

**NOTICE**

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2014 IL App (4th) 130378-U

NO. 4-13-0378

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

May 28, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

TAMIKA PICKETT, as Parent and Next Friend of	)	Appeal from
JAQUEVON M. EDWARDS, Deceased; and TAMIKA	)	Circuit Court of
PICKETT, Individually,	)	Champaign County
Plaintiff-Appellant,	)	No. 12L135
v.	)	
THE CITY OF CHAMPAIGN, a Municipal Corporation;	)	
and CARLE FOUNDATION HOSPITAL,	)	
Defendants-Appellees,	)	
and	)	
PROVENA HOSPITALS, an Illinois Corporation;	)	
PROVENA COVENANT MEDICAL CENTER; PRO	)	
AMBULANCE BILLING, INC., an Illinois Corporation;	)	
PRO AMBULANCE; ROBERT LeCLAIR, a/k/a BOB	)	
LeCLAIR; JASON KELLER; Various Unknown	)	
Employees/Agents of PRO AMBULANCE; THE	)	
VILLAGE OF RANTOUL, a Municipal Corporation;	)	
KEN WATERS, a/k/a KENNETH WATERS; PAUL	)	
FARBER; Various Unknown Employees/Agents of THE	)	
VILLAGE OF RANTOUL; THE CARLE	)	
FOUNDATION HOSPITAL, an Illinois Corporation;	)	
THE COUNTY OF CHAMPAIGN; METROPOLITAN	)	
COMPUTER-AIDED DISPATCH; and CARLE	)	
AUXILIARY, INC., an Illinois Not-for-Profit	)	Honorable
Corporation,	)	Jeffrey B. Ford,
Defendants.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Pope and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed in part, reversed in part, and remanded with directions, concluding (1) Pickett conceded any legal issues pertaining to the

Carle entities and (2) the trial court did not err by dismissing the complaint against the City of Champaign but abused its discretion by dismissing with prejudice.

¶ 2 In July 2011, Jaquevon M. Edwards went into respiratory arrest following an asthma attack and subsequently died. In July 2012, plaintiff, Tamika Pickett, individually and as the parent and next friend of her son, Jaquevon, filed a complaint alleging numerous defendants, including Carle Foundation Hospital; The Carle Foundation Hospital; and Carle Auxiliary, Inc. (Carle Auxiliary), an Illinois not-for-profit corporation, acted negligently in providing medical care for her son. In October 2012, plaintiff filed an amended complaint, adding the City of Champaign (City) and Metropolitan Computer Aided Dispatch (METCAD) as defendants. In January 2013, the trial court granted with prejudice (1) the City's motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619 (West 2012)), (2) Carle's motion to dismiss Carle Foundation Hospital pursuant to section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), and (3) Carle's motion to dismiss Carle Auxiliary pursuant to sections 2-615 and 2-619 of the Civil Code.

¶ 3 Because Pickett conceded at oral argument that (1) Carle Auxiliary was not an appropriate party on appeal; (2) Carle Foundation Hospital is not a legal entity amenable to suit, thus removing from this appeal any issues related to the Carle entities; and (3) the trial court properly granted the City's motion to dismiss pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)), the only remaining issue this court will address is whether the trial court erred by dismissing the complaint against the City with prejudice pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2012)). For the following reasons, we affirm in part, reverse in part, and remand with directions.

¶ 4

## I. BACKGROUND

¶ 5 On July 15, 2011, Pickett called 9-1-1 seeking emergency assistance for her son, Jaquevon, who was in respiratory arrest following an asthma attack. METCAD, which provided emergency-dispatch services to the general area, answered the call and dispatched an ambulance and medical personnel to Pickett's residence. An ambulance subsequently transported Jaquevon to Carle Foundation Hospital in Champaign, Illinois. On July 25, 2011, Jaquevon died at the hospital.

¶ 6 On July 9, 2012, Pickett filed a complaint against multiple defendants, including The Carle Foundation Hospital, Carle Foundation Hospital, and Carle Auxiliary. In October 2012, Pickett filed an amended complaint, adding the City and METCAD (which is not a party on appeal) as defendants.

¶ 7 As to the City, Pickett asserted the City was liable for Jaquevon's death under the Wrongful Death Act (740 ILCS 180/.01 to 180/2.2 (West 2010)), alleging the City engaged in willful and wanton acts or omissions as part of its supervisory role over METCAD (count XIII). In count XIV, Pickett alleged a survival action pursuant to section 27-6 of the Probate Act of 1975 (755 ILCS 5/27-6 (West 2010)), asserting the City engaged in willful and wanton acts or omissions as part of its supervisory authority over METCAD. Pickett also asserted a claim of indemnification against the City for the acts of its agent, METCAD, pursuant to section 9-102 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act). 745 ILCS 10/9-102 (West 2010)).

¶ 8

### A. The City's Motion To Dismiss

¶ 9 In December 2012, the City filed a motion to dismiss pursuant to section 2-619 of

the Civil Code (735 ILCS 5/2-619 (West 2012)), asserting the one-year statute of limitations for filing an action against the City had passed under section 8-101 of the Tort Immunity Act (745 ILCS 10/8-101 (West 2012)).

¶ 10 In January 2013, Pickett filed a response to the City's motion to dismiss, asserting a two-year statute of limitations applied to Pickett's causes of action because the allegations arose out of patient care pursuant to section 8-101(a) of the Tort Immunity Act (745 ILCS 10/8-101(a) (West 2012)). Therefore, because Pickett filed both the complaint and amended complaint during that two-year period, she argued the trial court should deny the City's motion to dismiss. In the alternative, Pickett asserted, even if the one-year statute of limitations set forth in section 8-101 of the Tort Immunity Act applied, the October 2012 amended complaint adding the City as a party related back to the original complaint pursuant to section 2-616 of the Civil Code (735 ILCS 5/2-616 (West 2012)), which was filed within the one-year statute of limitations.

¶ 11 B. The Trial Court's Ruling on the Motion To Dismiss

¶ 12 In January 2013, the trial court issued a ruling on defendant's motion to dismiss without hearing oral arguments, noting it spent 12 to 13 hours reviewing the various motions and the four volumes in the record. The court dismissed with prejudice the counts against the City pursuant to section 2-619 of the Civil Code. In calculating the appropriate statute of limitations, the court determined the one-year statute of limitations provided in section 8-101(a) of the Tort Immunity Act (745 ILCS 10/8-101(a) (West 2012)) applied to Pickett's complaint because Pickett never alleged the City or METCAD provided patient care to Jaquevon so as to trigger a two-year statute of limitations. The court took note of plaintiff's failure to attach to her

complaint an affidavit alleging healing art malpractice as required by section 2-622 of the Civil Code (735 ILCS 5/2-622 (West 2012)). The court determined the statute of limitations for filing a claim against the City ran out in July 2012; thus, Pickett's amended complaint adding the City in October 2012 was time-barred. The court also found Pickett's amended complaint did not relate back to the original complaint so as to defeat the statute of limitations. Specifically, with regard to count XIII, the trial court found the complaint failed to allege the City or METCAD provided any patient care to Jaquevon, nor did it allege the City had or breached any duty; thus, the court found Pickett failed to state a cause of action sufficient to trigger the two-year statute of limitations.

¶ 13 As to count XIV, the trial court found "a lot of problems." In particular, the bulk of count XIV incorporated paragraphs 1 through 15 of count I. However, count I pertained to unrelated defendants and made no mention of the City, the City's alleged duties, or the City's breach of any duty. The court then indicated count XV had "similar problems" in that it failed to name the City as responsible for indemnifying the actions of METCAD, thus warranting dismissal of that count.

¶ 14 C. Posthearing

¶ 15 In February 2013, Pickett filed a motion to reconsider the trial court's order dismissing the counts against the City, asserting she should have a reasonable opportunity to amend her complaint to cure any deficiencies so that the complaint would properly state a cause of action. The court denied the motion to reconsider, noting it did not grant the City's motion to dismiss on section 2-615 of the Civil Code for failure to state a cause of action, but rather, on section 2-619 because Pickett's claims were time-barred.

¶ 16 In April 2013, the trial court entered an order pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), finding no reason for delaying the appeal with regard to the City and Carle Foundation Hospital. Pickett filed a timely notice of appeal naming Carle Foundation Hospital and the City as appellees.

¶ 17 II. ANALYSIS

¶ 18 Initially on appeal, Pickett asserted the trial court erred by dismissing the complaint against (1) Carle Auxiliary and Carle Foundation Hospital with prejudice, and (2) the City with prejudice. However, during oral argument, Pickett conceded the issues on appeal relating to Carle Auxiliary and Carle Foundation Hospital. We accept her concessions and thus affirm the court's rulings as to Carle Auxiliary and Carle Foundation Hospital. Therefore, we will limit our review to those issues related to the City, specifically, whether the court erred in dismissing Pickett's complaint against the City with prejudice.

¶ 19 A. Whether the Trial Court Erred in Dismissing  
Pickett's Complaint Against the City

¶ 20 Pickett contends the trial court erred in dismissing her complaint against the City pursuant to section 2-619 of the Civil Code. In reviewing a section 2-619 motion to dismiss, courts must construe the pleadings and supporting documents in the light most favorable to the nonmoving party. *Cortright v. Doyle*, 386 Ill. App. 3d 895, 899, 898 N.E.2d 1153, 1157 (2008). On appeal, this court addresses whether the parties present a genuine issue of material fact and, if not, whether the facts set forth in the complaint entitle the defendant to judgment as a matter of law. *Saathoff v. Country Mutual Insurance Co.*, 379 Ill. App. 3d 398, 402, 886 N.E.2d 370, 374 (2008). We review the trial court's section 2-619 dismissal *de novo*. *Id.* In doing so, we rely on

the well-pled facts and on any reasonable inferences drawn from the record. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772, 919 N.E.2d 76, 85 (2009).

¶ 21 Pickett's complaint alleged the City was liable for Jaquevon's July 2011 death (1) pursuant to the Wrongful Death Act (740 ILCS 180/.01 to 180/2.2 (West 2010)) (count XIII); (2) under the Probate Act of 1975 (755 ILCS 5/27-6 (West 2010)) (count XIV); and (3) for indemnification purposes (745 ILCS 10/9-102 (West 2010)) (count XV) because the City owned, operated, controlled, and/or managed or participated in the management of METCAD.

¶ 22 The City's motion to dismiss under section 2-619(a)(5) of the Civil Code (735 ILCS 5/2-619(a)(5) (West 2012)), asserted the one-year statute of limitations had expired under section 8-101(a) of the Tort Immunity Act (745 ILCS 10/8-101(a) (West 2012)), thus barring Pickett from bringing a claim against the City. Pickett, in turn, argued a two-year statute of limitations applied to the claims pursuant to section 8-101(b) of the Tort Immunity Act because Jaquevon's death arose out of patient care.

¶ 23 Under section 8-101(a) the Tort Immunity Act, "[n]o civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." 745 ILCS 10/8-101(a) (West 2012). Subsection (b) reads, in relevant part:

"No action for damages for injury or death against any local public entity or public employee, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew \*\*\* of

the injury or death for which damages are sought in the action."

745 ILCS 10/8-101(b) (West 2012).

In other words, the presumptive statute of limitations for causes of action against the City is one year unless the plaintiff can establish an exception applies, namely, that Jaquevon's injury arose out of patient care, to extend the statute of limitations to two years. 745 ILCS 10/8-101(b) (West 2012). In determining its ruling on the motion, the trial court may rely on the pleadings, affidavits, or other proofs presented by the parties. *Myers v. Centralia Cartage Co.*, 94 Ill. App. 3d 1139, 1143, 419 N.E.2d 465, 468 (1981).

¶ 24 We begin our analysis by noting Pickett did not include METCAD or the City in her initial complaint filed in July 2012, which was filed within the one-year statute of limitations; rather, Pickett added both parties to the amended complaint filed in October 2012. With respect to whether the one- or two-year statute of limitations applies, the parties ask us to determine whether METCAD's alleged liability in providing dispatch services, as an agent of the City, "arose out of patient care" so as to trigger a two-year statute of limitations on the claims Pickett raised against the City. The difficulty in making this determination is that Pickett's amended complaint, on its face, fails to allege METCAD, as an agent of the City, engaged in any form of patient care so as to trigger a two-year statute of limitations. Pickett argues extensively the facts presented in the complaint demonstrate Jaquevon's death arose from METCAD's and the City's negligent patient care or, at the very least, the complaint presents an issue of fact that should survive the City's motion to dismiss. We disagree. Rather, the complaint presents no facts from which trial court could reasonably infer METCAD or the City engaged in patient care.

¶ 25 Pickett's wrongful death claim (count XIII) against the City alleged (1) the City owned, operated, controlled and/or managed or participated in the management of METCAD; (2) in July 2011, the City was the "lead agency" for METCAD; (3) METCAD provided dispatching services; (4) the City held itself "out to the public as possessing the requisite professional skill, expertise, knowledge, and information to provide appropriate medical services required by patients," specifically, Jaquevon; (5) the City "performed willful wanton, and reckless acts and[] omissions with respect to the care and treatment" of Jaquevon; (6) the City "owed a duty" to Jaquevon; (7) the City breached that duty by (a) failing to timely respond to Jaquevon's medical emergency, (b) failing to follow the proper protocol in response to Jaquevon's emergency, (c) acting with conscious disregard for life in treating Jaquevon, and (d) acting otherwise carelessly and recklessly; and (8) the "aforementioned willful and wanton acts or omissions" of METCAD directly and proximately caused Jaquevon's injuries and death. Though Pickett's brief on appeal summarily outlines the facts she relied upon, such as METCAD's alleged choices to assign Jaquevon's call lesser urgency and its failure to dispatch a more highly equipped ambulance, those facts were absent in the amended complaint. Without any facts on which to base a finding that Jaquevon's death arose out of METCAD's negligent patient care, the trial court did not err in finding the one-year statute of limitations applied pursuant to section 8-101(a) of the Tort Immunity Act.

¶ 26 Counts XIV and XV contain more obvious factual deficiencies. As to the survival action pursuant to the Probate Act of 1975 (755 ILCS 5/27-6 (West 2010)) (count XIV), Pickett alleged Jaquevon's injury and death were the direct and proximate result of "the aforementioned willful and wanton acts or omissions of [the City's] duly authorized agents," incorporating the

paragraphs as outlined in count I of the amended complaint. The "agents" outlined in count I consist of Provena Hospitals, Provena Covenant Medical Center, Pro Ambulance Billing, Inc., Pro Ambulance, Robert LeClair, Jason Keller, and various unknown employees/agents of Pro Ambulance. Nowhere in the complaint does Pickett establish a connection between the entities enumerated in count I and the City. Moreover, nowhere in this count does Pickett establish the City owed or breached a duty based on the vague inference that it was the authorized agent of the aforementioned entities. Thus, this count, on its face, provided insufficient facts for the trial court to find the two-year statute of limitations applied under section 8-101(b) of the Tort Immunity Act.

¶ 27 Count XV contains similar deficiencies. Though the caption and prayer for relief indicate count XV applies to the Village of Rantoul, the County of Champaign, and the City, all as indemnifying agents for METCAD, the body of the count refers only to the Village of Rantoul as the indemnifying entity of the City. Again, on its face, this count provided insufficient facts for the trial court to find the two-year statute of limitations applied pursuant to section 8-101(b) of the Tort Immunity Act.

¶ 28 Absent the necessary well-pled facts, Pickett cannot sustain her argument that a two-year statute of limitations should apply. Despite Pickett's contention that the trial court relied on the incorrect standard of proof by stating Pickett failed to state a cause of action, our review of the record reveals the court based its decision on Pickett's failure to plead sufficient facts to dispute the City's statute-of-limitations defense under section 2-619 of the Civil Code. Therefore, we conclude the court did not err in finding the one-year statute of limitations applied when dismissing the claims against the City pursuant to section 2-619 of the Civil Code because

Pickett failed to allege well-pled facts to support her contention that a two-year statute of limitations should apply. Additionally, Pickett alleged the City's liability arose out of patient care, yet failed to include a health professional's affidavit under section 2-622 of the Civil Code (735 ILCS 5/2-622 (West 2012)) for allegations against METCAD and, by extension, the City. As Pickett conceded during argument, this lack of an affidavit on its own constitutes grounds for dismissal under section 2-619. 735 ILCS 5/2-622(g) (West 2012).

¶ 29                                    B. Whether the Trial Court Erred in Dismissing  
Pickett's Claims Against the City With Prejudice

¶ 30                                    The question then turns on whether the trial court should have permitted Pickett the opportunity to amend her complaint. Section 2-612(a) of the Civil Code authorizes the court to allow amendments where the pleadings fail to sufficiently define the issues before the court. 735 ILCS 5/2-612(a) (West 2012). The section further provides, "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b) (West 2012). In determining whether it is appropriate to allow the plaintiff an opportunity to amend the complaint, the court must consider whether (1) the proposed amendment would cure the defective pleading; (2) the other parties would be prejudiced or surprised by the proposed amended complaint; (3) the plaintiff had previous opportunities to amend the complaint; and (4) the proposed amendment is timely. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 1215-16 (1992). We review the court's decision to dismiss a complaint with prejudice for an abuse of discretion. *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 28, 972 N.E.2d 1238.

¶ 31 In applying the factors set forth in *Loyola Academy*, we note, in March 2013, Pickett filed a second amended complaint which provides insight as to whether the amendment would cure the defective pleadings as to the wrongful death and survival claims (the second amended complaint does not include a separate indemnification count). The second amended complaint included facts missing from the first amended complaint about METCAD's alleged wrongdoing as an agent of the City. As to the wrongful death action (count XIII), the second amended complaint states (1) the METCAD dispatcher knew Jaquevon was in respiratory distress; (2) the dispatcher knew the first ambulance sent to the Pickett home did not arrive in a timely manner, yet the dispatcher failed to send a second ambulance; (3) Pickett placed the emergency call at 5:13 a.m., yet no ambulance had arrived by the time Jaquevon ceased breathing at 5:20 a.m.; (4) the dispatcher failed to send emergency vehicles other than a single ambulance; and (5) the dispatcher instructed Pickett regarding cardiopulmonary resuscitation that fell within the meaning of patient care. With regard to the survival action (count XIV), Pickett's second amended complaint incorporated the facts alleged under the wrongful death claim against the City. These pertinent facts included in the proposed second amended complaint, if undisputed, supply the information necessary for the trial court to determine whether, as a matter of law, Pickett's claim against the City arose out of patient care so as to invoke the two-year statute of limitations outlined in section 8-101(b) of the Tort Immunity Act (745 ILCS 10/8-101(b) (West 2012)). Thus, the amendment would cure the deficiencies upon which the court based its dismissal under the first prong of the analysis. "If, by amendment, a plaintiff can state a cause of action, a case should not be dismissed with prejudice on the pleadings." *Bowe v. Abbott Laboratories, Inc.*, 240 Ill. App. 3d 382, 389, 608 N.E.2d 223, 227 (1992). We note, allowing

Pickett to amend the complaint does not guarantee the facts would be legally sufficient to invoke a two-year statute of limitations under section 8-101(b) of the Tort Immunity Act, but it would serve to provide the court appropriate facts to rely upon in reaching a decision.

¶ 32 As to the second factor set forth in *Loyola Academy*, the City would be prejudiced by this amendment only insofar as it would prolong the proceedings, but it cannot claim surprise given the nature of the claims contained within the first amended complaint. "The most important of the *Loyola* factors is the prejudice to the opposing party, and substantial latitude to amend will be granted when there is no prejudice or surprise to the nonmovant." *Paschen Contractors, Inc. v. City of Kankakee, Illinois*, 353 Ill. App. 3d 628, 638, 819 N.E.2d 353, 362 (2004). For example, a party may be prejudiced if the amended complaint raises new theories the opposing party may not be prepared to address at trial. *Id.* Pickett's proposed second amended complaint does not raise any new issues; it merely clarifies the rather conclusory nature of its first amended complaint by adding relevant facts. We therefore conclude the City has suffered no prejudice and, thus, construe the second prong in Pickett's favor.

¶ 33 Regarding the third factor, Pickett has had an opportunity to amend her complaint previously, but the amendment only consisted of Pickett adding additional parties to the complaint, not amending any legal arguments. The City argues Pickett should not be granted leave to amend her complaint, as she failed to allege an appropriate cause of action despite having numerous opportunities to do so. However, the City filed its motion to dismiss pursuant to section 2-619 of the Civil Code, which concedes the legal sufficiency of the complaint but asserts an affirmative matter defeats the claim. *Krilich v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 572, 778 N.E.2d 1153, 1162 (2002). Thus, the City's argument

that Pickett's complaint failed to state a sufficient cause of action is not well taken. Because Pickett's sole prior amendment served only to add parties, not to amend the legal arguments at issue before us, we conclude this factor favors Pickett.

¶ 34 With respect to the timeliness factor, Pickett requested leave to amend her complaint at the time the trial court issued its ruling. Pickett filed her application to amend a mere three months after adding the City to the amended complaint. Reviewing courts have routinely deemed timely longer delays than the delay at issue here. See, *e.g.*, *Stefanich, McGarry, Wols & Okrei, Ltd. v. Hoeflich*, 260 Ill. App. 3d 758, 763, 632 N.E.2d 1064, 1068 (1994) (proposed amendment was timely when filed during the pleading stage and less than 11 months after the original complaint); *Seibring v. Parcell's Inc.*, 159 Ill. App. 3d 676, 681, 512 N.E.2d 394, 398 (1987) (timeliness factor favors amendment when no trial date has been set). Given the lengthy nature of these types of proceedings, as well as the lack of prejudice to the City, we conclude Pickett filed her motion for leave to amend in a timely manner.

¶ 35 Due to the nature of the City's motion to dismiss, which asserted the statute of limitations had run out, the trial court should have provided Pickett an opportunity to amend her complaint to demonstrate a different statute of limitations applied. "Trial courts should exercise their discretion liberally in favor of allowing amendments where doing so furthers the ends of justice." *Addison v. Distinctive Homes, Ltd.*, 359 Ill. App. 3d 997, 1003, 836 N.E.2d 88, 94-95 (2005). Pickett's proposed amendments were not an attempt to add legal claims, but merely to clarify facts related to the cause of action. Given the scarcity of cases analyzing that particular portion of the Tort Immunity Act and the lack of cases determining whether dispatchers are in the business of providing patient care, the court abused its discretion by dismissing the complaint

with prejudice before giving Pickett an opportunity to amend that portion of her complaint.

Additionally, the amendment would allow Pickett to fix any technical defects, such as including the proper affidavit pursuant to section 2-622 of the Civil Code (735 ILCS 5/2-622 (West 2012)).

¶ 36 Therefore, we conclude that while the trial court did not err in dismissing the claims against the City, the court did abuse its discretion by dismissing the counts with prejudice.

¶ 37 In recognition of the time and effort required to prepare, file, argue, and decide a matter on appeal, we note Illinois Supreme Court Rule 361 (eff. Dec. 29, 2009) permits parties to file motions, such as a motion conceding issues on appeal, with the appellate court. If, after filing briefs but prior to oral argument, a party realizes an issue is no longer disputed and instead intends to concede the issue, the party should timely notify opposing counsel and the reviewing court of this change in position.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm in part, reverse in part, and remand with directions.

¶ 40 Affirmed in part and reversed in part; cause remanded with directions.