pleaded a cause of action against us under section 1983 for violating due process by our deliberate indifference to his medical need for a splint on his finger, but, under the Reform Act, his failure to exhaust administrative remedies by following the grievance procedure defeats his action." See *Omega Demolition Corp. v. Illinois State Toll Highway Authority*, 2022 IL App (1st) 210158, ¶ 37.

¶ 34 When a defendant moves for a summary judgment on an affirmative defense (see 735 ILCS 5/2-1005(b) (West 2022)), the burden initially is on the defendant to come forward with materials establishing the factual basis of the affirmative defense (see *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 369 (2006)). These materials must show that the defendant has a "right to judgment as a matter of law." *Soderlund Brothers, Inc. v. Carrier Corp.*, 278 Ill. App. 3d 606, 614 (1995). Once the defendant carries that burden of production, the burden of

production shifts to the plaintiff to show some factual basis that arguably would defeat the affirmative defense. See *Home Healthcare of Illinois, Inc. v. Jesk,* 2017 IL App (1st) 162482, ¶ 53. The plaintiff

> "may not rely on the factual issues raised by the pleadings, but must submit affidavits or refer to depositions or admissions on file which present a contrary version of the facts. [Citation.] While parties opposing a summary judgment motion are not required to prove their case, they are under a duty to present a factual basis which would arguably entitle them to judgment in their favor, based on the applicable law." *Soderlund,* 278 Ill. App. 3d at 615.

In responding, then, to the defendant's motion for a summary judgment on the affirmative defense (assuming the defendant has carried their burden of production), the plaintiff need not definitively and indisputably rebut the affirmative defense, but the plaintiff must provide a response, in the form of affidavits, depositions, or admissions, that a reasonable trier of fact could accept as a sufficient rebuttal. We decide *de novo* whether these burdens of production have been carried. See *id.* at 614.

¶ 35 In other words, we decide independently, without deference to the circuit court's analysis, the second issue from plaintiff's statement of issues. To repeat, that issue is "[w]hether Plaintiff properly exhausted his administrative remedies when he filed his grievance outside of the administrative window but also alleges a continuing tort."

¶ 36 We see two problems with that issue as plaintiff frames it.

¶ 37 First, there is his assumption—an unearned assumption, it seems to us—that the concept of a continuing tort applies to the grievance procedure. Plaintiff cites a federal case, *Heard v. Sheahan,* 253 F.3d 316 (7th Cir. 2001), in which the court applied the doctrine of a

continuing violation to the issue of whether the statutory period of limitations for bringing a section 1983 action had expired (see *id.* at 317), but he does not cite a case applying the doctrine to an administrative deadline for filing a grievance.

¶ 38 To be sure, there is a period of limitations, so to speak, in the Inmate Handbook, just as there is a period of limitations in a statute of limitations, and no doubt the grievance procedure aims to prevent stale grievances, just as the statute of limitations aims to prevent stale claims (see *Guzman v. C.R. Epperson Construction, Inc.*, 196 Ill. 2d 391, 400 (2001)). But different things cause these two periods to start running.

¶ 39 The period in a statute of limitations begins to run when a cause of action accrues (*Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 71 (2007)), and "[a] cause of action 'accrues' when facts exist that authorize the bringing of a cause of action" (*Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 20). "[A] tort cause of action," for example, "accrues when all its elements are present, *i.e.*, duty, breach, and resulting injury or damage." *Id.* The statute of limitations applicable to a section 1983 action for personal injury uses the language of accrual: "Actions for damages for an injury to the person *** shall be commenced within 2 years next after *the cause of action accrued*." (Emphasis added.) 735 ILCS 5/13-202 (West 2022); see *McCray v. Steeves*, 2026 IL App (3d) 250334-U, ¶ 15.

¶ 40 By contrast, the grievance procedure in the Inmate Handbook contains no mention of the accrual of a cause of action. Instead, the grievance procedure provides, "All grievances must be filed as soon as possible but no later than 5 days after the incident." Because it is the inmate's knowledge of an aggrieving incident, rather than the accrual of a cause of action, that causes the five-day period in the grievance procedure to start running, the doctrine of a continuing tort is inapplicable, for that doctrine, unlike the grievance procedure, concerns the

accrual of a cause of action.

> "[U]nder the 'continuing tort' or 'continuing violation' theory, where the tort involves continuous or repeated injurious behavior, by the same actor and of a similar nature, the limitations period is held in abeyance and the plaintiff's cause of action does not accrue until the date the final injury occurs or the tort[i]ous acts cease." *Taylor v. Board of Education of the City of Chicago*, 2014 IL App (1st) 123744, ¶ 46.

A grievance, by contrast, need not rise to the level of a cause of action.

¶ 41 In fact, we infer that the purpose of the grievance procedure is to resolve problems before they become so serious and injurious that a cause of action accrues. Thus, the deadline for filing a grievance is short: as soon as the inmate can get to the kiosk or the tablet but, in any event, not longer than five days. The grievance procedure aims to address problems right away, "as soon as possible," to quote the Inmate Handbook—ideally *before* they turn into claims ripe for adjudication in a court of law. Waiting until a cause of action for damages accrues—or waiting, in the rubric of the continuing tort doctrine, "until the date the final injury occurs or the tort[i]ous acts cease" (*id.*)—would defeat this prophylactic purpose of the grievance procedure and would hardly be conducive to having a well-ordered jail. The county, one may presume, wants its jail to operate as peacefully and harmoniously as possible and does not want discontent among inmates to fester until it reaches crisis proportions, the proportions that might support a lawsuit. Accordingly, what commences the period of limitations in the grievance procedure is not the accrual of a cause of action, as in a statute of limitations. Rather, what commences the period of limitations in the grievance procedure is simply the inmate's having a "grievance," "a cause of distress *** felt to afford reason for complaint." Merriam-Webster's

New Collegiate Dictionary 550 (11th ed. 2020) (definition of "grievance").

¶ 42 In his framing of this issue, plaintiff admits he "filed his grievance outside of the administrative window." This brings us to the second problem with his issue as he formulates it: he admits he failed to exhaust his administrative remedies before bringing his action under section 1983.

¶ 43 His grievance was late, and he says so—and it would be hard not to say so. November 1, 2023, was when plaintiff filed a grievance over the correctional officers' repeated refusal to allow him to have a splint on his finger. That was more than 5 days after August 26, 2022, and "[a]round the end of September" 2022, when the refusals happened. According to the allegations in the complaint, medical providers told plaintiff, at the time of those refusals, that he needed a splint so that his finger could heal properly. Thus, the potential injuriousness of the refusals and his cause for being aggrieved were evident to him at the time of the refusals. Even if, in August and September 2022, plaintiff could not foresee that he would end up being unable to straighten his finger—even if he could not foresee exactly how his finger would heal improperly—he knew immediately, from what medical providers told him, that he had "a cause of distress," a "reason for complaint." *Id.* He knew right away that a splint was needed for his finger to heal properly and that jail officials were refusing to allow that medical need of his to be met. It made no sense for plaintiff to wait until his finger healed crookedly to file a grievance, any more than it would make sense for an inmate who is denied prescribed blood pressure medicine to wait until he has a stroke to file a grievance.

¶ 44 By plaintiff's own admission, then, he did not comply with the grievance procedure—he "filed his grievance outside of the administrative window." He invokes the continuing tort doctrine as an excuse. For the reasons we have explained, though, that doctrine is

inapplicable to the grievance procedure and does not excuse plaintiff's admitted failure to exhaust his administrative remedies. On their first affirmative defense, defendants have carried their burden of production, but plaintiff has not carried his burden of production. The Reform Act bars his action under section 1983.

¶ 45 D. Negligence

¶ 46 In addition to accusing defendants of violating his right to due process by their "deliberate indifference" to his medical need, the complaint accuses them, in the same sentence, of mere "negligence"—thereby seeming to suggest, by way of an alternative theory, a common-law tort action for negligence. Correspondingly, defendants raised a second affirmative defense: the statute of limitations in section 8-101(a) of the Local Government and Governmental Employees Tort Immunity Act (Immunity Act) (745 ILCS 10/8-101(a) (West 2022)). See *Patsis v. Zion-Benton Township High School, No. 126*, 234 Ill. App. 3d 232, 238 (1992) ("The statute of limitations is an affirmative defense."). That statute provides, "No civil action *** may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101(a) (West 2022).

¶ 47 Plaintiff argues in his brief, "If this Court believes that Plaintiff has alleged a continuing tort[,] it follows that any state law claim for negligence should be reinstated as well." It does not follow, and we will explain why.

¶ 48 Plaintiff was diagnosed with a boutonniere deformity on November 14, 2022, during his fourth appointment at OrthoIllinois, and, at "that *** point in time, [he] did splint," according to the medical records. Pontarelli recommended that plaintiff "work on flexion of [his] finger as there were not a lot of great options for [his] finger conservatively at this point," and

"surgery was not recommended." Thus, by November 14, 2022, "the injury was received" (*id.*)—plaintiff had developed a boutonniere's deformity from the lack of a splint and was so diagnosed—but he filed his complaint more than a year after that diagnosis, on December 21, 2023.

¶ 49 The continuing tort doctrine does not make the complaint timely. The final injury would have been the development of the boutonniere deformity, and the continuous tortious act of denying plaintiff a splint had ceased by November 14, 2022, when, according to the medical records—the accuracy of which plaintiff admitted in his deposition—he "did splint." See *Taylor*, 2014 IL App (1st) 123744, ¶ 46. It appears, then, that, as of November 14, 2022, defendants were no longer denying him a splint.

¶ 50 For that matter, the continuing tort would have ceased even earlier, after plaintiff's third appointment at OrthoIllinois. Defendants could not have denied plaintiff medical treatment for his finger after his third appointment, in October 2022, for he pleaded in his complaint that, "[d]uring a 3rd visit to St. Anthony"—by which, as he clarified in his deposition, he meant OrthoIllinois—"i was told there was nothing more they could do." If, as of October 2022, there was nothing more the medical provider could do for plaintiff's finger, or at least if, in October 2022, the medical provider so advised plaintiff and defendants, defendants could not have been still unreasonably denying plaintiff necessary medical care for his finger in October 2022. See *Vinke v. Artim Transportation System, Inc.*, 87 Ill. App. 3d 400, 406 (1980) ("Negligence is defined as the failure to do something which a reasonably careful person would do, or doing something which a reasonably careful person would not do.").

¶ 51 Granted, plaintiff alleges in his complaint that he "experiences everyday pain and discomfort in this finger and also a lack of sleep at times." Even so, "[a] continuing violation or

tort is occasioned by continuing unlawful acts and conduct, not by continual ill effects from an initial violation." *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003). Plaintiff's "everyday pain and discomfort" and "lack of sleep at times" are continual ill effects.

¶ 52 Therefore, on the affirmative defense of an expired statutory period of limitations, defendants have carried their burden of production, but plaintiff has not carried his burden of production. The expiration of the one-year period in section 8-101(a) of the Immunity Act (745 ILCS 10/8-101(a) (West 2022)) bars his common-law action for negligence.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the circuit court's judgment.

¶ 55 Affirmed.