

NOTICE

Rule 23 Order filed August 17, 2012;
Modified Upon Denial of Rehearing
September 24, 2012.

2012 IL App (5th) 100518-U

NO. 5-10-0518

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

IRENE M. SLEDGE,

Plaintiff-Appellant,

v.

J. ROBERT SLEDGE,

Defendant-Appellee.

) Appeal from the
) Circuit Court of
) Jefferson County.
)
) No. 08-L-36
)
) Honorable
) Timothy R. Neubauer,
) Judge, presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff filed a timely complaint against a deceased person but did not argue the amended complaint substituting a special representative for the deceased related back to the date of the original complaint, the trial court properly dismissed the action with prejudice for lack of subject-matter jurisdiction.

¶ 2 In June 2008, plaintiff, Irene M. Sledge, filed a negligence action against defendant, J. Robert Sledge, who died as a result of the automobile accident in which plaintiff was injured. In March 2010, Jerome E. McDonald was appointed special representative for the deceased defendant. In May 2010, McDonald filed a motion to dismiss the complaint under section 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-619 (West 2010)), asserting the complaint was against a nonentity. In an October 2010 written order, the Jefferson County circuit court granted McDonald's motion to dismiss plaintiff's complaint with prejudice.

¶ 3 Plaintiff appeals, asserting the trial court erred by finding the six-month limitations

period contained in section 13-209(b)(1) of the Procedure Code (735 ILCS 5/13-209(b)(1) (West 2008)) also applied to section 13-209(b)(2) (735 ILCS 5/13-209(b)(2) (West 2008)). We affirm.

¶ 4

I. BACKGROUND

¶ 5 Defendant and plaintiff were husband and wife. Plaintiff's complaint alleges that, on June 11, 2006, defendant lost control of the car in which she was a passenger, and the car left the roadway and overturned. As a result of the accident, plaintiff suffered severe and permanent injuries. Defendant passed away on June 21, 2006. He was survived by plaintiff and their three children.

¶ 6 On June 10, 2008, plaintiff filed her negligence action naming her deceased husband as defendant. The parties' three children each executed a waiver and consent document, noting no petition for letters of office had been filed in defendant's estate and consenting to the appointment of a special representative to act on behalf of defendant and his estate. The waiver and consent documents were filed on November 18, 2008. On January 22, 2009, plaintiff filed a motion under section 2-1008(b)(2) of the Procedure Code (735 ILCS 5/2-1008(b)(2) (West 2008)) for the appointment of a special representative on defendant's behalf for the purpose of defending this action. On March 23, 2010, the trial court appointed McDonald as defendant's special representative under section 2-1008(b)(2).

¶ 7 In May 2010, McDonald filed a section 2-619 motion to dismiss plaintiff's complaint, alleging the complaint was against a nonentity. Citing section 13-209 of the Procedure Code (735 ILCS 5/13-209 (West 2008)) and *Sisk v. Lewis*, 245 Ill. App. 3d 689, 615 N.E.2d 46 (1993), McDonald asserted the complaint should be dismissed because it was against a nonentity and plaintiff had failed to amend the complaint and effect service upon an appointed special administrator before the expiration of the statute of limitations. Plaintiff filed a response to the motion to dismiss, arguing this case was controlled by section 13-

209(b)(2), which is separate from section 13-209(b)(1) that contains the six-month limitations period after the defendant's death. On June 8, 2010, the trial court heard arguments on McDonald's motion to dismiss and took the matter under advisement.

¶ 8 Three days after arguments, plaintiff filed a motion for leave to file a first-amended complaint, which included a proposed first-amended complaint. The motion noted plaintiff passed away on September 5, 2008. The proposed first-amended complaint listed the plaintiff as the executrix of plaintiff's estate and the defendant as McDonald as special representative for defendant.

¶ 9 On October 1, 2010, the trial court dismissed plaintiff's complaint with prejudice under section 2-619(a)(5) and (a)(9) of the Procedure Code (735 ILCS 5/2-619(a)(5), (a)(9) (West 2010)), rendering plaintiff's motion for leave to file a first-amended complaint moot. The trial court found section 13-209(b)(1) provided a possible extension of the statute of limitations. However, it further found subsections (b)(1) and (b)(2) of section 13-209 of the Procedure Code must be read together because, if they are not, section 13-209(b)(2) would not have a statute of limitations.

¶ 10 On October 27, 2010, plaintiff filed a timely notice of appeal, and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 11 II. ANALYSIS

¶ 12 Here, plaintiff challenges the trial court's section 2-619 dismissal of her original complaint. We review *de novo* a trial court's ruling on a section 2-619 motion to dismiss and may affirm that ruling on any basis supported by the record. *Krulich v. American National Bank & Trust Co. of Chicago*, 334 Ill. App. 3d 563, 573, 778 N.E.2d 1153, 1163 (2002).

¶ 13 In this case, the parties and the trial court focused on whether the six-month period contained in section 13-209(b)(1) also applied to section 13-209(b)(2). However, as explained below, this case does not involve that issue.

¶ 14 The fundamental rule of statutory construction requires courts to ascertain and give effect to the legislature's intent. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 180, 950 N.E.2d 1136, 1146 (2011). The statutory language, given its plain and ordinary meaning, best indicates the legislature's intent. *Pappas*, 242 Ill. 2d at 180, 950 N.E.2d at 1146. In interpreting a statutory provision, courts evaluate the statute as a whole, "with each provision construed in connection with every other section." *Pappas*, 242 Ill. 2d at 180, 950 N.E.2d at 1146. When the statutory language is clear and unambiguous, a court must give effect to the statute's plain meaning without resorting to extrinsic statutory-construction aids. *Pappas*, 242 Ill. 2d at 180, 950 N.E.2d at 1146. Thus, a court may examine legislative history only when the legislature's intent is not clear from the statute's plain language. *People v. Jones*, 214 Ill. 2d 187, 193, 824 N.E.2d 239, 242 (2005). Accordingly, we do not look to the purpose behind a statute unless the statute is ambiguous. "A statute is ambiguous if it is capable of more than one reasonable interpretation." *People ex rel. Department of Public Aid v. Smith*, 212 Ill. 2d 389, 397, 818 N.E.2d 1204, 1209 (2004).

¶ 15 Section 13-209(b) of the Procedure Code (735 ILCS 5/13-209(b) (West 2008)) provides the following:

"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." (Emphases added.)

¶ 16 The plain and ordinary language of section 13-209(b)(1) provides a *possible extension* of the statute of limitations for the underlying action of up to six months after the decedent's death. See *Sisk*, 245 Ill. App. 3d at 691, 615 N.E.2d at 47 (addressing Ill. Rev. Stat. 1991, ch. 110, ¶ 13-209(b), which contained the same language as section 13-209(b)(1)). That section is not itself a separate statute of limitations period as suggested by plaintiff. In this case, the two-year statute of limitations for an action seeking damages for personal injury (735 ILCS 5/13-202 (West 2008)) expired on June 11, 2008, and defendant died June 21, 2006. Thus, the six-month possible extension contained in section 13-209(b)(1) expired well before the two-year statute of limitations for the underlying action and could never have applied in this case. See *Sisk*, 245 Ill. App. 3d at 691, 615 N.E.2d at 47-48 (explaining the inapplicability of the six-month extension based on the facts of that case). Accordingly, the six-month period contained in section 13-209(b)(1) is not at issue here, and no reason exists for determining whether sections 13-209(b)(1) and 13-209(b)(2) must be read together or separate.

¶ 17 "A deceased person cannot be a party to a suit because such is a nonexistent entity ***." *Keller v. Walker*, 319 Ill. App. 3d 67, 70, 744 N.E.2d 381, 384 (2001). Illinois appellate court cases have found a trial court lacks subject-matter jurisdiction when a party files a suit against a deceased person and thus such proceedings are void *ab initio*. *Keller*, 319 Ill. App. 3d at 70, 744 N.E.2d at 384. However, our supreme court has declined to hold

an action against a decedent is under all circumstances a nullity. See *Vaughn v. Speaker*, 126 Ill. 2d 150, 157-60, 533 N.E.2d 885, 888-89 (1988). In *Vaughn*, 126 Ill. 2d at 159-60, 533 N.E.2d at 889, the supreme court considered whether, under section 2-616(d) of the Procedure Code (Ill. Rev. Stat. 1987, ch. 110, ¶ 2-616(d) (now 735 ILCS 5/2-616(d)), the second complaint naming the executors of the decedent's estate as the defendant related back for purposes of the statute of limitations to the initial complaint which named as defendant a deceased individual. Before considering section 2-616(d), the *Vaughn* court explained the amended complaint replacing the decedent with his executors was itself untimely as it was filed after the statute of limitations for the action had expired, no statutory provision extended the statute of limitations, and the substitution of the executors was not the correction of a misnomer. *Vaughn*, 126 Ill. 2d at 156-57, 533 N.E.2d at 887-88. On the facts in *Vaughn*, the supreme court concluded section 2-616(d) did not apply because one of the requirements was not met but did reverse the trial court's dismissal and remanded the cause for the trial court to address the plaintiff's argument that the defendants were estopped from raising the statute of limitations. *Vaughn*, 126 Ill. 2d at 160, 167, 533 N.E.2d at 889, 892. In addition to section 2-616(d)'s relation-back doctrine, the Third District has held that a trial court can acquire subject-matter jurisdiction of a case with a deceased defendant pursuant to section 13-209(c) of the Procedure Code (735 ILCS 5/13-209(c) (West 1998)), which addresses situations where the plaintiffs are unaware a deceased person was named a defendant. *Keller*, 319 Ill. App. 3d at 71, 744 N.E.2d at 384.

¶ 18 Here, the facts are uncontested. Plaintiff knew defendant was deceased when she filed her negligence complaint against him. Since section 13-209(c) of the Procedure Code (735 ILCS 5/13-209(c) (West 2008)) does not apply due to plaintiff's knowledge of the death, the trial court did not obtain subject-matter jurisdiction under that provision. Moreover, plaintiff's June 2010 attempt to file an amended complaint naming McDonald as the

defendant was filed more than two years after the date of plaintiff's injury, and thus it is untimely under section 13-202 of the Procedure Code (735 ILCS 5/13-202 (West 2008)). Plaintiff has not raised any statutory provision extending the two-year statute of limitations of section 13-202. Additionally, plaintiff did not raise in the trial court and does not raise on appeal the argument that her proposed amended complaint related back to the date on which the original complaint was filed by meeting the requirements of the relation-back doctrine contained in section 2-616(d) of the Procedure Code (735 ILCS 5/2-616(d) (West 2008)). Thus, plaintiff's proposed amended complaint is untimely under the two-year statute of limitations of section 13-202 and does not cure the original complaint's nonentity defect. Last, plaintiff has not argued that the statute of limitations is inapplicable under the estoppel doctrine.

¶ 19 Accordingly, we find plaintiff's complaint was against a nonentity and the trial court lacked subject-matter jurisdiction over it. Thus, the trial court properly dismissed plaintiff's action with prejudice.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Jefferson County circuit court's judgment.

¶ 22 Affirmed.