

No. 1-10-1321

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSE ANNE GODBOLD,)	Appeal from
)	the Circuit Court
Plaintiff-Appellant,)	of Cook County
)	
v.)	
)	No. 09 L 6396
ADVOCATE HEALTH AND HOSPITALS CORP., d/b/a/)	
Advocate Medical Group, an Assumed Name; and BRIAN)	
McMAHON,)	Honorable
)	Kathy Flanagan,
Defendants-Appellees.)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice R.E. Gordon concurred in the judgment.

ORDER

Held: The trial court's ruling that plaintiff's complaint was partially untimely was affirmed.

Plaintiff Rose Anne Godbold appeals the circuit court dismissal of her complaint under section 2-619(a)(5) of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/2-619(a)(5) (West 2006). We affirm.

Plaintiff underwent a Positron Emission Tomography (PET) scan at Advocate Health (Advocate) conducted by Brian McMahon (defendant) on February 4, 2005.

In August or September 2005, plaintiff learned that protocols were not followed in the administration of the scan and the results were fraudulently concealed. While plaintiff was aware of the negligent and fraudulent acts of defendants in August or September of 2005, she did not know she was injured as a result of those acts until June 18, 2007. Plaintiff filed her eight count complaint on June 1, 2009.

Defendants moved to dismiss the case. The court partially granted the motion, finding five of the counts in plaintiff's complaint untimely. The court found that because plaintiff admitted to discovery of the fraud and her claim within a reasonable amount of time before the expiration of the four-year repose period under section 13-212 of the Code (735 ILCS 5/13-212 (West 2006)), the five-year repose period in section 13-215 of the Code (735 ILCS 5/13-215 (West 2006)) did not apply to toll the repose period.

On appeal, plaintiff contends that the four-year statute of repose in section 13-212 is inapplicable. Instead, she argues that the five-year limitation period in section 13-215 applies because plaintiff alleged fraudulent concealment in this case. Plaintiff reasons that because she learned of the fraudulent and negligent actions of defendants in August or September 2005, she should have had until August or September 2010 to file a lawsuit under section 13-215. Plaintiff claims that because she filed her original complaint on June 1, 2009, it was timely under section 13-215.

Section 13-212 of the Code states:

“Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, *but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death.*”

(Emphasis added.) 735 ILCS 5/13-212 (West 2006).

Section 13-215 of the Code States:

“If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.” 735 ILCS 5/13-215 (West 2006).

Our courts have repeatedly held that when a party learns of a fraudulently concealed injury, the statute of repose under section 13-215 will be tolled *unless* the injured party has a reasonable amount of time to file her claim within the applicable statute of repose. See *Morris v. Margulis*, 197 Ill. 2d 28, 38, 754 N.E.2d 314 (2001) (two years is a reasonable amount of time to file a claim for breach of fiduciary duty after discovery of the fraudulent concealment); *Mauer v. Rubin*, 401 Ill. App. 3d 630, 650, 926 N.E.2d 947 (2010) (a year and eight months is a reasonable

amount of time to file after discovery of the fraudulent concealment); *Anderson v. Wagner*, 79 Ill. 2d 295, 322, 402 N.E.2d 560 (1980) (a year and four months is a reasonable amount of time to file after discovery of the fraudulent concealment); *Turner v. Nama*, 294 Ill. App. 3d 19, 28, 689 N.E.2d 303 (1997) (a period of eight months is a reasonable amount of time to file after discovery of the fraudulent concealment); *Smith v. Cook County Hospital*, 164 Ill. App. 3d 857, 863-64, 518 N.E.2d 336 (1987) (six months is a reasonable amount of time to file after discovery of the fraudulent concealment). Our supreme court has explained that “[t]his rule is logical because once a party discovers the fraud, it is no longer concealed and if time remains within which to file the action, section 13-215 cannot operate to toll the limitations period.” *Morris*, 197 Ill. 2d at 38 (quoting *Muskat v. Sternberg*, 211 Ill. App. 3d 1052, 1061, 570 N.E.2d 696 (1991)).

Here, the five-year repose period under section 13-215 does not apply, and plaintiff’s claims are time-barred by the four-year statute of repose under section 13-212. The acts plaintiff complained of took place on February 4, 2005. Plaintiff discovered the alleged fraudulent acts and negligence by September 2005 and her injury on June 18, 2007. Plaintiff had more than a year and a half after discovering her injury to timely file her claim under section 13-212. A year and a half was a reasonable amount of time under our case law for plaintiff to file her complaint under the remaining limitation period. See *Anderson*, 79 Ill. 2d at 322; *Turner*, 294 Ill. App. 3d at 28. The four-year repose period under section 13-212 expired on February 4, 2009. Plaintiff did not file her claim until June 1, 2009, making her claims untimely.

We affirm the circuit court’s dismissal of plaintiff’s claim.

1-10-1321

Affirmed.