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2018 IL App (3d) 3170040-U

Order filed June 12, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

JOSEPH P. MENDRALA,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellant,)	Kankakee County, Illinois.
)	
v.)	Appeal No. 3-17-0040
)	Circuit No. 14-L-119
JOHN S. COGHLAN,)	
)	The Honorable
Defendant-Appellee.)	Adrienne W. Albrecht,
)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant's motion for involuntary dismissal because plaintiff's claim is barred by statute of limitations.

¶ 2 This case involves a claim brought by plaintiff Joseph P. Mendrala against a deceased person, John G. Meyers. Mendrala filed a complaint against Meyers believing that he was alive and located in Illinois. Mendrala later learned that Meyers had died and, almost a year after commencing the action, moved for the appointment of a special representative for Meyers'

estate. At the time, no estate was opened nor letters of office issued to any executor or administrator for Meyers. The court appointed defendant John S. Coghlan as the special representative. Coghlan filed a motion for involuntary dismissal, and the trial court granted the motion. Mendrala appeals, alleging that the trial court erred when it granted the motion because (1) the court had subject matter jurisdiction to hear and review the case, and (2) the claim was not time-barred. We affirm.

¶ 3

FACTS

¶ 4

On December 3, 2012, plaintiff Joseph P. Mendrala was involved in an automobile accident with John G. Meyers in Manteno, Illinois. At the time, Meyers resided in Manteno. On November 25, 2014, Mendrala filed a timely complaint against Meyers and attempted to serve the summons and a copy of the complaint on him but was unsuccessful. Eventually, Mendrala learned that Meyers had relocated to California and attempted to serve him there but, again, was unsuccessful. Around June 2015, Mendrala discovered that Meyers had died on January 8, 2013—slightly more than a month after the accident.

¶ 5

On September 29, 2015, Mendrala filed a motion to appoint a special representative for Meyers' estate. In the motion, Mendrala stated that no estate was opened nor letters of office issued to any executor or administrator for Meyers. The trial court appointed John S. Coghlan as the special representative. On November 10, Mendrala filed an amended complaint substituting Coghlan as the defendant. David J. Santori entered an appearance on behalf of Coghlan and filed a motion for involuntary dismissal pursuant to section 2-619(a)(1), (2), (5) of the Code of Civil Procedure (Code) (725 ILCS 5/2-619(a)(1), (2), (5) (West 2014)), arguing that the trial court lacked subject matter jurisdiction; that Coghlan, as special representative for Meyers' estate, did not have the legal capacity to be sued; and that Mendrala's claim was time-barred under section

13-209 of the Code (735 ILCS 5/13-209 (West 2014)). The trial court granted the motion. Mendrala filed a motion to reconsider and vacate the order of dismissal, and the trial court denied the motion. Mendrala appealed.

¶ 6

ANALYSIS

¶ 7

Mendrala challenges the trial court’s grant of Coghlan’s motion for involuntary dismissal for lack of subject matter jurisdiction pursuant to section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2014)). A motion to dismiss under section 2-619(a) “admits the legal sufficiency of the complaint but asserts affirmative matter outside the complaint that defeats the cause of action.” *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). A section 2-619(a) motion to dismiss is reviewed *de novo*. *Id.*

¶ 8

Mendrala contends that his complaint was not null and void for two reasons. First, Mendrala claims that, pursuant to *Keller v. Walker*, 319 Ill. App. 3d 67 (2001), the trial court obtained subject matter jurisdiction under section 13-209 although Meyers died before the original complaint was filed. Second, Mendrala alleges Coghlan is considered a “personal representative” under sections 13-209(b)(1) and 13-209(c) of the Code (735 ILCS 5/13-209(b)(1), (c) (West 2014)) although the trial court appointed him as special representative. Mendrala claims that subsections (b)(1) and (c), which allow the court to appoint a personal representative in actions against a decedent, and section 13-209(b)(2) of the Code (735 ILCS 5/13-209(b)(2) (West 2014)), which allows the court to appoint a special representative in actions against a decedent, are not mutually exclusive in accordance with *Keller*. Coghlan, on the other hand, asserts that Mendrala cannot bring a claim under subsections (b)(1) and (c) because our supreme court in *Relf v. Shatayeva*, 2013 IL 114925, established that a personal representative and a special representative are different legal entities under section 13-209.

Coghlan also argues that Mendrala amended his complaint after the two-year statute of limitations for personal injury actions and that section 13-209(b)(2) does not provide an extension of the limitations period in actions against a decedent's special representative.

¶ 9 We consider, first, the issue of the circuit court's subject matter jurisdiction. Subject matter jurisdiction refers to the power of a court to hear and determine cases. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). "With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Id.* (citing Ill. Const. 1970, art. VI, § 9). Section 9 of article VI of the Illinois Constitution extends the court's jurisdiction to all justiciable matters. Ill. Const. 1970, art. VI, § 9. "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Id.* at 335. The circuit court is not deprived of subject matter jurisdiction if a complaint is defective. *Id.* at 340. "Subject matter jurisdiction does not depend upon the legal sufficiency of the pleadings." *Id.*

¶ 10 As the supreme court's decision in *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), makes clear, the circuit court in the instant case had subject matter jurisdiction. In *Belleville*, the supreme court held that the trial court's jurisdictional authority over statutory causes of action comes from the Illinois Constitution, which grants circuit courts "original jurisdiction of all justiciable matters." *Id.* at 337. This case involves a justiciable matter raised in a civil action within the general jurisdiction of the circuit court. See *id.*; see also *People v. Castleberry*, 2015 IL 116916. The trial court's decision cannot be void on this basis.

¶ 11 Next, we address whether Mendrala’s claim is time-barred. Illinois courts established that “[a] deceased person cannot be a party to a suit because such is a nonexistent entity and the proceedings are void *ab initio*.” *Reed v. Long*, 122 Ill. App. 2d 295, 297 (1970). In general, “[p]roceedings against an individual who is deceased at the time of the filing of suit are a nullity.” *Volkmar v State Farm Mutual Automobile Insurance Co.*, 104 Ill. App. 3d 149, 151 (2001).

¶ 12 There are, however, situations when a party can bring a claim against a person who dies before the expiration of the limitations period for commencement of the action. Such claims are governed by section 13-209 of the Code (735 ILCS 5/13-209 (West 2014)). Because of the nature of the special representative’s challenge, we turn to that statute of limitations to determine if the Estate of John Meyers has been timely and effectively brought before the court. Section 13-209 provides, in pertinent part:

“(b) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, and is not otherwise barred:

(1) an action may be commenced against his or her personal representative after the expiration of the time limited for the commencement of the action, and within 6 months after the person’s death;

(2) if no petition has been filed for letters of office for the deceased’s estate, the court, upon the motion of a person entitled to bring an action and after the notice to the party’s heirs or legatees

as the court directs and without opening an estate, may appoint a special representative for the deceased party for the purposes of defending the action. If a party elects to have a special representative appointed under this paragraph (2), the recovery shall be limited to the proceeds of any liability insurance protecting the estate and shall not bar the estate from enforcing any claims that might have been available to it as counterclaims.

(c) If a party commences an action against a deceased person whose death is unknown to the party before the expiration of the time limited for the commencement thereof, and the cause of action survives, and is not otherwise barred, the action may be commenced against the deceased person's personal representative if all of the following terms and conditions are met:

(1) After learning of the death, the party proceeds with reasonable diligence to move the court for leave to file an amended complaint, substituting the personal representative as defendant.

(2) The party proceeds with reasonable diligence to serve process upon the personal representative.

(3) If process is served more than 6 months after the issuance of letters of office, liability of the estate is limited as to recovery to the extent the estate is protected by liability insurance.

(4) In no event can a party commence an action under this subsection (c) unless a personal representative is appointed and an

amended complaint is filed within 2 years of the time limited for the commencement of the original action.” 735 ILCS 5/13-209(b), (c) (West 2014).

Mendrala cites this court’s decision in *Keller* to support his argument that the trial court had subject matter jurisdiction to hear his claim under subsections (b) and (c). To the extent that *Keller* found section 13-209 conferred subject matter jurisdiction on the circuit court, it was wrongly decided. Because, we have the benefit of the supreme court’s more recent decision in *Relf v. Shatayeva*, 2013 IL 114925, which guides our resolution in this case, our analysis will focus on *Relf*.

In *Relf*, the plaintiff filed an action against Joseph Grand Pre before the expiration of the two-year limitations period for personal injury actions to recover damages for injuries she sustained during a car accident. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 4. After the plaintiff learned about Grand Pre’s death, she asked the trial court to appoint a special representative, which the court did. *Id.* ¶¶ 8-10. The special administrator filed a motion to dismiss, arguing, *inter alia*, that, under Illinois law, a deceased person cannot be a party to a lawsuit and that the plaintiff failed to meet the statutory requirements under section 13-209. *Id.* ¶¶ 12-13.

¶ 13 Relevant to this appeal, our supreme court determined that section 13-209(b) was inapplicable to its case. It explained that section 13-209(c) explicitly “lists a set of requirements where, as in this case, the defendant’s death is not known to plaintiff before the expiration of the limitations period and, unaware of the death, the plaintiff commences the action against the deceased defendant directly.” *Id.* ¶ 27. Without making a distinction of whether the death was known to the plaintiff at the time the action was commenced, section 13-209(b) lists requirements where a plaintiff may commence an action against the personal or special

representative of a deceased person if the decedent died before the expiration of the limitations period. Therefore, the court found that, because section 13-209(b) contains no explicit language of a plaintiff's knowledge as set forth in section 13-209(c), its provisions "presuppose that the plaintiff is aware of the defendant's death at the time he or she commences the action." *Id.*

¶ 14 The court also held that the term "special representative" and "personal representative" had different meanings within section 13-209. *Id.* ¶ 34. The court stated that a personal representative is an individual "appointed to settle and distribute a decedent's estate pursuant to a petition for issuance of letters" and a special representative is an individual "appointed by the court in situations where no petition for letters of office for decedent's estate has been filed." *Id.* ¶ 37. The court noted that *Keller* did not address that issue, and therefore, it could not rely on *Keller's* decision. *Id.* ¶ 45.

¶ 15 The supreme court found in *Relf* that section 13-209(b) applies only when a plaintiff knows of a defendant's death at the time he commences the action. *Id.* ¶ 27. The only provision of the statute that authorizes pursuing a claim against a *special* representative is subsection (b)(2). Mendrala, however, was not aware of Meyers' death at the time he filed his complaint in 2014 and, pursuant to *Relf*, is precluded from bringing a claim against Coghlan, as the special representative of Meyers' estate, under section 13-209(b).

¶ 16 We believe this case "falls within the category of cases covered by section 13-209(c)." *Id.* ¶¶ 28, 31. Subsection (c) applies to situations where a plaintiff commences an action against a deceased person whose death is unknown to the plaintiff before the limitations period for that cause of action expires and the action survives and is not otherwise barred. In this case, Mendrala commenced an action against Meyers, whose death was unknown to Mendrala at the time, nine

