

No. 1-10-0017

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

YVONNE ORREGO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	
)	No. 09 M1 169639
DR. CLAUDE GENDREAU, D.V.M., and SURGICAL)	
REFERRAL SERVICES/VETERINARY SPECIALTY)	Honorable
CENTER,)	Dennis M. McGuire,
)	Judge Presiding.
Defendants-Appellees.)	

JUSTICE KARNEZIS delivered the judgment of the court.
Justice Connors concurred in the judgment.
Presiding Justice Cunningham dissented.

ORDER

HELD: The five-year statute of limitations for damage to personal property barred plaintiff's complaint for veterinary malpractice, which was filed nearly nine years after plaintiff knew or should have known the injury to her dog was wrongly caused.

In this appeal, plaintiff Yvonne Orrego appeals *pro se* from an order of the circuit court granting the motion of defendants Dr. Claude Gendreau, D.V.M., and Surgical

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Referral Services/Veterinary Specialty Center, to dismiss plaintiff's complaint for veterinary malpractice based on the applicable statute of limitations. For the following reasons, we affirm.

On December 7, 2004, plaintiff filed a complaint seeking damages from defendants as a result of an operation her dog, Milan, underwent in 2000. On August 18, 2005, plaintiff voluntarily dismissed her complaint.

Four years later, on August 26, 2009, plaintiff filed another complaint against defendants. The complaint alleged that Milan underwent surgery on his leg with Dr. Gendreau on November 3, 2000. Due to complications from the surgery, Milan was taken to Chicago Veterinary Services on November 4, 2000, and was also taken to his veterinarian the next day. When the complications continued, plaintiff brought Milan back to Dr. Gendreau on November 14, 2000. Plaintiff's complaint further alleged that the complications continued from the date of the surgery until August 2004. On August 30, 2004, plaintiff brought Milan to a different veterinarian who found a "nail pin" in Milan's leg area where the operation had taken place.

Defendants filed a motion to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619(5) (West 2008)) (Code) and section 13-205 of the Code (735 ILCS 5/13-205) (West 2008)). Defendants argued in the motion that the five-year statute of limitations for injury to personal property (735 ILCS 5/13-205) applied and that because plaintiff knew or should have known that Milan's injury was wrongfully caused sometime shortly after the surgery in 2000, plaintiff's complaint,

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which was filed in 2009, was untimely. After a hearing, the circuit court granted the motion to dismiss. Plaintiff now appeals.

On appeal, plaintiff argues that her August 26, 2009, complaint is timely because the five-year statute of limitations should begin to run on August 30, 2004, when she discovered that the nail pin had been left in Milan's leg. Plaintiff maintains that prior to that date, she did not know that the complications Milan had suffered had been wrongfully caused.

A motion to dismiss pursuant to section 2-619 of the Code admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that defeats the plaintiff's claim. DeLuna v. Burciaga, 223 Ill. 2d 49, 59 (2006). We review an order dismissing a complaint pursuant to section 2-619 of the Code *de novo*. Ferguson v. City of Chicago, 213 Ill. 2d 94, 99 (2004).

Section 13-205 provides in part, "[e]xcept as provided in * * *, actions on unwritten contracts, expressed or implied, or on awards of arbitration, 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 2008).

Pursuant to the "discovery rule," a party's cause of action accrues when "the party knows or reasonably should know of an injury and that the injury was wrongfully caused." Clay v. Kuhl, 189 Ill. 2d 603, 608 (2000).

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Here, plaintiff's complaint alleged that Milan suffered complications immediately after the surgery in 2000 and those complications continued for the next four years, until August 30, 2004, when the nail pin was discovered by a different veterinarian. Therefore, plaintiff knew something was wrong after Milan's surgery, as evidenced by her allegations that she brought Milan to Chicago Veterinary Services the day after the surgery, his veterinarian the next day, and back to Dr. Gendreau about 10 days after the surgery. Plaintiff also knew something was wrong after the surgery because she alleged that Milan's complications continued for the next four years. Plaintiff might not have known the exact cause of Milan's injury (i.e. the nail pin), however, plaintiff reasonably should have known that Milan had been injured as a result of undergoing surgery with Dr. Gendreau, and that injury had been wrongfully caused. We find that the five-year statute of limitations began to run sometime shortly after the surgery in 2000. Plaintiff's 2009 complaint was untimely because it was filed more than five years after 2000, when plaintiff reasonably should have known Milan's injury was wrongfully caused. Even if we were to find that the statute of limitations did not begin to run until several years after the surgery, plaintiff's complaint would still be untimely. We do not agree that the statute of limitations began to run as late as August 30, 2004, when the nail pin was discovered, because plaintiff knew of Milan's complications from the date of the surgery and several years thereafter. Plaintiff simply filed her complaint too late and the circuit court properly granted defendant's motion to dismissed based on the statute of limitations.

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Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

PRESIDING JUSTICE CUNNINGHAM respectfully dissents:

I respectfully dissent from the majority view which affirms the trial court's dismissal of plaintiff's complaint on the grounds that the statute of limitations had expired before plaintiff filed suit. I believe that this case presents unique facts which dictate a different result.

Plaintiff was assured by the defendant, Dr. Gendreau, and a collaborative veterinarian, Dr. Ferraro, that the problems which her dog was experiencing post-operatively were the "type of incidents [that] happen" following surgery to a dog. In fact, plaintiff seems to have done everything that was reasonable in repeatedly taking her dog for follow-up examinations and treatment when the symptoms persisted. Dr. Gendreau, who it later turns out may have been the source of the dog's problem, continued to assure plaintiff that all was well. This was also supported by the assurances of the dog's original veterinarian, Dr. Ferraro. Since the victim of the alleged malpractice is a dog, plaintiff could not question the dog about its condition and its specific symptoms. She had to rely upon the expertise of veterinarians to discern the symptoms, whether there was a problem, and its cause. Dr. Gendreau, the alleged source of the problem, certainly did not advise plaintiff that there was an issue resulting from the surgery that he performed nor did he identify the surgery as the source of the dog's symptoms.

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Therefore, defendants' argument that plaintiff was aware of "surgical complications" soon after the surgery is disingenuous at worst and meaningless at best. First, as discussed, plaintiff was repeatedly assured by two veterinarians that her dog's problems were nothing out of the ordinary. This assurance came from the very defendant who is now claiming that plaintiff should have known that there was something wrong and therefore brought her lawsuit earlier. Second, even though plaintiff clearly knew that her dog had post-operative problems, it does not necessarily follow, nor can it be asserted, that all post-operative complications are the result of malpractice. This is especially so in light of Dr. Gendreau's and Dr. Ferraro's continuing assurances that the problems which the dog seemed to be having were nothing out of the ordinary.

Thus, I do not believe it is reasonable for plaintiff to be held responsible for not having discovered the true nature of her dog's post-operative problems prior to switching veterinarians. To expect plaintiff to have acted sooner, would be to require her to have filed a complaint without knowing what she was complaining about. The fact that the treating veterinarians continued to assure plaintiff that there was nothing wrong, prevented plaintiff from discovering the true nature of the problem prior to switching veterinarians. It seems patently unfair to allow the defendant, Dr. Gendreau, to benefit from his own actions in assuring plaintiff that there was no problem, when it can reasonably be inferred that plaintiff's reliance upon those assurances caused a delay in discovering the true cause of the dog's problem; specifically, veterinary

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malpractice by Dr. Gendreau. In my view, plaintiff was placed in a "catch-22" situation by Dr. Gendreau's continuing assurances.

However, upon learning from the new veterinarian, Dr. Shanan, that there was in fact a problem which had its origin in the surgery performed by Dr. Gendreau, plaintiff acted reasonably and promptly in filing her complaint.

Accordingly, I would hold that under the facts of this case, the five year statute of limitations began to run when Dr. Shanan discovered the retained pin left in the dog's leg by the defendant, Dr. Gendreau, and advised plaintiff that the pin was the cause of the problems which the dog had experienced for those years following the surgery.

I would therefore reverse the trial court's order of dismissal of plaintiff's complaint.