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SIXTH DIVISION
February 17, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRUCE JONES,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
v.)	
)	No. 08 L 000382
DONNA BROWN,)	
)	The Honorable
Defendant-Appellee.)	Lee Preston,
)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

ORDER

¶ 1 *HELD:* Plaintiff's second amended complaint related back to his original timely-filed complaint and, therefore, was not barred by the statute of limitations where the original complaint placed defendant on notice of the facts upon which the amended causes of action were based. Plaintiff's complaint, however, was barred by the doctrine of *res judicata*.

¶ 2 Plaintiff, Bruce Jones, appeals the dismissal of his second amended complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2002)) in favor of

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defendant, Donna Brown. Plaintiff contends his second amended complaint was not barred by the statute of limitations because it relates back to his timely-filed original complaint. Based on the following, we affirm.

¶ 3

FACTS

¶ 4 On October 25, 1999, defendant was appointed as the plenary guardian of plaintiff's mother, Viola Jones. Defendant is plaintiff's great niece and was the great granddaughter of Viola. On November 22, 1999, plaintiff filed a motion to reconsider defendant's guardianship appointment. Up until July 27, 1999, plaintiff lived with Viola in a six-unit building owned by Viola on South Essex in Chicago, Illinois. On July 27, 1999, Viola was admitted to the hospital and, thereafter, was placed in a nursing home. Between July 27, 1999 and June 26, 2001, several orders of protection were entered limiting plaintiff's ability to visit Viola. Plaintiff was allowed supervised visitation with Viola through March 26, 2003, when Viola died. On January 18, 2002, the probate court granted defendant's petition to sell Viola's six-unit apartment building. On June 4, 2002, plaintiff was ordered to execute a lease to remain in the apartment building or to vacate it. Plaintiff refused and was evicted from the property on July 19, 2002. The building was sold. Plaintiff then refused to accept his one-sixth share of the proceeds from the sale, which had been reduced for "back rent" on February 5, 2003. Plaintiff's proceeds were deposited with the Cook County Treasurer. On April 10, 2003, defendant was discharged as guardian and Viola's estate was closed.

¶ 5 Plaintiff filed a *pro se* complaint against defendant on January 14, 2008, alleging "invasion of privacy-negligence" and "personal injury and property damage." The complaint was

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dismissed for want of prosecution. On December 22, 2008, the dismissal was vacated and plaintiff's attorney filed an appearance. Plaintiff eventually filed an amended complaint on August 10, 2009. Defendant responded by filing a combined motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2002)). Plaintiff's complaint was dismissed without prejudice.

¶ 6 On January 20, 2010, plaintiff filed his second amended complaint,¹ which is the subject of this appeal, alleging fraud, breach of the statutory duty pursuant to section 11a-17(e) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/11a-17(e) (West 2002)), breach of the statutory duty pursuant to section 11a-17(a) of the Probate Act (755 ILCS 5/11a-17(a) (West 2002)), breach of common law fiduciary duty, and breach of the duty of loyalty. Defendant filed a section 2-619 motion to dismiss, arguing that plaintiff's complaint was barred by the statute of limitations and the doctrine of *res judicata*. Plaintiff responded to the motion to dismiss and defendant replied, arguing for the first time that plaintiff's second amended complaint did not relate back to his original complaint. Plaintiff requested leave to file a surreply. The request was denied. In a written order, the trial court granted defendant's motion to dismiss, finding plaintiff's second amended complaint did not relate back to his *pro se* complaint and, therefore, the causes of action in the second amended complaint were not timely filed within the applicable five-year statute of limitations.

¹Plaintiff mistakenly titled the complaint his first amended complaint.

¶ 7

DECISION

¶ 8

I. Statute Of Limitations

¶ 9 Plaintiff contends the trial court erred in dismissing his second amended complaint where his original *pro se* complaint contained the substance of his claims; therefore, the second amended complaint related back to his timely-filed original complaint.

¶ 10 A section 2-619 motion to dismiss admits the legal sufficiency of a complaint, but asserts that an affirmative defense or other matter avoids or defeats the plaintiff's claim. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59, 857 N.E.2d 229 (2006). When ruling on a section 2-619 motion to dismiss, the reviewing court must interpret all pleadings and supporting documents in a light most favorable to the plaintiff. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352, 882 N.E.2d 583 (2008). We review the dismissal of a complaint pursuant to section 2-619 *de novo*. *Id.*

¶ 11 Section 2-616(b) of the Code (735 ILCS 5/2-616(b)) governs the relation-back doctrine and provides:

"The cause of action, cross claim or defense set up in any amended pleading shall not be barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that the cause of action asserted, or the defense or cross claim interposed in the amended pleading, grew out of the same transaction or occurrence set up in the

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original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery or defense asserted, if the condition precedent has in fact been performed, and for the purpose of preserving the cause of action, cross claim or defense set up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended." 735 ILCS 5/2-616(b) (West 2002).

¶ 12 As our supreme court has instructed, the relation-back doctrine prevents the dismissal of a cause of action due to a "technical default unrelated to the merits." *Porter*, 227 Ill. 2d at 355. "Courts should therefore construe the requirements of section 2-616(b) to allow resolution of litigation on the merits and to avoid elevating questions of form over substance." *Id.* The relation-back doctrine is "appropriate where a party seeks to add a new legal theory to a set of previously alleged facts," but not where the amendment "states an entirely new and distinct claim for relief based on completely different facts." *Id.* at 358-59. In between those extremes lies the "sufficiently-close relationship test" adopted in *Porter*, which provides that "a new claim will be considered to have arisen out of the same transaction or occurrence and will relate back if the new allegations as compared with the timely-filed allegations show that the events alleged were close in time and subject matter and led to the same injury." *Id.* at 360. Section 2-616(b) "was largely designed to notify a party that claims will be asserted that grow out of the general fact situation set forth in the original pleading." *Id.* at 362.

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¶ 13 The basis of plaintiff's second amended complaint is that defendant defrauded him of the ability to enjoy unrestricted visitation with his mother in the years prior to her death and for selling Viola's property without his consent and then subsequently charging him back rent by reducing his proceeds from Viola's estate. The allegations are based on actions occurring between July 1999 and March 26, 2003. In contrast, the causes of action in plaintiff's original complaint involved his sister, Ernestine Jones. Specifically, plaintiff alleged that defendant failed to inform him of Ernestine's death and falsified documents submitted to the cemetery where Ernestine was to be buried. The actions related to Ernestine's estate took place in October 2007.

¶ 14 However, in the "background" section of his original complaint, plaintiff included the relevant facts alleged in support of the causes of action in the second amended complaint, namely, that defendant "presented fraud upon the court" in obtaining an order of protection to keep plaintiff from Viola, that defendant deprived plaintiff of his property interest, and that defendant breached her fiduciary duty by mismanaging Viola's estate. We, therefore, find defendant was sufficiently placed on notice of the new grounds of liability. *Strickland v. Communications & Cable of Chicago, Inc.*, 304 Ill. App. 3d 679, 686, 710 N.E.2d 55 (1999). "In order for a cause of action to relate back under section 2-616(b), the original pleading need not have technically stated a cause of action, nor need the cause of action set out in the amended pleading be substantially the same as that stated in the original pleading. [Citations]. Rather, an amended pleading grows out of the original pleading if the latter provided defendant with all of the necessary information to prepare his defense to the subsequently asserted claim. [Citation.]

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***. [I]f the original complaint directed defendant's attention to the facts on which the amended claim is predicated, the court will not find prejudice and the amendment relates back.

[Citation.]" *Williams v. Board of Education of City of Chicago*, 222 Ill. App. 3d 559, 563, 584 N.E.2d 257 (1991). In light of the fact that section 2-616(b) is to be liberally construed in favor of hearing a plaintiff's claim (*id.* at 565) and the fact that plaintiff filed his original complaint *pro se*, we conclude that plaintiff's second amended complaint should not have been dismissed based on the statute of limitations.

¶ 15

II. *Res Judicata*

¶ 16 In her motion to dismiss, defendant also argued that plaintiff's claims were barred by the doctrine of *res judicata*. We recognize that the trial court did not reach the issue of *res judicata* because the second amended complaint was dismissed on statute of limitations grounds; however, we may affirm the trial court's judgment on any basis appearing in the record.

Williams, 222 Ill. App. 3d at 562. Whether the second amended complaint was barred by the doctrine of *res judicata* is a legal question that can be decided based on the pleadings and the record before us.

¶ 17 The doctrine of *res judicata* bars the relitigation of a cause of action between the same parties or privies after there has been a final judgment on the merits rendered by a court of competent jurisdiction. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210 (2008) (citing *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199 (1996)). Therefore, in order for *res judicata* to apply, three requirements must be met: (1) a final judgment on the merits must have been reached by a court of competent jurisdiction; (2) there must be an identity

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of a cause of action; and (3) there must be an identity of the parties or their privies. *Id.* The doctrine bars the relitigation of matters actually decided, as well as matters that could have been decided. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883 (1998). Res judicata equally applies to probate matters. *Hooks v. Bonner*, 187 Ill. App. 3d 944, 947, 543 N.E.2d 953 (1989). The application of res judicata is a question of law, which we review de novo. *In re Estate of Barth*, 339 Ill. App. 3d 651, 667, 792 N.E.2d 315 (2003).

¶ 18 The question before us is whether the claims in plaintiff's second amended complaint are barred by the litigation of Viola's estate in probate court? Based on the foregoing, we conclude that res judicata applies.

¶ 19 As to the first requirement, Viola's estate was litigated in probate court and the estate was closed on April 10, 2003. There was a final judgment rendered by a court of competent jurisdiction. See *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1069, 890 N.E.2d 964 (2008) (an order is considered final when it disposes with the rights of the parties either to the entire controversy or some distinct portion thereof). As to the second requirement, the transactional test provides that "separate claims will be considered the same cause of action for purposes of res judicata if they arise from a single group of operative facts, regardless of whether they assert different theories of relief." *River Park, Inc.*, 184 Ill. 2d at 311. Here, the probate court considered and decided the identical issues raised in plaintiff's second amended complaint, namely, the appointment of defendant as Viola's guardian, the imposition of orders of protection limiting plaintiff's ability to visit Viola, the sale of Viola's building, and the charging plaintiff of back rent and reduction of his proceeds from the sale of the property. The fact that plaintiff

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raised fraud for the first time after the estate was closed does not prohibit the application of res judicata. Plaintiff could have raised his claim before the probate court where it was based on the same group of operative facts raised in the probate court. As to the third requirement, although not named as parties in the probate matter, plaintiff, as guardian of the estate, and defendant, as a beneficiary of the estate, were represented by counsel before the probate court and raised and defended the issues described. We, therefore, find that plaintiff's second amended complaint was barred by the doctrine of res judicata and was properly dismissed.

¶ 20

CONCLUSION

¶ 21 We affirm the dismissal of plaintiff's second amended complaint.

¶ 22 Affirmed.