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FIFTH DIVISION
September 22, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THEODORA W. WESTON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 P 006920
)	
ESTATE OF EVELYN D. WHITE,)	The Honorable
)	Susan Coleman,
Defendant-Appellee.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶1 *HELD:* Plaintiff’s statutory custodial claim was barred by the two-year statute of limitations for claims against an estate where plaintiff’s claim failed to relate back to her timely-filed petition to quiet title.

¶2 Plaintiff, Theodora Weston, appears *pro se* to appeal the circuit court’s order dismissing her statutory custodial claim as time-barred. Plaintiff contends the circuit court erred in dismissing her claim where it related back to the timely-filed petition to quiet title. Based on the following, we affirm.

¶3

FACTS

¶4 Plaintiff's sister, Evelyn White, died on October 14, 2012. Juanita White II, also Evelyn's sister, filed and was granted, over plaintiff's objection, a petition for letters of administration. The circuit court then entered an order appointing Juanita as the supervised administrator of Evelyn's estate.

¶5 On October 22, 2013, plaintiff filed a *pro se* claim against defendant, the Estate of Evelyn D. White (the Estate), for "unjust enrichment" in the amount of \$100,000. The "unjust enrichment" claim alleged that Juanita destroyed Evelyn's will and that plaintiff was "relegated to recouping [her] investment via claim—See 2nd Amended Petition to Quiet Title." Plaintiff's *pro se* "Second Amended Petition for Suit to Quiet Title to Real and Personal Property for a Life Estate Interest"¹ provided that the equitable action was supported by the theories of quantum meruit and unjust enrichment. The petition alleged she and Evelyn lived together for more than 20 years and "formed a relationship, which was contactable [*sic*] in nature, even though they did not enter into a formal contract; relative to their joint interests and co-ownership of the real and personal property at 9541 [S. Indiana Avenue in Chicago, Illinois]." Plaintiff referred to her relationship with Evelyn as a "domestic partnership in which they both contributed and acquiesced in a multitude of services." Plaintiff noted that, "but for the fact that" she and Evelyn were sisters, the Civil Union Act would have recognized their legal relationship. Plaintiff cited section 13-106(b) of the Code of Civil Procedure (Code) (735 ILCS 5/13-106(b) (West 2012)) to support her claim. The Estate filed a motion to dismiss pursuant to sections 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) and section 25 of the Illinois Religious Freedom Protection and Civil Union Act (750 ILCS 75/25(3) (West 2012), the latter of which prohibits civil unions

¹ Plaintiff's original "Petition for Suit to Quiet Title to Real and Personal Property" was filed on February 15, 2013. The second amended petition was filed on October 8, 2013.

between siblings. On October 22, 2013, the circuit court granted the Estate's motion to dismiss with prejudice.

¶6 Then, on October 27, 2016, plaintiff filed the underlying *pro se* "Statutory Custodial Claim." Citing section 18-1.1 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/18-1.1 (West 2016)), plaintiff alleged she "dedicated herself to the care and nursing of her disabled sister, Evelyn, for more than three (3) years *** without incurring any physical or financial benefit." Plaintiff stated that she filed her claim on October 22, 2013, and requested \$100,000 from the Estate. On the same date, the circuit court dismissed plaintiff's statutory custodial claim as time-barred. On November 7, 2016, plaintiff filed a *pro se* motion to reconsider, arguing her statutory custodial claim was not time-barred but, rather, related back to her October 22, 2013, claim for equitable relief, which incorporated her second amended petition to quiet title. The circuit court denied plaintiff's motion to reconsider. This appeal followed.

¶7

ANALYSIS

¶8 The question before us is whether plaintiff's 2016 statutory custodial claim relates back to the timely-filed claim for equitable relief/petition to quiet title or whether it is time-barred.

¶9 Section 18-12(b) of the Probate Act provides, in relevant part, "all claims which could have been barred under this Section are, in any event, barred 2 years after decedent's death, whether or not letters of office are issued upon the estate of the decedent." 755 ILCS 5/18-12(b) (West 2016). The application of the statute of limitations is a question of law we review *de novo*. See *Weininger v. Siomopoulos*, 366 Ill. App. 3d 428, (2006).

¶10 There is no dispute that Evelyn died in 2012 and, therefore, plaintiff's 2016 statutory custodial claim was not filed within the requisite two-year period. Section 2-616(b) of the Code, however, 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 original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or 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 2016).

Our court has instructed that “[t]he later claim relates back if the original complaint directs the defendant’s attention to the facts on which the plaintiff bases the later claim.” *McCorry v. Gooneratne*, 332 Ill. App. 3d 935, 943-44 (2002).

¶11 After reviewing plaintiff’s second amended petition to quiet title as well as her statutory custodial claim, we find the latter claim did not relate back to the former. Plaintiff’s second amended petition to quiet title argued that she was entitled to a portion of the Estate due to her and Evelyn’s relationship, equating it to that of a civil union. Nowhere within that pleading did plaintiff allege that she was entitled to an award based on her position as a caretaker of Evelyn. Plaintiff’s pleadings did not provide similar factual allegations or theories of recovery. In short,

plaintiff's statutory custodial claim did not grow out of the same transaction or occurrence described by plaintiff's second amended petition to quiet title. See 735 ILCS 5/2-616(b) (West 2016). We, therefore, conclude the circuit court properly dismissed plaintiff's statutory custodial claim as time-barred because it was filed over two years after Evelyn's death.

¶12

CONCLUSION

¶13 We affirm the judgment of the circuit court that plaintiff's statutory custodial claim was time-barred.

¶14 Affirmed.