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2014 IL App (3d) 130721-U

Order filed May 13, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

PATRICIA MARTIN,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellant,)	Tazewell County, Illinois,
)	
v.)	Appeal No. 3-13-0721
)	Circuit No. 12-L-141
SECURITAS SECURITY SERVICES)	
USA, INC.,)	Honorable
)	Paul Gilfillan,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing the plaintiff-wife's loss of consortium claim because the claim was time-barred by the applicable two-year statute of limitations.

¶ 2 The plaintiff-wife, Patricia Martin, appeals the trial court's dismissal of her loss of consortium complaint against defendant, Securitas Security Services USA, Inc. (Securitas), as being time-barred by the statute of limitations. We affirm.

¶ 3

FACTS

¶ 4

On November 30, 2012, Patricia filed a loss of consortium claim for damages arising out of injuries sustained by her husband, Perry Martin. The complaint alleged that Patricia and Perry had been married for over 30 years. On December 27, 2008, Perry was working as an ironworker in a permit-required area where Securitas had been hired to perform security. A guard employed by Securitas allegedly was negligent in allowing an unauthorized person into the permit-required area. The unauthorized person pushed a button that caused a furnace door to crush Perry, paralyzing him from the waist down. As a result of Perry's injuries, Patricia was allegedly damaged in that she was "deprived of [Perry's] society and companionship and of his services; her comfort and happiness in his society and companionship ha[d] been impaired and impeded; and such impairment and deprivation will continue for some time to come[.]" Patricia sought damages in excess of \$50,000.

¶ 5

In response, Securitas filed a motion to dismiss the complaint with prejudice pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2012)). Securitas argued that the loss of consortium claim was barred by an applicable two-year statute of limitations pursuant to section 13-203 of the Code for loss of consortium claims. See 735 ILCS 5/13-203 (West 2012). The trial court granted Securitas' motion to dismiss with prejudice, finding that the two-year statute of limitations set forth in section 13-203 of the Code was controlling. Patricia appealed.

¶ 6

ANALYSIS

¶ 7

On appeal, Patricia argues that her loss of consortium claim was timely filed because the applicable statute of limitations was a five-year statute of limitations set forth in section 13-205 of the Code. 735 ILCS 5/13-205 (West 2012). We review *de novo* a trial court's dismissal of a

claim pursuant to section 2-619 of the Code. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343 (2008).

¶ 8 Under Illinois law, actions for damages for loss of consortium or other actions deriving from injury to the person of another "shall be commenced within the same period of time as actions for damages for injury to such other person." 735 ILCS 5/13-203 (West 2012). The applicable statute of limitations for an action for injury to a person is two years from the time the cause of action accrues. 735 ILCS 5/13-202 (West 2012). In cases of a sudden or traumatic event, the cause of action accrues and the statute of limitations begins to run at the time the injury occurred. *Golla v. General Motors Corp.*, 167 Ill. 2d 353 (1995). The rationale behind the rule is that the injured party would be placed on notice that actionable conduct might be involved by the nature and circumstances surrounding the traumatic event. *Id.*

¶ 9 Here, Patricia's loss of consortium claim was derived from injuries to Perry. The time for Patricia to file her loss of consortium claim was within the same two-year period that Perry had to file a claim for his injuries, which was within two years of the traumatic event that caused his injuries on December 27, 2008. Patricia failed to file her loss of consortium claim within the applicable two-year statute of limitations and, as such, her claim is time-barred.

¶ 10 Patricia argues that the applicable statute of limitations for her loss of consortium claim is a five-year statute of limitations set forth in section 13-205 of the Code because her claim is for injury to her marital relationship and not for injury to Perry's person. Section 13-205 provides that actions on verbal contracts, on arbitration awards, or "to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be

commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2012).

¶ 11 In support of her argument for the five-year statute, Patricia cites to *Mitchell v. White Motor Co.*, 58 Ill. 2d 159 (1974). In *Mitchell*, our supreme court held that the language of the five-year statute of limitations of a catchall provision, as opposed to the two-year statute of limitations for personal injury, was applicable to a loss of consortium claim, reasoning that a loss of consortium action was not based on injury to the plaintiff's person but was derived from a personal injury to a third person. *Mitchell*, 58 Ill. 2d 159.

¶ 12 In 1984, the *Mitchell* holding was superseded by the enactment of section 13-203 of the Code, which specified that the statute of limitations for a loss of consortium claim "shall be commenced within the same time period as actions for damages for injury to such other person." 735 ILCS 5/13-203 (West 2012). In this case, Patricia's loss of consortium claim was based on injury to her husband to which the two-year statute of limitations applied.

¶ 13 Patricia additionally cites *Dahlin v. Evangelical Child & Family Agency*, 252 F. Supp. 2d 666 (2002), arguing the five-year statute of limitations is applicable because her claim was not based on injury to her husband but upon injury to their marital relationship. In *Dahlin*, the court applied the five-year statute of limitations set forth in the catchall provision of section 13-205 of the Code to an adoptive parents' claim, which included emotional distress, alleged fraud, breach of fiduciary duty, and negligence against an adoption agency because their child had behavioral problems and the agency failed to fully disclose the child's social and medical history. The *Dahlin* court applied the five-year limitations, noting that the applicable statute of limitations is governed by the type of injury and the plaintiff's claim did not derive from "injury to the person of another" as required by section 13-203. *Id.* In this case, Patricia's claim for loss of

consortium is distinguishable from the claim in *Dahlin* because Patricia's claim is, in fact, derived from the injury to the person of her husband to which section 13-203 is directly applicable.

¶ 14 Patricia further cites *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155 (2009) in support of her argument for the five-year statute of limitations. In *Tedrick*, the Illinois supreme court reviewed the legal sufficiency of a complaint on appeal from a ruling on defendant's motion to dismiss. The complaint alleged a theory of transferred negligence for damages resulting from the death of a wife who was killed by her husband. The complaint named 10 of the husband's health-care providers as having provided negligent care to the husband. Our supreme court rejected the plaintiff's contention that the negligent acts toward the husband transferred to the wife based on a special relationship between them as spouses. In discussing the marital relationship, the *Tedrick* court referred to *Mitchell*, wherein the court applied the catchall five-year statute of limitations based on its reasoning that a derivative loss of consortium claim was a claim for damage to the marital relationship and not an action for the actual injury. *Id.* (citing *Mitchell*, 58 Ill. 2d 159).

¶ 15 We disagree with Patricia that the *Tedrick* court's reference to *Mitchell* equated to our supreme court holding that the five-year statute of limitations under section 13-205 is applicable to loss of consortium claims. As discussed above, the five-year statute of limitations for loss of consortium claims indicated in *Mitchell* has been superseded by the enactment of section 12-203 of the Code. *Tedrick* did not overrule the validity of section 12-203.

¶ 16 Therefore, pursuant to section 13-203 of the Code, the applicable statute of limitations to Patricia's loss of consortium claim was two years. Consequently, the trial court did not err in dismissing Patricia's loss of consortium complaint with prejudice.

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Tazewell County is affirmed.

¶ 19

Affirmed.