2026 IL App (1st) 242012
No. 1-24-2012
Opinion filed September 18, 2026

Sixth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE CHICAGO TRUST COMPANY, N.A., Guardian of the Estate of Craig F. Pierce, a Disabled Person; and SUSAN PIERCE, Individually,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees,	)	
v.	)	No. 2021 L 007988
SUDHA CHERUKURI, M.D.; FRESENIUS HEALTH PARTNERS, INC.; FRESENIUS USA MANUFACTURING, INC.; FRESENIUS MEDICAL CARE NORTH AMERICA; FRESENIUS MEDICAL CARE OF ILLINOIS, LLC; FRESENIUS KIDNEY CARE; FRESENIUS KIDNEY CARE MACOMB; FRESENIUS MEDICAL CARE HOLDINGS, INC; NATIONAL MEDICAL CARE INC.; ILLINOIS KIDNEY DISEASE AND HYPERTENSION CENTER; RENALCARE ASSOCIATES, S.C.; RENAL INTERVENTION CENTER, LLC; OSF HEALTHCARE SYSTEM; AND OSF MULTI-SPECIALTY GROUP,	)	Honorable Thomas V. Lyons, II Judge, presiding.
Defendants		
(OSF Healthcare System and OSF Multi-Specialty Group, Defendants-Appellants; Sudha Cherukuri, M.D., Fresenius Medical Care of Illinois, LLC, Renalcare Associates, S.C., and Renal Intervention Center, LLC, Defendants-Appellees).		

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Presiding Justice Gamrath and Justice Pucinski concurred in the judgment and opinion.

OPINION

¶ 1 A stroke left Craig Pierce permanently unable to manage his affairs or make decisions for himself. More than seven years later, his court-appointed guardian, Chicago Trust Company, N.A., sued his healthcare providers, including OSF Healthcare System and OSF Multi-Specialty Group (collectively, OSF), alleging negligent monitoring of Craig's blood-thinning medication caused the stroke, and Craig's wife, Susan, sought damages for loss of consortium.

¶ 2 OSF filed affirmative defenses, arguing the statutes of limitations and repose were not tolled because Susan was not disabled and could have brought the claims on Craig's behalf. The trial court struck the defenses.

¶ 3 After a three-week trial, the jury awarded Craig more than $35 million and Susan $6 million. OSF's codefendants settled with the Pierces for $16.75 million. OSF then sought a setoff. The trial court awarded prejudgment interest, set off $11.5 million, and entered judgment for Craig and for Susan.

¶ 4 OSF contends the trial court erred by (i) striking its affirmative defenses because tolling of the statutes of limitations and repose presented questions of fact for the jury, (ii) calculating prejudgment interest from the date of the initial complaint rather than the date OSF was named as a defendant, (iii) calculating prejudgment interest before applying the setoff, and (iv) instructing the jury that it could award damages for mental and emotional distress, duplicating damages for the pain and suffering.

¶ 5 We affirm, holding (i) OSF's affirmative defense based on Susan's lack of disability finds no support in the law, (ii) OSF forfeited its argument that the jury should have decided whether Craig remained continuously disabled because it did not raise that theory before or during trial, (iii) the trial court correctly calculated prejudgment interest from the filing of the initial complaint and before applying the settlement setoff, and (iv) the record gives no reason to disturb the jury's separate awards for mental and emotional distress and pain and suffering.[1]

¶ 6 We also recognize the care and attention the trial court brought to these proceedings.

¶ 7 Background

¶ 8 In February 2016, 64-year-old Craig Pierce was admitted to Saint Francis Hospital with pneumonia and sepsis. While hospitalized, he suffered an acute kidney injury after a CT scan. Doctors placed a catheter for short-term dialysis treatment. Craig was also diagnosed with atrial fibrillation and prescribed a blood thinner, Coumadin, to prevent a stroke. The international normalization ratio (INR) determines a Coumadin dosage. The therapeutic INR range (level needed to protect against stroke) is between 2.0 and 3.0. Craig's INR level never reached 2.0; at discharge it was at 1.9.

¶ 9 Craig continued dialysis at a facility operated by Fresenius Medical Care of Illinois, LLC (Fresenius). When Craig finished dialysis treatment a few weeks later, Dr. Sudha Cherukuri, Fresenius's medical director, referred him to the Renal Intervention Center (RIC) to have the catheter removed. A few days before the procedure, an RIC employee phoned Susan and told her that Craig should stop taking Coumadin, which he did.

[1]The parties completed briefing in March 2025. The original authoring justice's illness delayed resolution of this appeal. The case was reassigned to accelerate resolution of this matter.

¶ 10 A few days later, Craig suffered a cerebral artery stroke. He was airlifted to an OSF hospital, where surgeons removed part of his skull to save his life. The stroke was catastrophic, causing extensive damage to Craig's brain and cognitive abilities. He was paralyzed on his left side, confined to bed, and had aphasia that prevented him from speaking. The parties agreed Craig required 24-hour care for daily activities. (Craig passed away during the pendency of this appeal.)

¶ 11 Procedural History

¶ 12 On February 7, 2020, Susan, as Craig's wife and next friend, filed a five-count complaint against Dr. Cherukuri, Fresenius, RIC, and others alleging negligence. Susan brought a loss of consortium claim on her own behalf. She named OSF Multi-Specialty Group and others as respondents in discovery under section 2-402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-402 (West 2020)). The trial court terminated the respondents in discovery on September 15, 2020.

¶ 13 In November 2022, the Pierces filed a second amended complaint adding OSF Healthcare and OSF Multi-Specialty Group as defendants and alleging medical negligence (count V) and loss of consortium (count VI). OSF moved to dismiss based on the two-year statute of limitations and four-year statute of repose for medical malpractice claims under section 13-212 of the Code (*id.* § 13-212).

¶ 14 OSF acknowledged that disability tolls the statutes of limitations and repose but argued tolling was inappropriate because (i) counsel represented Craig and Susan, (ii) Susan was not under a disability, and (iii) the Pierces failed to timely convert OSF Multi-Specialty Group from a respondent in discovery to a defendant. OSF also argued it would be unfair to add it more than six years after Craig's injury, more than two years after the initial complaint, and after dismissal as a respondent in discovery. Alternatively, OSF argued that Susan's loss of consortium claim should be dismissed with prejudice because she was not disabled.

¶ 15 The trial court denied the motion to dismiss, ruling that the disability exception tolled the statutes of limitations and repose. OSF later moved for summary judgment, making essentially the same arguments. The trial court denied summary judgment as well.

¶ 16 A week after the probate court appointed Chicago Trust Company as temporary guardian of Craig's estate, a third amended complaint alleged negligence on Craig's behalf and a loss of consortium claim brought by Susan individually. The next month, December 2023, the probate court deemed Craig "a disabled person" and appointed Susan as the plenary guardian of his person and Chicago Trust Company as the plenary guardian of Craig's estate.

¶ 17 After discovery and weeks before trial, OSF filed affirmative defenses again asserting the statutes of limitations and repose and arguing the trial court should not toll them because Susan was not disabled. The Pierces moved to strike the affirmative defenses as legally and factually deficient under section 13-212(c) (*id.* § 13-212(c)) and barred by the law-of-the-case doctrine. Alternatively, they contended that OSF did not dispute that Craig had been disabled and incompetent since his stroke. OSF filed no written response. After a hearing, the trial court struck the affirmative defenses without stating its reasons.

¶ 18 Before trial, OSF's codefendants and the Pierces entered into high-low settlement agreements.

¶ 19 After a three-week trial, the jury returned a verdict for the Pierces and against all defendants except Renal Intervention Center, which was found not liable. The jury awarded over $35 million to Craig and $6 million to Susan. The Pierces moved to amend the judgment to add prejudgment interest under section 2-1303(c). 735 ILCS 5/2-1303(c) (West 2022).

¶ 20 OSF moved for a new trial or, alternatively, a remittitur owing to trial court error in (i) striking its affirmative defenses and (ii) allowing the award of both emotional distress and pain and suffering damages. OSF also moved to set off its codefendants' $16.75 million settlement, contending that prejudgment interest should be calculated after deducting the setoff.

¶ 21 The trial court denied the motions for a new trial or remittitur and granted an $11.5 million setoff. The court also awarded prejudgment interest on the full amount of the verdict before applying the setoff, resulting in an amended judgment. The court stayed enforcement pending this appeal.

¶ 22 Analysis

¶ 23 Affirmative Defenses

¶ 24 OSF contends the trial court erred in striking its affirmative defenses based on the statutes of limitations and repose. A defendant bears the burden of showing that an affirmative defense, including a statute of limitations or repose, applies. *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 371 (2006). Once the defendant makes this showing, the plaintiff bears the burden of showing facts that toll or create an exception to the limitations or repose period. *Id.*

¶ 25 We review *de novo* the legal sufficiency of an affirmative defense and may affirm on any basis supported by the record, regardless of the court's reasoning. *Noland v. Mendoza*, 2022 IL 127239 ¶ 30; *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶ 11.

¶ 26 Section 13-212 generally requires a medical negligence action to be filed within two years after the plaintiff knew or reasonably should have known of the injury and its wrongful cause and, in all events, within four years after the act or omission giving rise to the claim. 735 ILCS 5/13-212 (West 2022). Section 13-212(c), however, provides that, for a person under a legal disability when the cause of action accrues, "the period of limitations does not begin to run until the disability is removed." *Id.* § 13-212(c). Legal disability thus tolls both the two-year limitations period and the four-year repose period.

¶ 27 In late December 2022, OSF filed a section 2-619 (*id.* § 2-619) motion to dismiss based on the statutes of limitations and repose. Significantly, OSF did not contest that Craig had a legal disability after his stroke or claim that his disability was later removed. Instead, OSF argued that neither limitations nor repose should be tolled because Susan was not disabled and could act on Craig's behalf. OSF later made essentially the same argument in its motion for summary judgment. The trial court denied both motions.

¶ 28 When OSF filed its affirmative defenses, it again relied on Susan's lack of disability rather than the removal of Craig's disability. Section 13-212(c) does not support that theory. The statute makes Craig's disability controlling, not Susan's ability to act on his behalf. A representative may sue on behalf of a disabled person, but the representative's ability to sue neither removes the disability nor starts the statutory periods. *Gavlin v. Adventist Bolingbrook Hospital*, 2022 IL App (3d) 200282, ¶ 19. Otherwise, the protection afforded a disabled person would depend on someone else's diligence. *Id.* (disabled persons should not be held responsible for lack of diligence or negligence of their representative). Thus, OSF failed to show that either limitations or repose applied and barred the claims while Craig remained disabled. See *id.*

¶ 29 Courts elsewhere have held similarly. See, *e.g.*, *Abels v. Genie Industries, Inc.*, 202 S.W.3d 99, 106 (Tenn. 2006) (tolling provision "remains in effect as to plaintiffs of 'unsound mind' for so long as they remain of 'unsound mind' regardless of *** the commencement of a lawsuit by a representative on behalf of the disabled plaintiff"); *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 756 (Tex. 1993) ("mere commencement of a lawsuit by, or on behalf of, a legally incapacitated individual is, considered alone, insufficient to deny the protection of the tolling provision"); *Tzolov v. International Jet Leasing, Inc.*, 283 Cal. Rptr. 314, 317-18 (Ct. App. 1991) (filing of action by guardian *ad litem* did not affect tolling of statute of limitations).

¶ 30 Moreover, many jurisdictions allow a plaintiff suing on behalf of a disabled person to amend a complaint to add a new defendant, as the Pierces did, because the statute of limitations remains tolled. See, *e.g.*, *Abels*, 202 S.W.3d at 105 (guardian *ad litem* of disabled person could amend complaint to add additional defendant); *Palla v. McDonald*, 877 S.W.2d 472, 477 (Tex. App. 1994) (husband, as next friend of allegedly disabled wife, could amend medical malpractice action to add new defendant after initially filing suit).

¶ 31 OSF frames the issue differently on appeal. It argues that whether Craig remained disabled after his stroke presented a factual question for the jury. Before trial, OSF neither pleaded that Craig's disability had been removed nor sought to amend its defense to say so. At trial, OSF did not ask the jury to decide that question. A party cannot obtain a new trial on a factual theory not pleaded in its answer or cure the omission by citing evidence that might support an unpleaded defense. *Consoer, Townsend & Associates v. Addis*, 37 Ill. App. 2d 105, 109-10 (1962); see, *e.g.*, *Ellerby v. Spiezer*, 138 Ill. App. 3d 77, 80 (1985) (party's failure to plead claim in answer waived it on review); *Kaufman & Broad Homes, Inc. v. Allied Homes, Inc.*, 86 Ill. App. 3d 498, 502 (1980) (waiver applied where defense not in pleadings and new defense asserted first time in final argument). Nor do we consider issues first raised in a posttrial motion. *Antol v. Chavez-Pereda*, 284 Ill. App. 3d 561, 566 (1996) (question of law waived on appeal in negligence action).

¶ 32 As for Susan's individual claim, section 13-203 of the Code provides that "[a]ctions for damages for loss of consortium *** deriving from injury to the person of another, *** shall be commenced within the same period of time as actions for damages for injury to such other person." 735 ILCS 5/13-203 (West 2022). Susan's derivative claim therefore follows the same filing period as Craig's claims. *Id.*; see *Reichert v. Ford Motor Co.*, 768 F. Supp. 262, 263 (S.D. Ill. 1991) (under Illinois law, statute of limitations governing wife's loss of consortium claim for period between accident and death subject to same tolling as accident victim). Because Craig's disability tolled the period for his claims, it likewise tolled the period for Susan's loss of consortium claim.

¶ 33 Prejudgment Interest

¶ 34 OSF raises two issues regarding prejudgment interest under the prejudgment interest statute. 735 ILCS 5/2-1303 (West 2022). First, OSF argues interest should run from November 7, 2022, when the Pierces first named it as a defendant, rather than July 1, 2021, the prejudgment interest statute's effective date. Second, OSF argues the trial court should have calculated the prejudgment interest after applying the setoff.

¶ 35 Date of Accrual

¶ 36 The primary goal in construing a statute is to give effect to the legislature's intent, best shown by the statutory language. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 45 (2002). When the language is unambiguous, we apply it as written without resorting to statutory construction. *Id.* at 45-46. We may not add provisions; substitute different ones; or read into the statute exceptions, limitations, or conditions the legislature omitted. *Hines v. Department of Public Aid*, 221 Ill. 2d 222, 230 (2006). Statutory construction presents a question of law reviewed *de novo*. *Maksym v. Board of Election Commissioners of Chicago*, 242 Ill. 2d 303, 318 (2011).

¶ 37 Section 2-1303(c) provides that prejudgment interest begins accruing on the later of July 1, 2021, the statute's effective date, or the date the action is filed. The Code does not define "action." OSF contends that adding a defendant to a pending complaint begins a new action for purposes of calculating prejudgment interest. OSF relies on *Flynn v. Allis Chalmers Corp.*, 262 Ill. App. 3d 136, 139 (1994).

¶ 38 In *Flynn*, the plaintiffs sued a subsidiary of Allis Chalmers. Plaintiffs voluntarily dismissed their complaint after being informed that the real party in interest was Allis Chalmers, which had filed for bankruptcy. *Id.* at 137-38. After the bankruptcy stay was lifted, the plaintiffs filed a new complaint naming Allis Chalmers, dismissed that complaint, and filed another. *Id.* at 138.

¶ 39 The trial court granted Allis Chalmers's motion to dismiss on the ground that the complaint was an impermissible second refiling of the same cause of action under section 13-217 of the Code. 735 ILCS 5/13-217 (West 1992). This court reversed, holding that the identity of the defendant is an essential element of an "action" and that, because the first complaint was against a separate corporate entity, Allis Chalmers could not rely on that pleading to argue the current complaint against it was an improper second refiling. *Flynn*, 262 Ill. App. 3d at 139-40.

¶ 40 OSF seizes on *Flynn*'s statement describing a defendant's identity as an "essential" element of an action to argue that the Pierces began a new and separate action when they added OSF in the second amended complaint. *Flynn* is inapplicable. The Pierces did not voluntarily dismiss and refile their complaint; they amended a pending action. And *Flynn* construed section 13-217, a savings statute, not section 2-1303(c), the prejudgment interest statute.

¶ 41 The other cases OSF relies on, *Seibert v. Cahill*, 173 Ill. App. 3d 545 (1988), and *Cotton v. Coccaro*, 2023 IL App (1st) 220788, are inapplicable, too.

¶ 42 In *Seibert*, the court stated that "*[f]or statute of limitations purposes*, [a] plaintiff's amended complaint set[s] forth a new cause of action" that "commenced on the date the amended complaint is filed." (Emphasis added.) *Seibert*, 173 Ill. App. 3d at 549. That holding concerns the statute of limitations, not prejudgment interest.

¶ 43 In *Cotton*, the court found that the defendants lacked standing to argue that the prejudgment interest statute discriminated against a defendant added more than a year after the plaintiff filed the action. *Cotton*, 2023 IL App (1st) 220788, ¶ 62. In *dicta*, the court said, "a reasonable trial court *could* construe the prejudgment interest amendment such that the grace period is one year from the filing of the action as to that defendant." (Emphasis added.) *Id.* But neither *Cotton* nor any other case has held that adding a defendant begins a new action for purposes of prejudgment interest.

¶ 44 Section 2-1303(c) says prejudgment interest begins accruing on July 1, 2021, or the date of the action's filing, whichever is later. Nothing in the statute ties accrual to the date a defendant is added to a pending action. Nor, contrary to OSF's contention, did section 2-1303(c) preclude OSF from making a settlement offer, as its codefendants did.

¶ 45 The trial court correctly used July 1, 2021, the date prejudgment interest began to accrue.

¶ 46 Timing of Setoff

¶ 47 Shortly before trial, the Pierces entered into high-low settlement agreements with Dr. Cherukuri, Fresenius, and RIC. Under the agreements, the Pierces renounced attempting "to collect interest, including pre-judgment interest *** on any verdict or judgment against [settling codefendant] or payments under this Agreement." The high-low settlements resulted in an $11.5 million setoff. OSF asserts the trial court should have deducted the setoff before calculating prejudgment interest.

¶ 48 The codefendants' high-low settlement agreements do not qualify as "settlement offers" under the prejudgment interest statute. So held *Johnson v. Advocate Health & Hospitals Corp.*, 2025 IL App (1st) 230087, appeal denied, No. 132045 (Ill. Sept. 24, 2025), which neither party cited. We agree with the ruling in *Johnson*. See *Thompson v. Centegra Management Services, Inc.*, 2026 IL App (2d) 240667, ¶¶ 40, 44 (holding that payment under high-low agreement constitutes settlement subject to setoff under Joint Tortfeasor Contribution Act (Contribution Act) section 2(c) (740 ILCS 100/2(c) (West 2022))). Note: *Thompson* did not address whether the setoff should be deducted before calculating prejudgment interest.

¶ 49 Section 2(c) of the Contribution Act and section 2-1303(c) on prejudgment interest address different matters. Section 2(c) governs the effect of a settlement with joint tortfeasors and provides that the settlement "reduces the recovery" against the others. 740 ILCS 100/2(c) (West 2022); see *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 80 (2002) (nothing in Contribution Act prevents plaintiff from recovering full amount of judgment from any jointly and severally liable defendant). Section 2-1303(c) governs prejudgment interest on damages "set forth in the judgment." 735 ILCS 5/2-1303(c) (West 2022). Neither statute directs a court to deduct a Contribution Act setoff before calculating prejudgment interest.

¶ 50 Prejudgment interest compensates plaintiffs for the delay in being made whole and accounts for a defendant's use of money ultimately found to be due the plaintiff. *Johnson*, 2025 IL App (1st) 230087, ¶ 82 (citing *Cotton*, 2023 IL App (1st) 220788 ¶ 43). Prejudgment interest also encourages earlier resolution of claims. *Id.*

¶ 51 The Pierces' agreement not to collect prejudgment interest applies only to the settling defendants. It neither changes OSF's obligation to pay prejudgment interest nor enlarges the setoff to which OSF is entitled under the Contribution Act—either the amount stated in the settlement agreements or the consideration actually paid, whichever is greater. 740 ILCS 100/2(c) (West 2022).

¶ 52 A high-low agreement is a conditional settlement. *Johnson*, 2025 IL App (1st) 230087, ¶ 85 (citing *Pinske v. Allstate Property & Casualty Insurance Co.*, 2015 IL App (1st) 150537, ¶ 23, citing *Cunha v. Shapiro*, 837 N.Y.S.2d 160, 163 (App. Div. 2007)). A high-low settlement requires the case proceed to trial and verdict. Unlike other settlements, it does not reduce the cost of delay or the burden on court dockets, which the legislature sought to alleviate with the prejudgment interest statute. Thus, as the *Johnson* court concluded, the legislature did not intend for a high-low offer to qualify as a "settlement offer" under the prejudgment interest statute. *Id.*

¶ 53 Moreover, a request for a setoff is a supplementary enforcement proceeding to satisfy, rather than modify, a judgment. *Star Charters v. Figueroa*, 192 Ill. 2d 47, 48-49 (2000). Thus, the Pierces were entitled to prejudgment interest on the full $41 million judgment, regardless of the amounts the settling defendants agreed to pay or the amount the trial court set off. In addition, the defendants were jointly and severally liable, so the Pierces could recover the entire judgment from any of them. *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶ 32.

¶ 54 Accordingly, the trial court did not err in calculating prejudgment interest without deducting the high-low settlement agreement setoff.

¶ 55 Damages for Pain and Suffering

¶ 56 OSF contends the jury's $4 million award for emotional distress duplicates its $4 million award for pain and suffering and asks for a remittitur. OSF notes a split of authority in the appellate court. In *Babikian v. Mruz*, 2011 IL App (1st) 102579, this court rejected a claim of error in a medical negligence case based on the trial court's instruction that jurors "could award damages for pain and suffering and also for emotional distress, if they determined that such damages were proved to have resulted from the defendant's negligence." *Id.* ¶ 18; see *Jefferson v. Mercy Hospital & Medical Center*, 2018 IL App (1st) 162219, ¶ 57 (adopting holding in *Babikian* that damages for emotional distress are available to prevailing plaintiffs in medical negligence cases). The *Babikian* court found no indication in the record of jury confusion in determining damages, and the defendant failed to submit special interrogatories that might have shown a double recovery. *Babikian*, 2011 IL App (1st) 102579, ¶ 20.

¶ 57 The Fourth District has cautioned that separate awards carry a risk of double recovery because emotional distress is a component of "suffering" but ultimately upheld the separate awards. *Marxmiller v. Champaign-Urbana Mass Transit District*, 2017 IL App (4th) 160741, ¶¶ 51-53, 55-56. Here, nothing in the record indicates jury confusion, and OSF did not submit special interrogatories. Equal awards, standing alone, do not show that the jury compensated the same injury twice.

¶ 58 Affirmed.

Chicago Trust Co. v. Cherukuri, **2026 IL App (1st) 242012**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2021-L-007988; the Hon. Thomas V. Lyons II, Judge, presiding.
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