No. 2—09—1137
Order filed March 31, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BERYL GORE,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—L—1081
	)	
BELLE L. GORDON,	)	Honorable
	)	Margaret J. Mullen,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: The trial court properly dismissed plaintiff's complaint as barred by the two-year statute of limitations for claims against attorneys; plaintiff knew or should have known of her injury no later than when defendant petitioned for fees in plaintiff's divorce case, and plaintiff sued more than two years later; it was irrelevant that plaintiff could have brought her claim as a counterclaim to defendant's petition.

Plaintiff, Beryl Gore, sued her former divorce attorney, defendant Belle L. Gordon, claiming that defendant charged excessive fees for various work related to plaintiff's divorce case. Defendant moved to dismiss, arguing, among other things, that plaintiff's complaint was barred by the two-year statute of limitations delineated in section 13—214.3(b) of the Code of Civil Procedure (Code) (735

ILCS 5/13—214.3(b) (West 1994)). The trial court dismissed plaintiff's complaint on this basis, and plaintiff timely appeals, arguing that her complaint should not be considered time-barred. We affirm.

The facts relevant to resolving this appeal are as follows. On August 5, 2003, plaintiff retained defendant to represent plaintiff in her divorce case. In the written agreement evidencing that retention, defendant detailed the services for which plaintiff would have to pay, in addition to the fees charged for those services.

On December 21, 2004, defendant filed a petition for fees entitled "Petition for Setting Final Fees and Costs and for Award of Attorneys' Fees, Expert Witness Fees, and Litigation Costs against [Plaintiff]." Subsequently, defendant moved to voluntarily nonsuit the petition, and the trial court granted the motion on March 9, 2007.

On December 12, 2008, plaintiff sued defendant for "Breach of Contract (Charging Excessive Legal Fees in Violation of Contract Terms.)" In her complaint, plaintiff alleged that defendant charged too many hours for tasks that were or could have been accomplished more quickly, billed plaintiff for unnecessary research, engaged in conferences with other attorneys that were either not needed or not permitted, charged for items that should be considered overhead of any law firm, created conflicts with plaintiff's husband and his counsel in order to increase billing, and impeded settlement and the eventual reconciliation that took place between plaintiff and her husband.

On February 26, 2009, defendant moved to dismiss plaintiff's complaint, claiming, among other things, that plaintiff's complaint was time-barred. More specifically, defendant asserted that plaintiff's complaint should be dismissed pursuant to section 2—619(a)(5) of the Code (735 ILCS 5/2—619(a)(5) (West 2008)), because, in violation of section 13—214.3(b) of the Code, her

complaint was brought more than two years after she knew or should have known of the alleged breach. The trial court granted the motion to dismiss on this basis.

At issue in this appeal is whether dismissal of plaintiff's complaint was proper. As noted, defendant moved to dismiss plaintiff's complaint under section 2—619(a)(5) of the Code, which authorizes a court to dismiss a complaint if the complaint was "not commenced within the time limited by law." 735 ILCS 5/2—619(a)(5) (West 2008). A motion to dismiss a complaint under section 2—619(a)(5) admits the legal sufficiency of the complaint, along with all well-pleaded facts and the inferences drawn therefrom. *Sorce v. Armstrong*, 399 Ill. App. 3d 1097, 1098 (2010). We review *de novo* dismissals under section 2—619(a)(5). *Alvarez v. Pappas*, 229 Ill. 2d 217, 220 (2008).

In deciding whether the dismissal was proper here, we are necessarily called upon to interpret section 13—214.3(b) of the Code. Questions of statutory interpretation are issues of law, which are similarly reviewed *de novo*. *Id.* As relevant here, section 13—214.3(b) of the Code provides that "[a]n action for damages based on tort, contract, or otherwise *** against an attorney arising out of an act or omission in the performance of professional services *** must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13—214.3(b) (West 1994).[1]

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[1]Although section 13—214.3 was amended by Public Act 89—7 (Pub. Act 89—7, §15, eff. March 9, 1995), our supreme court held that various portions of that act were unconstitutional, and, thus, the act was invalid in its entirety. See *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 378 (1997). As a result of this finding, section 13—214.3 reverted back to the version that was in effect before the act went into effect. See *Snyder v. Heidelberger*, 403 Ill. App. 3d 974, 976 n.2 (2010).

In interpreting this statutory provision, our primary objective is to ascertain and give effect to the intent of the legislature. *General Motors Corp. v. State of Illinois Motor Vehicle Review Board*, 224 Ill. 2d 1, 13 (2007). The most reliable indicator of the legislature's intent is the language of the statute, which "must be afforded its plain, ordinary, and popularly understood meaning." *Alvarez*, 229 Ill. 2d at 228. If the language of the statute is clear and unambiguous, it must be given effect as written without resorting to any other aids of construction. *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006).

The clear and unambiguous language of section 13—214.3(b) of the Code indicates that any claim against an attorney, whether arising in tort, contract, or some other legal basis, must be filed within two years after the party initiating the action knew or should have known of the injury caused. Thus, even though here the parties disagree about whether plaintiff's complaint sounded in tort or contract, the fact remains that under either legal basis plaintiff had two years from the time she knew or should have known of the injury to bring her claim. As the record reflects, and as plaintiff does not dispute, plaintiff knew or should have known of the injury on December 21, 2004, when defendant filed her petition for fees. Two years after December 21, 2004, was December 21, 2006. Plaintiff's complaint, brought on December 12, 2008, was almost two years too late.

In reaching this conclusion, we find unavailing plaintiff's claim that, under principles of fundamental fairness, her complaint should be considered timely. Not only has plaintiff not cited any authority indicating that the statute of limitations in section 13—214.3(b) of the Code may be relaxed pursuant to principles of fundamental fairness, but, if we were to decide that plaintiff could file her complaint against defendant more than two years after the cause of action accrued, we would be reading into section 13—214.3(b) of the Code conditions for which the legislature did not

provide. This would violate well-settled rules of statutory construction. See *Nordine v. Illinois Power Co.*, 32 Ill. 2d 421, 428 (1965) (noting that "[t]he rule, not only in this State but in most jurisdictions, is that plain and unambiguous provisions of a statute do not need construction and the courts cannot read into a provision exceptions or limitations which depart from its plain meaning.").

Moreover, aside from these impediments, we note that a challenge to section 13—214.3(b) was raised and rejected in *Serafin v. Seith*, 284 Ill. App. 3d 577, 587-88 (1996). There, the plaintiff claimed that the two-year statute of limitations in section 13—214.3(b) violated the equal protection clause of the Illinois Constitution, because it conferred on attorneys a benefit that was unavailable to other Illinois citizens. *Id.* The appellate court disagreed, noting that, with regard to other professions, other statutes limit the time within which a cause of action may be brought. *Id.* Plaintiff's argument here is likewise unfounded.

Additionally, we reject plaintiff's claim that, pursuant to section 13—207 of the Code (735 ILCS 5/13—207 (West 2008)), her complaint should be considered timely, because she could have brought her complaint as a counterclaim when defendant filed her petition for fees. An examination of both section 13—207 of the Code and *Viland v. James E. McElvain, Inc.*, 103 Ill. App. 3d 318 (1982), which plaintiff relies on in making her argument, reveals that section 13—207 applies to save otherwise time-barred *counterclaims.* Here, plaintiff never brought her complaint as a counterclaim to defendant's petition for fees. The fact that plaintiff arguably could have brought her complaint as a counterclaim is irrelevant.

For these reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.