

No. 1-10-3640

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANN MADRIGAL-SANTOS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 P 7761
)	
THE ESTATE OF ABE KORACH,)	
Deceased,)	The Honorable
)	Susan M. Coleman,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Salone and Sterba concurred in the judgment.

ORDER

Held: The circuit court properly dismissed plaintiff's negligence claim against defendant estate as being time-barred under section 13-202 and 13-216 of the Code of Civil Procedure. Furthermore, section 18-12 of the Probate Act of 1975 cannot serve to revive claims otherwise time-barred under a general statute of limitations.

¶ 1 Plaintiff Ann Madrigal Santos sued defendant Estate of Abe Korach, for personal injuries she sustained in a July 8, 2004, automobile accident. Plaintiff appeals from the circuit court's order of November 10, 2010, dismissing her claim with prejudice as being time-barred by a statute of limitations. On appeal, plaintiff asks this court to vacate the order dismissing her claim, arguing that a statutory period set by section 18-12 of the Probate Act (Act) (755 ILCS

5/18-12 (West 2008)) governs the limitations period of her claims, rather than the general statute of limitations contained within sections 13-202 and 13-217 of the Code of Civil Procedure (Code) (735 ILCS 5/13-202, 13-217 (West 2008)). We affirm.

¶ 2

I. BACKGROUND

¶ 3 On June 20, 2006, plaintiff filed a lawsuit against Abe Korach for personal injuries she sustained in a July 8, 2004, automobile accident. On May 3, 2008, Korach died and John Regan was appointed Special Administrator for the Estate of Abe Korach one month thereafter. Subsequently, on July 30, 2008, plaintiff voluntarily dismissed her lawsuit without prejudice. On July 8, 2009, plaintiff attempted to refile her case in the law division, but improperly named the deceased “Abe Korach” as defendant instead of the estate. Plaintiff did not make an effort to correct her error.

¶ 4 On January 13, 2010, Joan Korach, the widow of the decedent, was appointed as the independent executor of defendant, Abe Korach’s estate, and the decedent’s will was presented and admitted for probate. Two months later, on March 25, 2010, plaintiff filed her negligence claim against defendant for the personal injuries she sustained in the July 8, 2004, automobile accident. Defendant filed a motion to dismiss plaintiff’s claim pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2008)). Defendant argued that the claim was time-barred pursuant to Sections 13-202 and 13-217 of the Code (735 ILCS 5/13-202, 13-217 (West 2008)). In response, plaintiff argued that her claim was timely filed in the probate division pursuant to Section 18-12(b) of the Act (755 ILCS 5/18-12(b) (West 2008)), which bars claims filed two years after a decedent’s death. Plaintiff further claimed that section 18-12(c) of the Act

is applicable, in that the section, as a whole, does not bar actions to establish liability of the decedent to the extent that the Defendant is protected by liability insurance. 755 ILCS 5/18-12(c) (West 2008). On November 10, 2011, the circuit court granted defendant's motion to dismiss plaintiff's negligence claim with prejudice. Plaintiff filed this timely appeal.

¶ 5

II. ANALYSIS

¶ 6 Plaintiff contends that the probate division judge erred in dismissing her personal injury claim against defendant. She argues that her action was not time-barred by the Code because a more specific statute in the Probate Act provides for the limitations period applicable to her action. We review the circuit court's order of involuntary dismissal pursuant to Section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2008)) under a *de novo* standard.

Progressive Insurance Co. v. Williams, 379 Ill. App. 3d 541, 544 (2008).

¶ 7 Section 18-12(b) and (c) of the Act, titled "Limitations on payment of claims," provides:

"(b) All claims which could have been barred under this Section are, in any event, barred 2 years after decedent's death, whether or not letters of office are issued upon the estate of the decedent.

(c) This Section does not bar actions to establish liability of the decedent to the extent the estate is protected by liability insurance." 755 ILCS 5/18-12(b), (c) (West 2008).

A failure to file within the statutory period, prescribed by the section, bars a plaintiff from participating in the inventoried assets of the estate. *Estate of Garawany*, 80 Ill. App. 3d 401, 404 (1980). This section was adopted for the purpose of facilitating early settlement of estates and is

not a general statute of limitations. *In re Marriage of Epstein*, 339 Ill. App. 3d 586, 596 (2003); *Garawany*, 80 Ill. App. 3d at 404; *In re Baker's Estate*, 48 Ill. App. 2d 442, 443 (1964).

¶ 8 Moving on to the Code, the statute of limitations generally governing personal injury actions, set forth in section 13-202, allows a victim to file a claim within two years from the date of injury. 735 ILCS 5/13-202 (West 2008). In the event that a plaintiff's claim is dismissed or reversed, she may commence a new action within one year or within the remaining limitation period, whichever is greater. 735 ILCS 5/13-217 (West 2008). Plaintiffs, however, are permitted "one, and only one, refiling of a claim even if the statute of limitations has not expired."

Timberlake v. Illini Hospital, 277 Ill. App. 3d 1041, 1043 (1996) (quoting *Flesner v. Youngs Development Co.*, 145 Ill. 2d 252, 254 (1991)). Furthermore, the general statute of limitations is the sole governing statute, which operates as an absolute bar to filing of an action against estate for personal injuries. *Hannah v. Gilbert*, 207 Ill. App. 3d 87, 91 (1990) (quoting *Schloegl v. Nardi*, 92 Ill. App. 3d 302, 306 (1968)).

¶ 9 If section 13-217 of the Code controls here, plaintiff's claim would have expired on July 30, 2009, one year after her case was voluntarily dismissed. Plaintiff seeks legal refuge in the novel, but unsupported, argument that the Act governs this action, since it is a more specific statute, rather than the Code's general statute of limitations applied to tort actions. Under plaintiff's interpretation, she would have had until May 3, 2010, to file her action against defendant. Accordingly, she argues that her claim was timely as it was filed on March 25, 2010, less than two years following the decedent's death on May 3, 2008.

¶ 10 According to plaintiff, the Code's general statute of limitations for the refiling of a tort

action is a catchall provision that is superseded by the Act. In support of her argument, Plaintiff cites *Polly v. Estate of Polly*, 385 Ill. App. 3d 300 (2008). In *Polly*, a widow sued her husband's estate for breach of contract of a prenuptial agreement and for an accounting. Her husband had died on June 4, 2003, and the relevant complaint was filed against the defendant estate on November 2, 2005. The circuit court and this court held that the two-year statute of limitations for filing a claim against the estate barred the widow's claims. *Id.* at 305. The widow's counts were contractual "claims" against the estate rather than assertion of rights as an heir under the will; therefore, in accordance with section 18-12 of the Act, the widow had two years from the date of her husband's death to inform the estate of her claims. *Id.* at 304-05. The widow, however, failed to do so and thus her claims were barred by section 18-12 of the Act. *Id.* Based on this, the instant plaintiff argues that the time limitations and conditions in section 18-12 are the only ones applicable to her cause of action.

¶ 11 In this regard, plaintiff leans on a rather slender reed. First, the widow in *Polly* only argued that the statute of limitations of section 18-12 of the Act did not apply because the counts for breach of contract and for an accounting were not "claims" against the defendant estate within the meaning of that section. This court in *Polly*, essentially, was asked to define the word "claim" as it was used in section 18-12 of the Act. That is not the issue here, and no similar argument has been raised by either party that plaintiff's negligence action does not constitute a claim, as used in section 18-12 of the Act, against defendant.

¶ 12 Second, plaintiff in the case *sub judice* requests that we apply one statutory period to the action instead of another, and thus the issue here primarily concerns a comparison of statutory

provisions. The analysis in *Polly*, however, involved no such interpretation or otherwise required a determination of how section 18-12 of the Act should be construed with the Code's general statute of limitations. The apparent reason for this is that the applicable statute of limitations period in the Code for the widow's breach of contract claim was 10 years (735 ILCS 5/13-206 (West 2008)) and thus could not have possibly served to bar her claim. *Polly*, therefore, does not stand for the proposition that a general statute of limitations was inapplicable, but rather that the Act's statutory period could act to bar a claim earlier than the Code's statute of limitations would. This is consistent with the above stated principle that section 18-12 was intended to facilitate the early settlement of estates. *Epsteen*, 339 Ill. App. 3d at 596. Plaintiff in the instant case, however, asks us to do the opposite and interprets section 18-12 in such a way to effectively extend the time for which she could file her action. We disagree with her interpretation, and as will be discussed below, we hold that section 18-12 was intended to expedite settlements and act as a further limitation on actions against an estate, and not as a way for a plaintiff to toll or otherwise avoid a statute of limitations that would act to bar an action.

¶ 13 Of particular note is our supreme court's opinion in *Vaughn v. Speaker*, 126 Ill. 2d 150 (1988). There, the plaintiff filed a negligence action against an individual, not knowing he was deceased. Upon learning this, plaintiff filed another complaint, within two years of decedent's death, against the co-executors of decedent's estate. The defendants moved to dismiss, asserting the statute of limitations in section 13-202 of the Code barred the action. In response, plaintiff presented to the courts, *inter alia*, a relation back argument and an argument based on section 18-12 of the Act. While we acknowledge that any "relation back" argument and analysis in *Vaughn*

has little relevance here, as to section 18-12 of the Act, the supreme court stated:

"[S]ection 18-12 of the Probate Act of 1975 ***, relied on by plaintiffs, is no basis for asserting that the second complaint was filed prior to the running of the statute of limitations. The language of section 18-12 (entitled "Limitations on payment of claims") clearly does not *extend* any otherwise applicable statute of limitations but instead imposes *additional* time constraints for making certain claims against a decedent's estate."

(Emphasis in original.) *Vaughn*, 126 Ill. 2d at 157.

This language is consistent with our rationale for distinguishing *Polly*. To reiterate, section 18-12 of the Act actually served as an additional time constraint to the plaintiff in *Polly*, providing a further time limitation on claims that were filed within a lengthier general statute of limitations. The quoted language from *Vaughn* confirms our determination that section 18-12 does not operate in an opposite manner, serving to extend the Code's statute of limitations.

¶ 14 Also of concern are the potential consequences should we adopt plaintiff's suggested application of section 18-12 of the Act. We observe that plaintiff's contention essentially creates a situation where we must determine which statute of limitations ultimately controls. When two statutes are allegedly in conflict, a court has the duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible. *Ferguson v. McKenzie*, 202 Ill. 2d 304 311-12 (2001). Applying section 18-12 in the way plaintiff suggests, however, would effectively render any general statute of limitations applicable to living defendants meaningless. It would allow a plaintiff to allow a statute of limitations period to expire, wait for the defendant's demise, and then have a previously

time-barred claim resurrected by the admission of the deceased defendant's estate into probate. This result is unacceptable and we are wholly unpersuaded that section 18-12 was intended to allow such a scenario.

¶ 15 Upon a closer examination, however, we further find that the statutes are not necessarily in direct conflict. As stated, section 18-12 of the Act was not intended to create an extended opportunity to advance claims; rather, it was intended to expedite the settlement of estates. To this end, the " 'general statute of limitations is the sole governing statute which operates as an absolute bar to the filing of the action for the personal injuries.' " *Hannah*, 207 Ill. App. 3d at 91 (1990) (quoting *Schloegl*, 92 Ill. App. 3d at 306 (1968)). Section 18-12 of the Act, on the other hand, merely provides for a claim against an estate within a prescribed period, and thus has been held to be a grant of jurisdiction and not a general statute of limitations. *Epsteen*, 339 Ill. App. 3d at 598. Accordingly, the statutes can be applied harmoniously under these circumstances, in that the Code is the source of the applicable statute of limitations to claims while section 18-12 of the Act affects only jurisdiction of claims during the statute of limitations. Interpreting the statutes in such a manner does not allow an extension of any statute of limitations but imposes additional time constraints on claims against an estate, an interpretation which avoids vitiating the Code's statute of limitations, gives full effect to both statutes, and is entirely consistent with the purpose of section 18-12 referenced several times above. See *Vaughn*, 126 Ill. 2d at 157, *Epsteen*, 339 Ill. App. 3d at 596, *Garawany*, 80 Ill. App. 3d at 404; *In re Baker's Estate*, 48 Ill. App. 2d at 443.

¶ 16 We note that plaintiff also argues hypothetically that if she had never filed her action and

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Abe Korach had died on the last day of the two year statute of limitations under section 13-202 of the Code, she would still have had two years from the date of his death to file under section 18-12 of the Act. She argues it would be "absurd" to not use section 18-12 of the Act to extend the limitations period, as it would result in her being in a worse position for attempting to pursue her claim, as opposed to not taking any prior action. We are unpersuaded. In our view, section 13-209(b) of the Code would have been the only possible saving provision under plaintiff's hypothetical, which specifically provides, in pertinent part, that:

"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." 735 ILCS 5/13-209(b) (West 2008).

Under plaintiff's hypothetical construct, she would have had six months to preserve her claim after Korach's death if she failed to previously pursue the matter. If the action was already filed, however, section 13-217 of the Code would have allowed plaintiff a year to refile from the date of a voluntary dismissal based on Korach's death. Therefore, under plaintiff's hypothetical, she would actually have been in a worse position had she failed to act. Accordingly, we find that refusing to extend the general statute of limitations through section 18-12 of the Act does not lead to the absurd consequences plaintiff suggests.

¶ 17 Here, plaintiff filed their initial lawsuit against Abe Korach on June 20, 2006. It was

voluntarily dismissed on July 30, 2008, upon learning of Abe Korach's death. Despite this knowledge, plaintiff refiled their lawsuit on July 8, 2009, erroneously naming the deceased Abe Korach as defendant, and therefore, the circuit court lacked jurisdiction over the matter and the lawsuit was a nullity and void *ab initio*. *Keller v. Walker*, 319 Ill. App. 3d 67, 70 (2001).

Plaintiff had until July 30, 2009, to remedy this error, however, she did not attempt to do so until March 25, 2010. By then, the statute of limitations under section 13-202 and 13-217 had both run (see 735 ILCS 5/13-202, 13-217 (West 2008)), and for the reasons discussed above, section 18-12 of the Act could not serve to revive plaintiff's time-barred claims. Accordingly, the trial court did not err in dismissing plaintiff's claim with prejudice.

¶ 18

III. CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.