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2011 IL App (3d) 100877-U

Order filed October 17, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

DENNIS WARD,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellant,	)	Kankakee County, Illinois
	)	
v.	)	Appeal No. 3--10--0877
	)	Circuit No. 10--L--135
CHRISTINE RICHARDSON,	)	
	)	Honorable Kendall O. Wenzelman,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court:  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Plaintiff had the right to refile the complaint within one year of dismissal for want of prosecution notwithstanding language in the dismissal order that dismissal was with prejudice.

¶ 2 Plaintiff, Dennis Ward, appeals the dismissal of his complaint against defendant, Christine

Richardson, in case number 10-L-135 by the circuit court of Kankakee County. Plaintiff claims the court improperly denied his "absolute right to refile his action within one year" pursuant to section 13-217 of the Code of Civil Procedure (the Code). 735 ILCS 5/13-217 (West 2010).

¶ 3

#### FACTS

¶ 4 The record on appeal indicates that on October 22, 2010, plaintiff filed a number of documents to initiate case number 10-L-135. The first document is titled complaint for damages. It alleges that in March of 1996, plaintiff entered into an installment and purchasing agreement with Queenola Hickman for a lot, upon which sat a mobile home, where he resided until his incarceration in January of 2001. The complaint continues, alleging that defendant, a notary public, "committed the offense of forgery" by forging the names of plaintiff and Queenola Hickman to a quit-claim deed that conveyed full rights of ownership to the lot to Meek Saxon. The complaint also includes a fraudulent conveyance count based upon the same transaction.

¶ 5 The second document filed by plaintiff on October 22, 2010, is titled motion to refile complaint. This motion alleges defendant originally filed this action on May 15, 2009, and that it was "dismissed for want of prosecution on April 26, 2010." The motion requested leave to refile the action pursuant to section 13-217 of the Code. 735 ILCS 5/13-217 (West 2010). The final documents defendant filed on October 22, 2010, include a motion requesting handwriting analysis and motion to proceed *in forma pauperis*. Neither of these motions are at issue in this appeal.

¶ 6 The trial court's docket shows the following entry for October 25, 2010:

"Case called on court's motion. Court having reviewed pleadings  
of *pro se* plaintiff and further having reviewed prior case 09-L-63 finds

that the motion to refile should be and hereby is denied due to prior dismissal with prejudice for want of prosecution. Clerk to notify *pro se* plaintiff. "

¶ 7 This timely appeal followed.

¶ 8 ANALYSIS

¶ 9 Plaintiff's sole claim on appeal is that the trial court erred in prohibiting him from refiling this cause of action.

¶ 10 Plaintiff begins his argument by citing to Illinois Supreme Court Rule 103(b) (Ill. S. Ct. R. 103(b) (eff. July 1, 2007)), and noting the rule allows for dismissal of a cause of action based upon a plaintiff's lack of reasonable diligence in obtaining service on a defendant. Plaintiff correctly states that dismissal under the rule may only be with prejudice when a plaintiff fails to exercise reasonable diligence to obtain service on a defendant "after the expiration of the applicable statute of limitations." *Id.* Plaintiff claims the trial court erred in dismissing his original complaint, number 09-L-63, with prejudice where "a limitation period was never applied by either party, or the trial court." Therefore, plaintiff extrapolates, that the trial court should have granted his motion for leave to file this complaint, number 10-L-135, as: (1) it was filed within one year of the dismissal of complaint number 09-L-63 pursuant to section 13-217 of the Code; and ( 2) his original action was improperly dismissed with prejudice.

¶ 11 "[U]nder section 13-217 of the Illinois Code of Civil Procedure [citation], \*\*\* a plaintiff who obtains a dismissal for want of prosecution \*\*\* may refile his action following such dismissal within one year or within the remaining period of limitations, whichever is greater." *Kraus v.*

*Metropolitan Two Illinois Center*, 146 Ill. App. 3d 210, 212-13; see also 735 ILCS 5/13-217 (West 2008); *Aranda v. Hobart Manufacturing Corp.*, 66 Ill. 2d 616 (1977). Section 13-217 simply "does not allow a dismissal for want of prosecution to be with prejudice." *Purcell & Wardrope, Chartered v. Hertz Corp.*, 279 Ill. App. 3d 16, 21 (1996); see also *Walton v. Throgmorton*, 273 Ill. App. 3d 353 (1995); *Farrar v. Jacobazzi*, 245 Ill. App. 3d 26 (1993).

¶ 12 While plaintiff's discussion of Rule 103(b) suggests his original complaint, number 09-L-63, may have been dismissed pursuant to that rule, the record before us reveals that the trial court stated it was dismissed "with prejudice for want of prosecution." Such a dismissal is simply impermissible. The authorities cited above and their progeny clearly establish that a plaintiff may refile his action within one year of it being dismissed for want of prosecution. As such, we hold the trial court erred in dismissing plaintiff's refiled complaint on the basis that it had been previously dismissed with prejudice.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, the judgment of the circuit court of Kankakee County is reversed, and this matter is remanded for further proceedings.

¶ 15 Reversed and remanded.