2016 IL App (1st) 153275-U

SIXTH DIVISION
Order filed: August 5, 2016

No. 1-15-3275

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re ESTATE OF PHILIP L. ZEID, Deceased, (PAULA S. KLEIN ZEID, individually and as beneficiary of the Philip L. Zeid Trust dated October 3, 2006, Plaintiff-Appellant, v. MARY VIDAL HAYS and ARONBERG GOLDGEHN DAVIS & GARMISA, Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County No. 15 P 2164 Honorable Margaret Brennan, Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court is affirmed in part and reversed in part where: (1) the court erred in dismissing the malpractice claim in count III and the advisor-provision and value-of-assets malpractice claims in count IV of the amended complaint as time-barred where the newly asserted claims related back to the timely filed original complaint; (2) the court properly dismissed the retirement-gift, life-insurance, salary, commission, and marital-residence

> malpractice claims in count IV of the amended complaint as time-barred where those claims did not relate back to the original complaint. The cause is remanded to the circuit court with instructions to strike count IV for failing to comply with section 2-603 of the Code and to afford the plaintiff a reasonable opportunity to amend her complaint.

¶ 2 The plaintiff, Paula S. Klein Zeid, appeals from the circuit court's order which granted the defendants', Aronberg, Goldgehn, Davis & Garmisa (Aronberg Firm) and Mary Vidal Hays (Hays), motion to dismiss her legal malpractice claims pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2014)). On appeal, the plaintiff argues that the circuit court erred when it determined that counts III and IV of her amended complaint were time-barred. See 735 ILCS 5/13-214.3 (West 2014). For the reasons that follow, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 The following facts are derived from the various pleadings, which we accept as true in the context of a dismissal pursuant to section 2-619. See *Wackrow v. Niemi*, 231 Ill. 2d 418, 420 (2008).

¶ 4 In October 1991, the plaintiff and her then-fiancé, Philip Zeid (Philip), executed an antenuptial agreement in contemplation of their upcoming marriage. At the time the parties entered into the antenuptial agreement, Philip had one son, Jason Zeid (Jason), from a prior marriage, and the plaintiff had two daughters from a prior marriage. Pursuant to the antenuptial agreement, Philip agreed to create a family trust for the benefit of Jason, and a marital trust for the benefit of the plaintiff during her lifetime. The antenuptial agreement also provided that, after Philip's death, the plaintiff would receive sole ownership of the property held between them in joint tenancy with right of survivorship. In negotiating the antenuptial agreement, the plaintiff and Philip were each represented by different attorneys. Neither of them was represented by Hays and the Aronberg Firm (collectively referred to as the Aronberg defendants).

¶ 5 In February 2004, the plaintiff and Philip signed a joint engagement letter with the Aronberg Firm to handle their respective estate plans. In May 2004, the Aronberg Firm assisted the plaintiff and Philip in drafting an amendment to their antenuptial agreement to clarify that, upon either of their deaths, the surviving spouse would become the sole and exclusive owner of the marital residence. The amendment also provided that, after Philip's death, the plaintiff would receive sole ownership of all property held between them in joint tenancy with right of survivorship.

¶ 6 Philip engaged the services of attorney Hays of the Aronberg Firm to assist him in the drafting and execution of the "Philip L. Zeid Trust dated October 3, 2006" (PLZ Trust). The PLZ Trust's corpus consisted of all of Philip's assets. As called for by the antenuptial agreement, articles III and IV of the PLZ Trust provided that, upon Philip's death, the trustee shall establish and fund two separate trusts: the family trust and the marital trust. The family trust was created for the benefit of Jason and was to be funded with $1 million and all of Philip's interest in Universal Scrap Metals, Inc. and USM Processing, Ltd. The marital trust was created for the benefit of the plaintiff for her lifetime, and was to contain the residue of the PLZ Trust corpus. Upon the plaintiff's death, the balance of the marital trust would be distributed to the family trust.

¶ 7 Relevant here, article VIII of the PLZ Trust, entitled "Designation of Successor Trustees," provided in pertinent part, as follows:

> "If at any time I become disabled and I am unable or unwilling to act as Trustee, then I name [the plaintiff] as successor Trustee. Upon my death, Jason shall act as the Trustee of the *** Family Trust created under Article III. Upon my death, [the plaintiff] shall act as a Co-Trustee, and shall choose a corporate Trustee to act as Co-Trustee, of the *** Marital Trust created under Article IV."

Although Philip designated himself to serve as trustee of the PLZ Trust, he did not name a successor trustee to serve upon his death.

¶ 8 Moreover, in addition to his role as trustee of the family trust, Jason was also appointed "adviser" under the PLZ Trust, entitling him to direct and control certain investments or "Special Securities" held in the family and marital trusts. The "Special Securities" included the following companies: Universal Scrap Metals, Inc., USM Processing Ltd., 2500 Fulton Holding Company, Fulton Street Trading Company, Scrap Holdings@4157 Kinzie, LLC, and Scrap Holdings@351 W. 59th, LLC.

¶ 9 In addition to drafting the PLZ Trust and the amendment to the antenuptial agreement, the Aronberg Firm also assisted Philip in drafting and executing a "Shareholders Agreement of Universal Scrap Metals" (Shareholders Agreement). The Shareholders Agreement, dated August 24, 2010, provided that, upon Philip's death, the company would employ the plaintiff as an executive level employee and pay her an annual salary of $100,000.

¶ 10 On November 30, 2010, Philip and the plaintiff executed a second amendment to their antenuptial agreement. That document, in relevant part, provides that:

> "1. Upon [the plaintiff's] retirement as a full-time consultant to Universal Scrap Metals, Inc. at any time after October 16, 2011, [Philip] will make a gift to [the plaintiff] of $500,000 to be paid *** on or prior to the effective date of [the plaintiff's] retirement.
>
> 2. Within ninety (90) days following the date of this Amendment, [Philip] will cause [the plaintiff] to be designated as the beneficiary of $300,000 of the life insurance proceeds payable upon [Philip]'s death under Transamerica Life Insurance Company Policy ***."

The second amendment to the antenuptial agreement noted that Philip was represented by William J. Garmisa of the Aronberg Firm, and the plaintiff was represented by Mitchell D. Weinstein of Chuhak & Tecson, P.C.

¶ 11 Also on November 30, 2010, Philip amended the PLZ Trust, removing the provision which directed the trustee to allocate all of his interest in Universal Scrap Metals and USM Processing to the family trust. The amendment to the PLZ Trust directed the trustee to set aside $1 million in assets for the family trust and provided that "Jason, if then living, shall have the right to select such assets as he desires to have to fund the [family trust]."

¶ 12 On February 9, 2011, Philip died. His will was admitted to probate on April 11, 2011, making the last day to contest the will October 11, 2011. Also in April 2011, the estate published notice that any claims against the estate had to be filed by October 15, 2011.

¶ 13 At the time of Philip's death, the plaintiff and Philip resided at 1806 North Wood Street in Chicago (Wood Street property). According to the deed, the plaintiff and Philip took title to the Wood Street property as tenants in common, with each having an undivided 50% interest in the property.

¶ 14 Shortly after Philip's death, a dispute arose between the plaintiff and Jason regarding who should be the successor trustee of the PLZ Trust. On June 2, 2011, the plaintiff, claiming to be the trustee of the PLZ Trust, filed a three-count complaint against Jason and the Aronberg defendants, seeking a declaratory judgment and trust construction (counts I and II), naming her successor trustee of the PLZ Trust. Count III alleged legal malpractice against the Aronberg defendants for their negligence in drafting the PLZ Trust; specifically, their failure to name a successor trustee. The plaintiff sought to recover the attorney fees and costs she would incur in attempting to resolve the successor-trustee dispute, and any financial losses that might result

from her being "thwarted in exercising her powers as successor trustee." The prayer for relief in count III stated that the plaintiff sought damages "individually, as a beneficiary of the [PLZ Trust]" in excess of $50,000.

¶ 15 On July 29, 2011, the plaintiff and the Aronberg defendants caused the entry of an agreed order, staying the proceedings on count III, the legal malpractice claim, pending resolution of the underlying declaratory judgment and trust construction claims.

¶ 16 Meanwhile, various disputes arose between the plaintiff and Jason regarding Philip's estate. According to an affidavit prepared by Mark Broaddus, an attorney for the plaintiff, the plaintiff demanded that she receive the benefits that she was entitled to under the antenuptial agreement as amended; specifically, the right to sole ownership of the Wood Street property, a $500,000 retirement gift, and a $300,000 payment from Philip's life insurance policy. A dispute also arose over the $100,000 annual salary to which the plaintiff was entitled pursuant to the terms of the Shareholders Agreement and commissions that she earned while working for USM Processing. Additionally, the plaintiff took issue with the PLZ Trust's "advisor" provision which gave Jason control over the "Special Securities" as well as the provision giving Jason "the right to select such assets as he desires to have to fund the [family trust]."

¶ 17 In November 2014, the plaintiff filed a motion for leave to file an amended complaint, which the circuit court granted. In her amended complaint, filed December 29, 2014, the plaintiff changed the caption to reflect that she was suing in her individual capacity and as a beneficiary of the PLZ Trust; she re-pled count III of her original complaint, but not counts I and II; and added count IV which alleged seven additional areas of legal malpractice.

¶ 18 On May 29, 2015, the Aronberg defendants filed a combined motion to dismiss counts III and IV of the plaintiff's amended complaint (see 735 ILCS 5/2-619.1 (West 2014)), contending,

in relevant part, that counts III and IV of the amended complaint should be dismissed pursuant to section 2-619(a)(5) of the Code because the plaintiff did not commence her action within the statute of limitations and statute of repose as set forth in sections 13-214.3(b) and (d) of the Code (735 ILCS 5/13-214.3(b), (d) (West 2010)). The Aronberg defendants asserted that count III of the amended complaint did not relate back to the timely-filed original complaint because the plaintiff changed her capacity from trustee of the PLZ Trust to her individual capacity and as a beneficiary of the PLZ Trust, and therefore constituted a new cause of action by a new party. As to count IV, the Aronberg defendants contended that none of the seven or more legal malpractice claims pled therein were related to the original complaint which was based solely upon Hays' negligent drafting of the PLZ Trust.

¶ 19 In response, the plaintiff argued that count III of her amended complaint related back to her original complaint because both pleadings grew out of the same transaction; namely, the Aronberg defendants' negligent drafting of the PLZ Trust. She also maintained that the substance of her original complaint showed that she intended to sue individually and as a beneficiary of the PLZ Trust. As to count IV, the plaintiff argued that the agreed stay order of July 28, 2011, which was entered two-and-a-half months before the expiration of the special repose period in section 13-214.3(d), tolled the period for filing malpractice claims. According to the plaintiff, because her amended complaint was filed within two-and-a-half months of the stay being lifted, her newly asserted malpractice claims were timely filed.

¶ 20 On September 18, 2015, following a hearing, the circuit court entered a written order granting the Aronberg defendants' motion to dismiss counts III and IV of the amended complaint as time-barred. See 735 ILCS 5/2-619(a)(5) (West 2014). Thereafter, the plaintiff filed a motion to reconsider, which the circuit court denied on October 26, 2015. This timely appeal followed.

¶ 21 For her first assignment of error, the plaintiff argues that the circuit court erred in granting the Aronberg defendants' motion to dismiss count III of her amended complaint as time-barred because it relates back to the timely filing of her original complaint. We agree.

¶ 22 A section 2-619 motion admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim. *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 11. In reviewing a motion to dismiss under section 2-619, the court is obligated to construe the complaint and the evidentiary material submitted in support or in opposition, in a light most favorable to the plaintiff, and to accept as true all well-pleaded facts in the complaint. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). We review a circuit court's dismissal under section 2-619(a)(5) of the Code *de novo*. *Id*.

¶ 23 Section 13-214.3 of the Code specifies the limitations and repose periods for bringing attorney malpractice claims. 735 ILCS 5/13-214.3 (West 2010). Section 13-214.3 provides, in pertinent part, 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 or (ii) against a non-attorney employee arising out of an act or omission in the course of his or her employment by an attorney to assist the attorney in performing 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) Except as provided in subsection (d), 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.

> (d) When the injury caused by the act or omission does not occur until the death of the person for whom the professional services were rendered, the action may be commenced within 2 years after the date of the person's death unless letters of office are issued or the person's will is admitted to probate within that 2 year period, in which case the action must be commenced within the time for filing claims against the estate or a petition contesting the validity of the will of the deceased person, whichever is later, as provided in the Probate Act of 1975." 735 ILCS 5/13-214.3(b)-(d) (West 2010).

¶ 24 In this case, the parties agree that the special repose period in subsection (d) applies to count III of the amended complaint because any injury caused by the Aronberg defendants' alleged negligent preparation of the PLZ Trust did not occur until Philip's death, the person for whom the professional services were rendered. See *Wackrow v. Niemi*, 231 Ill. 2d 418, 423-24 (2008). The parties also agree that, because Philip's will was admitted to probate and letters of office were issued, the plaintiff was required to file her complaint within the time for filing claims against the estate; namely, October 15, 2011. The plaintiff concedes that her amended complaint was not filed until December 29, 2014, but argues that count III of her amended complaint relates back to June 2, 2011, the date that she filed her original complaint; a date within the special repose period set forth in section 13-214.3(d).

¶ 25 Section 2-616(b) of the Code provides as follows:

> "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 original pleading, *** 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." (Emphasis added.) 735 ILCS 5/2-616(b) (West 2014).

Pursuant to this statute, a party may assert a cause of action in an amended pleading after the expiration of a statute of repose if: (1) the original pleading was timely filed; and (2) the new cause of action "grew out of the same transaction or occurrence set up in the original pleading." 735 ILCS 5/2-616(b) (West 2014); *Lawler v. University of Chicago Medical Center*, 2016 IL App (1st) 143189, ¶ 56 (applying section 2-616(b) to a statute of repose). The rationale behind the relation-back doctrine is that, if the amended pleading implicates the same transaction or occurrence as the timely-filed pleading, the defendants are not prejudiced by the amended pleading because their attention had been directed to the facts that form the basis of the claim asserted against them in a timely fashion. *Porter*, 227 Ill. 2d at 355. Therefore, relation back is appropriate where a party seeks to add a new legal theory to a set of facts that were previously alleged, but inappropriate where that party raises an entirely new and distinct claim for relief based on a completely different set of facts. *Id.* at 358-59. A new claim relates back to the filing of the original complaint when it has a "sufficiently close relationship" to the original claim in both the "temporal proximity and in the general character of the sets of factual allegations and where the facts are all part of the events leading up to the originally alleged injury." *Id.* at 359.

However, an amendment does not relate back to a timely-filed pleading where the two sets of facts are different in character or where the two sets of facts lead to different injuries. *Id*.

¶ 26 In this case, it is clear that count III of the plaintiff's amended complaint grew out of the same transaction or occurrence as alleged in the original complaint. Count III of the plaintiff's amended complaint contains substantially the same allegations as the original complaint; namely, that the Aronberg defendants were negligent in drafting the PLZ Trust by failing to name a successor trustee. Hence, the Aronberg defendants were not prejudiced because the plaintiff's original complaint informed them of the facts which formed the basis of the claim asserted in count III of the amended pleading.

¶ 27 Nevertheless, the Aronberg defendants argue that count III of the amended complaint does not relate back to the filing of the plaintiff's original complaint because she filed the amended complaint as an individual and as a beneficiary of the PLZ Trust, and not in her capacity as trustee of the PLZ Trust as she had in her original complaint. In support of their contention that count III of the amended complaint is essentially a new claim brought by a new party, the Aronberg defendants cite *Pirrello v. Maryville Academy, Inc.*, 2014 IL App (1st) 133964. We find *Pirrello* to be distinguishable from the case at bar. In *Pirrello*, the plaintiff's original claim arose from personal injuries she sustained while residing at the defendant's behavioral and mental health facility. After the limitations period had passed, she sought to amend her complaint to add her father as a plaintiff and add a claim under the Family Expense Act to recover the medical expenses he incurred. The court in *Pirrello* held that the father's claim for medical expenses, which arose out of his obligation to pay the plaintiff's medical bills, was "separate and distinct" from the plaintiff's claim for personal injuries. As a consequence, the *Pirrello* court held that the father's claim was time-barred as it did not relate back to the filing of

the plaintiff's original complaint. See *id.* ¶¶ 12, 19. In this case, there is no dispute on the issue of whether the claim pled in count III of the amended complaint arises out of the same transaction or occurrence as pled in the plaintiff's original complaint. Rather, the issue is whether a change in the plaintiff's capacity from trustee of the PLZ Trust to her individual capacity and as a beneficiary precludes relation back under section 2-616(b) of the Code, an issue which the *Pirrello* court did not address.

¶ 28 We believe that any change in the plaintiff's capacity, from trustee to individual and beneficiary, is a technical deficiency which, in light of the legislative purpose behind section 2-616(b), should not defeat the application of the relation-back doctrine. See *In re Estate of Kleine*, 2015 IL App (2d) 150063, ¶ 35 ("whether the amended complaint added a new party or the same party in a new capacity does not affect relation-back analysis"); *Redmond v. Central Community Hospital*, 65 Ill. App. 3d 669, 21 (1978). Accordingly, we conclude that count III of the amended complaint relates back to the date the original complaint was filed, and the circuit court erred in granting the Aronberg defendants' section 2-619(a)(5) motion to dismiss count III.

¶ 29 We next address the plaintiff's contention that the circuit court erred in dismissing count IV of her amended complaint. She asserts that the parties' agreement to stay the proceedings on count III of her original complaint tolled the repose period for any subsequently filed malpractice claims. According to the plaintiff, since the agreed stay order was entered on July 28, 2011, before the expiration of the special repose period on October 15, 2011, she had two-and-a-half months to file additional malpractice claims once the stay was lifted.

¶ 30 In this case, the parties apparently recognized that the plaintiff's malpractice claim in count III of her original complaint was premature as the underlying claims in counts I and II remained unresolved. See *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App.

3d 349, 356 (1998) ("a cause of action for legal malpractice will rarely accrue prior to the entry of an adverse judgment, settlement, or dismissal of the underlying action in which the plaintiff has become entangled due to the purportedly negligent advice of his attorney"). Because the plaintiff's malpractice claim would not ripen until the underlying claims relating to the appointment of a successor trustee of the PLZ Trust were resolved against her, the parties agreed to stay the proceedings on count III.

¶ 31 Contrary to the plaintiff's assertion, however, the stay did not toll the repose period for any and all future malpractice claims that the plaintiff had, or might have, against the Aronberg defendants. The agreed stay order was narrow and applied only to the plaintiff's prematurely filed malpractice claim in count III of her original complaint. The order states that the "Plaintiff's Count III claim for Legal Malpractice against Defendants Hays and Aronberg is hereby stayed pending further Order of the Court." It did not purport to toll the repose period for other, unrelated claims. Although the agreed stay order entered July 28, 2011, preserved the plaintiff's premature malpractice claim in count III of her original complaint, it did not toll the repose period for any additional unrelated malpractice claims.

¶ 32 In the alternative, the plaintiff contends that the claims pled in count IV of her amended complaint relate back to her timely-filed original complaint because both pleadings stated an "identical cause of action" and "arose out of the same engagement letter." The plaintiff asserts that the Aronberg defendants "would not be prejudiced by having [her] amend her legal malpractice action to add more allegations of malpractice."

¶ 33 Initially, we note that our review of this issue has been made extremely difficult due to the plaintiff's failure to comply with section 2-603 of the Code (735 ILCS 5/2-603 (West 2014)). Her amended complaint is the antithesis of the "plain and concise statement" of her causes of

action as mandated by section 2-603(a). The plaintiff's two-count amended complaint is 21 pages in length, which includes 46 paragraphs and 43 subparagraphs, and contains a number of sentences and paragraphs that are excessively long and virtually unintelligible. Moreover, her prolix pleading style resulted in repetitious and ill-defined multiple causes of action being pled in a single count in violation of section 2-603(b). The lack of clarity is further exacerbated by the parties' and the circuit court's varying approaches to analyzing the timeliness of count IV. For example, the plaintiff analyzed count IV as if it stated a single claim of malpractice, while the defendant treated count IV as if it stated eight claims. In fact, count IV contains seven distinct claims of malpractice. Those claims, which we describe in more detail below, are as follows: (1) the advisor-provision claim; (2) the value-of-assets claim; (3) the retirement-gift claim; (4) the life-insurance claim; (5) the salary claim; (6) the commission claim; and (7) the marital-residence claim. Since the plaintiff's failure to comply with section 2-603 can be cured in an amended pleading, we address the timeliness of each claim in turn.

¶ 34 We first consider the advisor-provision and value-of-assets claims. In paragraphs 42(d) and 45(f) of the amended complaint, the plaintiff asserts that, pursuant to the first amendment to the antenuptial agreement, Philip agreed to give the plaintiff control over the assets in the marital trust by naming her co-trustee. The claim alleges, however, that the manner in which the Aronberg defendants drafted the PLZ Trust thwarted Philip's desire to give the plaintiff control over the marital trust's assets. Pursuant to the advisor provision, enumerated in section 7.7 of the PLZ Trust, Jason has the "sole right to vote the Special Securities" and the sole right to "consent to: (i) any reorganization, consolidation, merger, sale of stock or sale of assets relating to the Special Securities; or (ii) any change in the financial structure of any entity whose securities constitute Special Securities." The plaintiff asserts that the advisor provision conflicts with the

antenuptial agreement and deprives her of significant authority as co-trustee of the marital trust. She asserts the Aronberg defendants had a duty to ensure that the promises Philip made in the antenuptial agreement were carried out in the PLZ Trust.

¶ 35 As to the value-of-assets claim, the plaintiff alleged in paragraphs 42(b) and 45(d) of her amended complaint that the Aronberg defendants were aware that Philip agreed, in clause 7 of the antenuptial agreement, to fund the family trust with $1 million and to fund the marital trust with "the remainder of his entire estate." She asserts, however, that the Aronberg defendants negligently drafted section 3.1 of the PLZ Trust which not only directed the trustee to fund the family trust with $1 million, but also stated that Jason "shall have the right to select such assets as he desires to have to fund the [family trust], such assets to be valued as finally ascertained for federal estate tax purposes." According to the plaintiff, the Aronberg defendants' negligent drafting of section 3.1 has allowed Jason to select assets for inclusion in the family trust which were valued at $0 for federal estate tax purposes in addition to the $1 million in assets he has already selected for inclusion in the corpus of the trust.

¶ 36 Both the advisor-provision and value-of-assets claims are based upon the Aronberg defendants' negligent drafting of the PLZ Trust. Because the alleged negligent legal services were rendered to Philip, and because the injury claimed as a result occurred on Philip's death, the special statute of repose in section 13-214.3(d) applies to these claims. See *Wackrow*, 231 Ill. 2d at 425. Pursuant to section 13-214.3(d), the plaintiff was required to file these legal malpractice claims by October 15, 2011, the last day for filing claims against the estate. Although the plaintiff's amended complaint was not filed until December 29, 2014, she argues that her advisor-provision and value-of-assets claims are not time barred as they relate back to the filing of her original complaint on June 2, 2011. We agree.

¶ 37 As noted earlier, a cause of action asserted in an amended pleading will not be time-barred and will "relate back" to the date of the filing of the plaintiff's original pleading if: (1) the original pleading was timely filed, and (2) the cause of action asserted in the amended pleading grew out of the same transaction or occurrence as that asserted in the original pleading. 735 ILCS 5/2-616(b) (West 2014).

¶ 38 In this case, the plaintiff's timely-filed original complaint was based upon the Aronberg defendants' negligent representation of Philip in drafting the PLZ Trust; namely, their failure to name a successor trustee in section 8.1. The advisor-provision and value-of-assets claims in count IV of the amended complaint also allege negligence on the part of the Aronberg defendants in drafting the PLZ Trust; namely, the careless drafting of sections 7.7 and 3.1. These newly added claims clearly arose out of the same transaction and occurrence setup in the original pleading. The advisor-provision and value-of-assets claims are also similar in character and general subject matter as the original complaint since they allege legal malpractice under the theory that the plaintiff was injured in the drafting of the PLZ Trust as an intended third-party beneficiary of the attorney-client relationship between Philip and the Aronberg defendants. And, the newly added claims resulted in the same injury for which damages were sought in the original complaint; namely, financial losses that the plaintiff sustained by reason of being deprived of control and access to the assets held by the PLZ Trust estate.

¶ 39 Based upon the foregoing analysis, we believe the advisor-provision and value-of-asset claims asserted in count IV of the plaintiff's amended complaint have a sufficiently close relationship to the allegations in the original complaint to show that the later allegations grew out of the same transaction or occurrence setup in the original pleading. We conclude, therefore, that the plaintiff's newly added advisor-provision and value-of-assets claims set forth in paragraphs

42(d) and 45(f), and 42(b) and 45(d) of count IV of the amended complaint, respectively, relate back to the plaintiff's timely-filed original complaint, and the circuit court erred when it dismissed those claims as time-barred.

¶ 40 We next address the plaintiff's retirement-gift, life-insurance, salary, and commission claims. In paragraphs 42(a) and 45(a)-(b) of her amended complaint, the plaintiff alleged that the Aronberg defendants breached their duties to her by failing to ensure that Philip complied with the provisions of the second amendment to the antenuptial agreement in which he agreed to give the plaintiff a $500,000 gift upon her retirement from Universal Scrap Metals "at any time after October 16, 2011," and also agreed to name her as the beneficiary of a $300,000 life insurance policy within ninety days following the date of the amendment. Paragraphs 42(a), 43, 45(g), and 45(i) of the amended complaint alleged that, pursuant to the Shareholders Agreement entered into by Philip and his partner, Barry Riback, the plaintiff was to be employed by Universal Scrap Metals at an annual salary of $100,000 "from and after Philip's death." The plaintiff alleges that the Aronberg defendants were negligent in drafting the Shareholders Agreement as the wording created a dispute as to whether her employment status was changed from an independent contractor to an at-will employee. In paragraphs 44(s), 45(c), 45(g), and 45(i)-(l), she asserts that the Aronberg defendants' "careless and inappropriate drafting of the Shareholder Agreement" has allowed Universal Scrap Metals to terminate her commissions. She asserts that the Aronberg defendants failed to protect her "interest in commissions" and breached their duties by failing to advise her "that a written agreement should exist as to commission amounts that [the plaintiff] was receiving on a yearly basis."

¶ 41 The plaintiff acknowledges that her retirement-gift, life-insurance, salary, and commission claims are subject to the special repose period in section 13-214.3(d) (see *Wackrow*,

231 Ill. 2d at 425), and she also concedes that her amended complaint containing these newly added claims was filed after October 15, 2011. Nevertheless, she maintains that these claims relate back to the filing of her original complaint and are not time barred. We disagree.

¶ 42 The plaintiff's original complaint was based upon the Aronberg defendants' negligent drafting of the PLZ Trust, a transaction which took place on October 3, 2006. In contrast, her newly added retirement-gift and life-insurance claims are based upon the Aronberg defendant's failure to ensure that Philip honored the provisions of the second amendment to the antenuptial agreement, and the salary and commission claims are based upon their negligent drafting of the Shareholders Agreement. These allegations have nothing to do with the alleged negligent drafting of the PLZ Trust as set forth in the original complaint. Rather, they are based upon two entirely different estate-planning documents which were drafted and executed five years after the PLZ Trust. See *Porter*, 227 Ill. 2d at 359 ("an amendment is considered distinct from the original pleading and will not relate back where *** the original and amended set of facts are separated by a significant lapse of time"). Because the original complaint did not contain a single allegation of negligence on the part of the Aronberg defendants in drafting the second amendment to the antenuptial agreement or the Shareholders Agreement, the plaintiff's newly added retirement-gift, life-insurance, salary, and commission claims do not relate back to her timely filed original complaint and are, therefore, time barred.

¶ 43 Last, we turn to the plaintiff's marital-residence claim. In paragraphs 42(c), 44(g)-(i), 44(m)-(o), 44(r), 45(e), and 45(h) of her amended complaint, the plaintiff alleged that the Aronberg Firm breached its duty to her by negligently drafting the deed to the Wood Street property. She asserts the Aronberg defendants were aware that the first amendment to the antenuptial agreement provided that "the surviving spouse shall become the sole and exclusive

owner of the primary marital residence," but they failed to draft a deed to effectuate that provision.

¶ 44 Here, the plaintiff's marital-residence claim is subject to both the two-year statute of limitations and six-year statute of repose in sections 13-214.3(b) and (c) of the Code (735 ILCS 5/13-214.3(b), (c) (West 2008)), because her injury occurred at the time the deed was prepared. See *Synder*, 2011 IL 111052, ¶ 14. Section 13-214.3(b) provides that attorney malpractice claims "must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury." 735 ILCS 5/13-214.3(b) (West 2008). Section 13-214.3(c) states that "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(c) (West 2008).

¶ 45 The statute of limitations set forth in section 13-214.3(b) incorporates the "discovery rule" which tolls the limitation period until the plaintiff knows or reasonably should know of her injury. *Snyder*, 2011 IL 111052, ¶ 10. "The purpose of a statute of repose like the one found in section 13-214.3(c) operates to curtail the 'long tail' of liability that may result from the discovery rule." *Id*. A statute of repose begins to run when a specific event occurs, regardless of whether an action has accrued. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311 (2001). Thus, a statute of repose is not tied to the existence of any injury, but rather extinguishes liability after a fixed period of time. *Id.*

¶ 46 In this case, the repose period in section 13-214.3(c) was triggered on August 21, 2009, the date the deed was prepared. See *Snyder*, 2011 IL 111052, ¶ 14 (attorney's failure to draft a deed creating a joint tenancy caused a present injury at the time deed was prepared). Because the plaintiff's marital-residence claim was filed on December 29, 2014, more than two years, but less

than six years, after the drafting of the deed, the issue becomes whether the plaintiff's claim was commenced within two years of the date that she knew or reasonably should have known of her injury and that it was wrongfully caused. Ordinarily, "[t]he question of when a party knew or reasonably should have known both of an injury and its wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them." *Kahn v. Deutsche Bank AG*, 2012 IL 112219, ¶ 21. A plaintiff has the burden of specifically pleading facts showing that the action was brought within the limitation period. *Krause v. Du Pont Pharmaceuticals, Inc.*, 237 Ill. App. 3d 254, 258-59 (1992). "When a plaintiff seeks to avail herself of the discovery-rule exception to an otherwise applicable limitation period, she has the burden of proving the date of discovery. *Id.* at 259.

¶ 47 In this case, the Aronberg defendants argue that the plaintiff knew of should have known of her injury by March 2011. They point to an affidavit from Mark Broaddus, one of the plaintiff's attorneys, stating that the plaintiff forwarded a memorandum to his partner, Mitchell Weinstein, on February 14, 2011, requesting that Weinstein review it in preparation for an upcoming meeting with the Aronberg Firm. The memorandum, dated February 11, 2011, was prepared by attorney Garmisa of the Aronberg Firm and states that the PLZ Trust has a "50% tenants in common fee simple title interest" in the Wood Street property. The Aronberg defendants also cite to a memorandum dated February 28, 2011, from Weinstein to Garmisa (with a copy sent to the plaintiff) in which Weinstein wrote:

> "A concern was previously raised that [the plaintiff], as trustee, could have a conflict of interest if she asserts that the primary marital residence (a trust asset as to a 50% interest) is distributed to [the plaintiff] to comply with the [antenuptial] agreement. We recognize the issue may exist, but we understand

> that [the plaintiff] and Jason have discussed the residence issue, and it is possible that there is not [an] issue. We propose that as part of a settlement agreement, the parties agree that the residence be distributed from the trust to [the plaintiff] (or her living trust) outright, in order to comply with the [antenuptial] agreement."

The record also contains an affidavit from the plaintiff in which she averred that, on March 21, 2011, she directed "[her] attorneys at the Chuhak Firm" to prepare a memorandum setting forth "[her] then-known claims." The memorandum, dated March 21, 2011, states that the Wood Street property "is not negotiable" and that the plaintiff "insists on getting the [Wood Street property] outright." The Aronberg defendants assert that, based upon the correspondence between the plaintiff, her attorneys, and the attorneys at the Aronberg Firm, the plaintiff knew or should have known that the Wood Street property was deeded to her and Philip as tenants in common and not as joint tenants with the right of survivorship.

¶ 48 The plaintiff does not respond to the Aronberg defendants' argument that her marital-residence claim is untimely under section 13-214.3(b), nor does her amended complaint contain any allegations regarding the date on which she became aware of her injury and that it was wrongfully caused. We find it apparent from the undisputed facts that only one conclusion can be drawn; hence, the question is one for the court. *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981). We find that, at the very latest, the two-year statute of limitations on the plaintiff's marital-residence claim began to run in March of 2011. However, the plaintiff again argues that the filing of her amended complaint on December 29, 2014, which contained the marital-residence claim, relates back to the timely filing of her original complaint. Again, we disagree.

¶ 49 Unlike the original complaint which was based upon the negligent drafting of the PLZ Trust, the plaintiff's marital-residence claim arises out of a separate transaction, the drafting of

the deed to the Wood Street property which occurred on August 21, 2009, nearly three years after the PLZ Trust was executed. Not only did the marital-residence claim grow out of a separate set of facts, it resulted in a distinct injury. Accordingly, the filing of the marital-residence claim does not relate back to the filing of the original complaint, and the claim was properly dismissed as time-barred.

¶ 50 For the foregoing reasons, we: (1) reverse that portion of the circuit court's order which dismissed count III of the amended complaint; (2) reverse that portion of the circuit court's order that dismissed the advisor-provision claim as set forth in paragraphs 42(d) and 42(f) of count IV of the amended complaint, and the value-of-assets claim as alleged in paragraphs 42(b) and 45(d) of count IV of the amended complaint; and (3) affirm that portion of the circuit court's order that dismissed the retirement-gift claim as set forth in paragraphs 45(a)-(b) of count IV of the amended complaint, the life-insurance claim as stated in paragraphs 42(a) and 45(a)-(b) of count IV of the amended complaint, the salary claim as alleged in paragraphs 42(a), 43, 45(g) and 45(i) of count IV of the amended complaint, the commission claim as set forth in paragraphs 44(s), 45(c), 45(g) and 45(i)-(l) of count IV of the amended complaint, and the marital-property claim as alleged in paragraphs 42(c), 44(g)-(i), 44(m)-(o), 44(r), 45(e) and 45(h) of count IV of the amended complaint. In addition, we instruct the circuit court on remand to strike count IV of the plaintiff's amended complaint for failing to comply with section 2-603 of the Code (735 ILCS 5/2-603 (West 2014)), and afford the plaintiff a reasonable opportunity to file an amended complaint, setting forth her advisor-provision and value-of-assets claims plainly, concisely, and in separate counts.

¶ 51 Reversed in part; affirmed in part; cause remanded with instructions.