



residential home, personal property, and a motor vehicle.

Rodney's life was insured by Union Labor Life Insurance Company for \$160,000. The sole beneficiary of these life insurance proceeds was Justin Studer. The life insurance policy was not a part of the administrated estate. Attorney Blake, however, assisted with getting the check issued. Upon his receipt of the life insurance check, Blake mailed the check to Justin Studer at the prison. The check arrived on January 6, 2000, at which time the prison officials seized the check.

Immediately thereafter, the Illinois Attorney General's office filed an action pursuant to statutory authority to confiscate a portion of the insurance proceeds in order to pay the expenses of Justin's confinement. See 730 ILCS 5/3-7-6 (West 1998).

Justin hired Paul Storment, Jr., to represent him in these confiscation proceedings. Attorney Storment also represented Justin in a subsequently filed negligence action against attorney Blake filed on January 9, 2002. Justin claimed that Blake owed him a fiduciary duty and committed negligence by mailing the life insurance proceeds to him at the prison in direct contradiction of orders given to Blake by Tamara Nichols and by Justin himself. Blake denies being instructed not to send the check to Justin at the Graham Correctional Center. The complaint also alleged that Blake diverted some funds to Tamara Nichols and failed to require that Nichols post a bond as the administrator of his father's estate. He further alleged that Blake was negligent in selling the real estate at less than fair market value, negligent in failing to administer the estate efficiently and in good faith, and negligent in charging excessive fees for the administration of such a small estate without getting approval for doing so.

Procedurally, there were several amended complaints filed in this case. An amended complaint was filed on April 19, 2002, adding Edward J. Blake, Jr.—in his individual capacity as an additional defendant (both Blake defendants are referred to as "Blake" throughout this

order without distinguishing between the individual and corporate capacities). He added an allegation that Blake received an annuity check payable to Justin as the sole beneficiary in the amount of \$6,731.83 and that Blake ordered Tamara Nichols to forge Justin's signature and turn the proceeds over to Blake for his attorney fees. Justin further alleged a conversion of those annuity funds and common law consumer fraud. The common law consumer fraud counts were dismissed pursuant to Blake's motion in August 2002.

Justin's second amended complaint, filed on November 25, 2002, added Dennis Watkins as a plaintiff. Dennis Watkins was the successor administrator of the estate of Rodney Studer.

Justin's attorney, Paul Storment, Jr., was suspended from the practice of law effective April 10, 2003, for a period of two years. Jennifer L. Teague, Storment's partner, continued representing Justin in this case. On December 12, 2003, Jennifer L. Teague was allowed to withdraw from representation of Justin. Justin was unrepresented by counsel until April 12, 2004, when his present attorney, George Ripplinger, entered his appearance.

Blake filed a motion to dismiss Justin's second amended complaint, which was granted on June 1, 2004. Justin was granted leave to file another amended complaint. Justin filed his third amended complaint later in June, adding Paul Storment, Jr., as an additional defendant. In this complaint, Justin contended that attorney Storment was liable for a breach of contract in that he charged an unreasonable attorney fee to represent Justin in the seizure action.

Justin filed two more amended complaints following dismissals with leave to amend against Storment. On January 26, 2005, the court dismissed with prejudice Justin's claims against Storment based on a statute of limitations affirmative defense. On April 7, 2009, the circuit court denied Justin's request to file a sixth amended complaint to add allegations against both Blake and Storment, and the court granted a summary judgment for Blake.

Justin appeals to this court from the January 26, 2005, order dismissing his claim against Storum and from the April 7, 2009, order granting Blake's motion for a summary judgment and denying Justin's attempt to file another amended complaint.

#### ISSUES, ARGUMENT, AND ANALYSIS

On appeal we are asked to review three issues. First we must address the statute of limitations issue to determine if Justin's claim against Storum was barred or was saved by the discovery rule. Justin further asks us to overturn the circuit court's decision denying his request to file a sixth amended complaint. Finally, Justin argues that the trial court erred in granting Blake's motion for a summary judgment.

#### Motion to Dismiss—Statute of Limitations

A motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2002)) admits the legal sufficiency of the complaint but asserts affirmative matter to avoid or defeat the claim. *Rajcan v. Donald Garvey & Associates, Ltd.*, 347 Ill. App. 3d 403, 407, 807 N.E.2d 725, 728 (2004). On appeal from a circuit court's involuntary dismissal of a complaint pursuant to section 2-619 of the Code of Civil Procedure, we must determine " 'whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 109-10, 708 N.E.2d 1140, 1144 (1999) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). In other words, our review is *de novo*. *Estate of Mayfield v. Estate of Mayfield*, 288 Ill. App. 3d 534, 542, 680 N.E.2d 784, 789 (1997).

We first look at the limitations statute for legal malpractice claims, which provides as follows:

"(b) An action for damages based on tort, contract, or otherwise (i) 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.

(c) An action described in subsection (b) may not be commenced in any event more than 6 years after the date on which the act or omission occurred." 735 ILCS 5/13-214.3(b), (c) (West 2002).

In this case, there appears to be no dispute regarding when Justin retained Storment and his office to represent him in the forfeiture case. Justin retained Storment by way of a written letter dated February 12, 2000. He was represented by Storment until Storment was suspended from the practice of law on April 10, 2003. He was then represented by Jennifer L. Teague, Storment's partner, until December 12, 2003, when Teague was allowed to withdraw from this case.

The issue, as framed by Justin, involves being overcharged by Storment for work on his forfeiture case. The fee was \$15,000. The amount of the insurance policy proceeds that were seized by the State was some portion of the \$160,000 life insurance proceeds check. On November 21, 2001, the State settled with Justin. The order from the Montgomery County circuit court indicates that the sum attached by the court on February 1, 2000, was \$77,776.93. By the agreement of the parties, \$69,776.93 was to be disbursed to the Illinois Department of Corrections. The remaining \$8,000 was to be returned to Justin in care of his attorneys. Justin argues that despite the fact that he paid the \$15,000 retainer in late February 2000, he could not then have known that he had a cause of action for being overcharged. Two years later, Justin was still represented by Storment. In fact, Justin was represented by the Storment law office until December 12, 2003.

Justin's first complaint against Storment was filed on June 16, 2004, more than two years from the February 2000 date on which Justin retained Storment's services. Count III of that complaint alleged a cause of action against Storment for a breach of contract. The

date of the contract is alleged to be February 12, 2000, with the payment of the \$15,000 retainer. The breach alleged was in failing to charge a reasonable attorney fee. Storment filed a motion to dismiss this complaint based in part upon section 2-619(a)(2) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(2) (West 2002)). Storment contended that the claim was barred by affirmative matter—the statute of limitations. The circuit court determined that there was no genuine material issue of fact, because the time lapse between February 12, 2000, and June 16, 2004, was more than four years, and the court concluded that Justin's claim was time-barred.

The amended complaint at issue was filed on December 8, 2004. The amendment to the complaint relative to count III adds the allegation that Justin "did not discover that the fee charged by Storment and Teague was excessive until he consulted with his present counsel, George Ripplinger[,] for the first time on April 6, 2004," and that, therefore, the two-year limitations period did not begin to run until that date. Justin argued that because his complaint was on file by June 16, 2004, he was well within the two years following his discovery of the cause of action. With this amended allegation, Justin relied on the portion of the statute that allows a claim within two years from when a person "reasonably should have known of the injury." 735 ILCS 5/13-214.3(b) (West 2002).

Storment argued that there was no excuse for Justin's failure to discover that his attorney allegedly overcharged him. He argued that the information in the form of a legal bill, a time sheet, an hourly charge, or a listing of the number of matters on which Storment represented Justin was always available. At any time, after engaging Storment's services, he could have requested this information. Storment argued that by choosing not to look into the matter, Justin could not claim that he was unaware that the amounts charged were unreasonable. In his legal malpractice complaint against attorney Blake filed by Storment on Justin's behalf, Justin alleged a breach of duty involving excessive legal fees. Storment

contended that in light of this allegation and others made against attorney Blake, Justin was far from naive.

The court's dismissal of Justin's amended complaint against Storment was based in part upon the case of *McIntosh v. Cueto*, 323 Ill. App. 3d 384, 752 N.E. 2d 640 (2001). We turn to that case now. *McIntosh v. Cueto* is a legal malpractice claim stemming from a medical malpractice claim that was not timely filed. *McIntosh*, 323 Ill. App. 3d 384, 752 N.E.2d 640. The plaintiffs alleged that the Cueto firm misrepresented facts to them, claiming that the complaint had been filed, and that until they filed an action in discovery in 1998, they had no knowledge that the complaint had not been filed. *McIntosh*, 323 Ill. App. 3d at 388, 752 N.E.2d at 643. By the time that they had filed their legal malpractice claim, more than six years had passed, and so their claim was potentially barred by the statute of limitations as well as the statute of repose. *McIntosh*, 323 Ill. App. 3d at 387, 752 N.E.2d at 642-43. The circuit court granted a summary judgment to Cueto, explaining that both the statute of limitations and the statute of repose controlled. *McIntosh*, 323 Ill. App. 3d at 388, 752 N.E.2d at 643. On review, this court analyzed the allegation of the legal malpractice complaint in order to determine if the complaint could be saved by equitable estoppel based on fraud. *McIntosh*, 323 Ill. App. 3d at 390, 752 N.E.2d at 645. We concluded that the alleged facts were insufficient "because there are no facts to show why it was reasonable for Michelle to place trust and confidence in unanswered calls and letters or why she waited 11 years after hiring Cueto to discover that he did not file a lawsuit on her behalf." *McIntosh*, 323 Ill. App. 3d at 390, 752 N.E.2d at 645. Plaintiff continued to argue the discovery rule, stating that she did not learn the true facts of this case until 1998 when she filed her action in discovery. *McIntosh*, 323 Ill. App. 3d at 391, 752 N.E.2d at 645. The court stated as follows:

"Plaintiffs do not address the question of why they chose to file an action in discovery

instead of simply checking the circuit court records to learn whether any case had been filed naming Michelle and Elaine as plaintiffs. We cannot hold defendants equitably estopped from asserting a statute-of-limitations defense where plaintiffs had the ability to learn through a simple and free process long before the limitations period ended that no case had been filed on their behalf." *Id.*

As we explained, a party is not allowed to close his eyes to obvious facts or fail to look for information that is easily accessible. *Id.*

*Cueto v. McIntosh* is factually distinguishable. Justin did not claim that equitable estoppel barred Storment from raising the statute of limitations. The period of time from the date Justin contracted with Storment until the date he filed suit against Storment is four years and four months—well within the six-year statute of repose. Consequently, Justin did not need to assert equitable estoppel to negate a statute of repose defense under section 13-214.3(c) of the Code of Civil Procedure (735 ILCS 5/13-214.3(c) (West 2002)). Instead, Justin argues that under section 13-214.3(b), he brought the action within two years from when he reasonably should have known of the injury he alleges.

The ability of the plaintiff in *Cueto v. McIntosh* to ascertain easily obtainable facts is significantly different from Justin's situation. In this case, there was nothing in the public domain for Justin to access in order to "check up" on the work that his attorney was or was not doing. Furthermore, as a nonattorney, whether or not Storment's fees were inordinately high for the legal work Storment was performing was not within Justin's base of knowledge even if he was in possession of billing statements or time sheets. Under the circumstances, it might have been reasonable for Justin to not suspect that he was being overcharged until he was no longer being represented by Storment or his former law partner, Teague.

The legal malpractice statute of limitations is not a simple two-year period; it allows for a claim to be filed two years from the date a person *reasonably* should have discovered

the claim. Bearing in mind the specific facts of this case, we believe that there are issues of fact regarding when Justin should have reasonably discovered his claim.

Accordingly, we reverse the trial court's decision dismissing Justin's complaint against Storment.

#### Sixth Amended Complaint

Justin next argues that the circuit court erred in refusing his request to allow the filing of a sixth amended complaint. Because we conclude that the circuit court erred in dismissing Justin's complaint against Storment, we also conclude that the circuit court abused its discretion in denying Justin's request to amend his complaint.

#### Summary Judgment for Blake

Finally, Justin claims that the circuit court's order granting a summary judgment in his legal malpractice claim against attorney Blake was improper.

In determining the appropriateness of a summary judgment, the circuit court strictly construes all the evidence in the record against the movant and liberally in favor of the opponent. *Purtill v. Hess*, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). The court must consider all the pleadings, depositions, admissions, and affidavits on file to decide if there is any issue of material fact. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992). On appeal, courts review summary judgment orders *de novo*. *Myers*, 225 Ill. App. 3d at 72, 587 N.E.2d at 497.

The only count of the complaint that remained pending against Blake was the count alleging a negligent handling of the life insurance proceeds. This was not a legal malpractice claim because Justin did not have an attorney-client relationship with Blake. The allegations are based upon Blake assuming a duty when he assisted Justin in obtaining the check for the life insurance proceeds.

With any negligence case, the plaintiff must establish a duty owed to him, a breach

of that duty, proximate causation, and damages stemming from the breach. *Congregation of the Passion Holy Cross Province v. Touche Ross & Co.*, 159 Ill. 2d 137, 191, 636 N.E.2d 503, 527 (1994). The administrator of the estate, Tamara Nichols, clearly directed attorney Blake to apply for and obtain the insurance proceeds. The record establishes by way of documentary evidence that Justin was aware that an application was being filed for the life insurance proceeds. On December 13, 1999, Justin signed an original affidavit of claimant for indemnity.

The circuit court did not determine whether or not Blake owed Justin a duty. Regardless of the issue of a duty, we note that once the life insurance check was in Blake's control, he was ethically bound to transfer the check to Justin. The rules of professional conduct mandate that if an attorney receives funds or property in which a third party has an interest, the lawyer is required to "promptly deliver to the \*\*\* third person any funds or other property that the \*\*\* third person is entitled to receive." Ill. S. Ct. Rs. of Prof. Conduct, R. 1.15(d) (eff. Jan. 1, 2010).

The circuit court's decision that a summary judgment was appropriate was based on the fact that Justin sustained no damages. We review that decision. The circuit court found that Justin was dependent upon the State and thus was required to reimburse the State for expenses associated with his incarceration. Section 3-7-6(a) of the Unified Code of Corrections states, "Committed persons shall be responsible to reimburse the Department for the expenses incurred by their incarceration at a rate to be determined by the Department in accordance with this Section." 730 ILCS 5/3-7-6(a) (West 2002). The statute defines an inmate's assets to include "any property, tangible or intangible, real or personal, belonging to or due to a committed or formerly committed person including income or payments to the person from social security, worker's compensation, veteran's compensation, pension benefits, or from any other source whatsoever and any and all assets and property of

whatever character held in the name of the person, held for the benefit of the person, or payable or otherwise deliverable to the person." 730 ILCS 5/3-7-6(e)(3) (West 2002). Justin argues that section 12-1001 of the Code of Civil Procedure provided an exemption to the reimbursement requirement of the Unified Code of Corrections. 735 ILCS 5/12-1001 (West 1998). Section 12-1001(f) provides that certain personal property owned by the debtor is exempt from attachment, specifically, insurance benefits payable upon the death of an insured to a child who is dependent upon the insured. 735 ILCS 5/12-1001(f) (West 1998). Subsection (h)(3) also provides an exemption related to life insurance for "a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor." 735 ILCS 5/12-1001(h)(3) (West 1998).

Initially, we note that this was a defense that could have been or perhaps was raised in defense of his attachment case. The records of that case are not included in the record on appeal. Justin was represented by attorney Storment in that case, and that case ended in a consent agreement. Justin consented to the State's seizure of a portion of the life insurance proceeds at issue—\$69,776.93. The responsibility for preparing a full and complete appellate record falls on Justin's shoulders, as the appellant. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). In the absence of a complete record on appeal, "the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Midstate Siding & Window Co.*, 204 Ill. 2d at 319, 789 N.E.2d at 1252. Therefore, we presume that either the court in the seizure case determined that the defense had no merit or the issue was never raised as a defense.

However, even if we reach the merits of Justin's claim that the life insurance proceeds were exempt from attachment by the State, we would not find that the circuit court's order

was erroneous. That is because the statutory exemptions claimed by Justin require proof of Justin's dependency upon his father.

Case law supports the circuit court's conclusion that an inmate is considered a dependent of the State of Illinois during his incarceration. We considered this issue in *People ex rel. Director of Corrections v. Ruckman*, 363 Ill. App. 3d 708, 843 N.E.2d 882 (2005). Ruckman was an inmate. *Ruckman*, 363 Ill. App. 3d at 709, 843 N.E.2d at 883. During his incarceration, Ruckman's mother died. *Id.* After she died, Ruckman used assets he received upon her death to purchase an annuity. *Id.* Upon learning of this asset, the State of Illinois filed a complaint against Ruckman and sought the reimbursement of the expenses incurred as a result of his incarceration. *Ruckman*, 363 Ill. App. 3d at 709-10, 843 N.E.2d at 883. Ruckman asked the court to quash this request on the basis that because the asset had been purchased with life insurance proceeds, the annuity asset was exempt. *Ruckman*, 363 Ill. App. 3d at 710, 843 N.E.2d at 883.

We explained that the reimbursement mandated by the Unified Code of Corrections is, in fact, subject to the attachment exemptions contained within the Code of Civil Procedure. *Ruckman*, 363 Ill. App. 3d at 710, 843 N.E.2d at 883-84. Because Ruckman converted the life insurance proceeds to an annuity, this court reasoned that the life insurance exemption under section 12-1001(f) did not apply. However, the court determined that the exemption under section 12-1001(h)(3) could apply, except that Ruckman was not dependent upon his mother at the time of her death, as he was incarcerated and thus was a dependent of the State of Illinois. We stated as follows:

"It is undisputed, however, that Ruckman was incarcerated at the time of his mother's death. Thus, Ruckman was a dependent of the State, which provided for all of Ruckman's basic necessities. Although Ruckman's mother may have provided her son with money to purchase extraneous items at the commissary, these items were not

essential since the State provided for all of his basic needs. Therefore, Ruckman was not his mother's dependent at the time of her death." *Ruckman*, 363 Ill. App. 3d at 711, 843 N.E.2d at 884.

As in *Ruckman*, when Justin's father died, Justin was incarcerated. Therefore, all of his needs were taken care of by the State of Illinois. While incarcerated, he was not a dependent of his father. Consequently, the life insurance proceeds were not exempt from attachment by the Department of Corrections.

Because these life insurance benefits were not exempt, they were subject to attachment by the State. Therefore, we agree with the circuit court's assessment that whether or not there was a duty owed to Justin by attorney Blake, Justin failed to establish damages. Because Justin is unable to establish damages—an element of the alleged tort—there was no genuine issue of material fact, and the summary judgment was correct.

#### CONCLUSION

For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed in part and reversed in part, and the cause is remanded.

Affirmed in part and reversed in part; cause remanded.