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SECOND DIVISION
JUNE 14, 2011

No. 1-10-0712

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|----------------------------------|---|-------------------|
| RAJESH JAIN, |) | Appeal from |
| |) | the Circuit Court |
| Plaintiff-Appellant, |) | of Cook County |
| |) | |
| v. |) | No. 07 L 6587 |
| |) | |
| NORTHWESTERN MEMORIAL HOSPITAL, |) | Honorable |
| |) | John A. Ward, |
| Defendant-Appellee, |) | Judge Presiding. |
| |) | |
| (Donna Kamuda, A.P.N., and Dixon |) |) |
| Kaufman, M.D. |) | |
| |) | |
| Defendants). |) | |

JUSTICE CONNORS delivered the judgment of the court.
Justices Karnezis and Harris concurred in the judgment.

ORDER

Held: Where plaintiff voluntarily dismissed his complaint, letters sent by plaintiff to the clerk of the circuit court requesting an extension of time to refile his complaint did not constitute commencement of a new action within the meaning of section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217 (West 2008)), and the circuit court properly dismissed plaintiff's complaint for failure to timely refile his complaint within one year of voluntary dismissal.

After voluntarily dismissing his medical negligence action, plaintiff Rajesh Jain purported

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to refile his cause of action against defendant Northwestern Memorial Hospital. Thereafter, the circuit court granted defendant's motion to dismiss the action, finding that a complaint was not refiled in a timely manner pursuant to the applicable savings statute. 735 ILCS 5/13-217 (West 2008). For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND

On June 26, 2007, plaintiff filed a three count complaint alleging medical negligence against certain defendant doctors and Northwestern Memorial Hospital for injuries he sustained on June 28, 2005, during a kidney transplant. Shortly thereafter, plaintiff's counsel was granted leave to withdraw from the case, and on December 6, 2007, plaintiff voluntarily dismissed his cause of action pursuant to section 2-1009 of the Code of Civil Procedure. 735 ILCS 5/2-1009 (West 2006).

On October 16, 2008, plaintiff apparently wrote a letter to the clerk of the circuit court, which stated:

"I'm [R]ajesh Jain. I filed a case against [N]orthwestern [H]ospital but due to some problem I took volunteer dismissal on 12/6/2007. Due to my health problem I couldn't find any lawyer in this period and [cannot] [resubmit] the case in the time and the time going to end on 12/6/2008. So please give me one more year to [refile] the case. I already [sent] you request letter before.

Please extend time for one more year. Thanks. Rajesh Jain."

The circuit court relied upon this letter in making its ruling. However, the letter does not appear

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in the record on appeal. In addition to this letter, the record includes a letter from plaintiff dated December 4, 2008, addressed to the circuit court judge seeking relief in his case and apparently requesting that he be given a "State attorney" to pursue his medical negligence claims. The letter is not file stamped and there is no indication in the record as to whether the letter was actually received by the court as it makes no mention of the letter in its ruling.

Thereafter, the record reflects that plaintiff filed a letter on December 16, 2008, directed to the law division, seeking an extension of time in which to refile his case due to his health condition. On December 31, 2008, the circuit court entered an order indicating that plaintiff attempted to file something with the clerk of the court which was forwarded to the circuit court judge on December 24, 2008. Included in the materials forwarded was a letter from the clerk that was filed December 9, 2008. Therein, the clerk indicated that his attempted filing was not accepted because the necessary filing fees or a petition to waive those fees had not been filed. Accordingly, the court held that no further action would be taken by the court until plaintiff either paid the fee or filed a petition to waive the fees.

On February 25, 2009, plaintiff was granted leave to sue as an indigent person. The next order in the record reflects that the matter was set for a status on service of summons for May 7, 2009. Following the summons in the record there is an unsigned copy of a complaint with no file stamp. Thereafter, defendant was served and subsequently filed a motion to dismiss the cause of action pursuant to section 13-217 of the Code. 735 ILCS 5/13-217 (West 2008). After reviewing the materials submitted to the court and hearing oral argument, the court granted the motion to dismiss with prejudice and entered a written order finding that no complaint was

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timely refiled. Plaintiff was granted leave to file a late notice of appeal.

ANALYSIS

A motion to dismiss pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2008)) admits the legal sufficiency of the complaint but asserts certain defects or defenses outside the pleading which defeat the claim. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). Our review on appeal from an order granting a section 2-619 motion to dismiss is *de novo*. *Wallace*, 203 Ill. 2d at 447.

At issue is whether plaintiff failed to timely re-file a complaint within the time permitted after his voluntary dismissal on December 6, 2007. Section 13-217 of the Code, referred to as the “saving” statute, allows a plaintiff to “commence a new action” within one year of the voluntary dismissal or within the remaining period of limitation, whichever is greater. 735 ILCS 5/13-217 (West 1994). An action that is refiled pursuant to section 13-217 is a new action, not a reinstatement of the old action. *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 504 (1997). Plaintiff does not dispute that the two-year statute of limitations applicable to medical negligence claims had run at the time he purported to refile his cause of action arising from a failed kidney transplant in June 2005. Thus, under section 13-217 of the Code, plaintiff had one year from the voluntary dismissal to commence a new action, that is, until December 6, 2008. However, because that date was a Saturday, plaintiff actually had until Monday, December 8, 2008, to refile his cause of action. See 5 ILCS 70/1.11 (West 2008).

On appeal, plaintiff directs our attention to the letters of October 16, 2008, and December 4, 2008, as sufficient evidence to establish that he commenced a new action within one year from

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the voluntary dismissal. We cannot find support in the record for plaintiff's contentions. An action is commenced by the filing of a complaint. 735 ILCS 5/2-201 (West 2008). The complaint must contain a "plain and concise statement of the pleader's cause of action." (735 ILCS 5/2-603(a) (West 2008)), and must reasonably inform the opposite party of "the nature of the claim *** which he or she is called upon to meet." (735 ILCS 5/2-612(b) (West 2008)).

Here, at best, the letters dated October 16 and December 4 were, as plaintiff concedes, requests to the clerk of the court for an extension of time to refile his cause of action due to his condition and a request for counsel to assist him. The letters do not constitute a plain and concise statement of plaintiff's cause of action and do not inform defendant of the nature of the claim against it. Furthermore, with respect to the December 4 letter, there is no evidence in the record to establish that it was ever timely filed or received by the clerk of the court prior to December 8, 2008. See *Wilson v. Brant*, 374 Ill. App. 3d 306, 310-311 (2007) (citing *Kelly v. Mазzie*, 207 Ill. App. 3d 251, 253 (1990) (the filing date of a complaint is the date it is actually received by the circuit court clerk)).

Although plaintiff attaches what purports to be a complaint to his brief, and the record reflects that a complaint was apparently attached to a summons issued to defendant in May 2009, this date was well beyond the one-year refiling period, and the complaint is not signed or file stamped. We recognize that plaintiff proceeded *pro se* in attempting to litigate his claims and apparently had difficulty acquiring new counsel due to his health condition. Nevertheless, *pro se* litigants must comply with the same rules of procedure as would be required of litigants with counsel. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001). Accordingly, because

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there is no evidence in the record to establish that plaintiff commenced a new action within one year of the voluntary dismissal, the trial court properly granted defendant's motion to dismiss with prejudice. 735 ILCS 5/13-217 (West 1994).

Affirmed.\