

Medical Malpractice Update

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The Illinois Supreme Court Speaks: The Relation-Back Statute Applies to Wrongful Death Case After Statute of Repose Expires

The Illinois Supreme Court recently issued its opinion in *Lawler v. University of Chicago Medical Center, et al.*, 2017 IL 120745, affirming the decision of the Illinois Appellate Court First District and finding the relation-back statute applied to a wrongful death claim even when the death occurred more than four years after the alleged act of negligence.

On August 4, 2011, plaintiff Jill Prusak sued the defendant, Dr. Rama Jager, and other medical providers, for medical malpractice. The plaintiff alleged that Dr. Jager, and other medical providers, misdiagnosed plaintiff's macular pathology and failed to recognize lymphoma in her central nervous system during treatment provided from November 5, 2007 through July 2009. *Lawler*, 2017 IL 120745 at ¶ 3. The plaintiff claimed she did not learn about the alleged misdiagnosis until at least August 7, 2009, following a brain biopsy. *Id.*

The plaintiff died on November 24, 2013. *Id.* at ¶ 4. On April 11, 2014, Sheri Lawler, the plaintiff's daughter and the executor of her estate, filed an amended complaint, adding two counts under the Illinois Wrongful Death Act. *Id.* The defendants moved to dismiss the wrongful death claims as barred by the four-year statute of repose because the plaintiff died more than four years after the last act of alleged medical negligence. *Id.* at ¶ 5. Plaintiff argued that the wrongful death claim was timely because it related-back to the original complaint pursuant to 735 ILCS 5/2-616(b). *Lawler*, 2017 IL 120745 at ¶ 6. The circuit court granted defendants' motions to dismiss, reasoning "that the medical malpractice statute of repose was an 'absolute bar' to a wrongful death claim brought more than four years after the last alleged act of negligence and that the relation back doctrine did not apply." *Id.* at ¶ 7.

The First District reversed the circuit court's decision, finding that the relation-back doctrine applied. Because plaintiff's original complaint was timely filed, her wrongful death claims, which were filed more than four years after the alleged act of negligence related-back, were timely. *Id.* at ¶ 8-9. The appellate court relied on language in the relation-back statute that "[t]he cause of action...in any amended pleading shall not be barred by lapse of time *under any statute* or contract prescribing or limiting the time within which an action may be brought or right asserted." *Id.*, quoting, *Lawler v. University of Chicago Medical Center, et al.*, 2016 IL App (1st) 143189 ¶ 56.

On appeal to the Illinois Supreme Court, the defendants contended the relation-back statute did not apply when a death occurs more than four years after the alleged act of negligence, and even if it did apply, the medical malpractice statute of repose should control and preclude plaintiff's wrongful death claims. *Lawler*, 2017 IL 120745 at ¶ 10. Considering this an issue of first impression, the supreme court initiated its *de novo* review of the circuit court's order granting defendants' motions to dismiss by examining the Wrongful Death Act, the medical malpractice statute of repose, and the relation-back statute.

The supreme court emphasized that the "primary goal in construing a statute is to ascertain and give effect to the intent of the legislature." *Id.* at ¶ 12. To determine the legislature's intent, one should consider the statute in its entirety and look to the plain language of the statute, "which must be given its plain and ordinary meaning." *Lawler*, 2017 IL 120745 at ¶

12, quoting, *Evanston Insurance Co. v. Risenborough*, 223 Ill.2d 49, 49 (2006). The Court considered the plain and ordinary meaning of the Wrongful Death Act, the statute of repose, and the relation-back statute.

The supreme court emphasized that the Wrongful Death Act allows a decedent's next of kin to recover damages for their own pecuniary injuries caused by the wrongful acts of another. 740 ILCS 180/2. The cause of action accrues when the death occurs, and "the death must also be the result of a wrongfully caused injury suffered by the deceased at the hands of another." *Lawler*, 2017 IL 120745 at ¶ 15, quoting, *Wyness v. Armstrong World Industries, Inc.*, 131 Ill.2d 403, 414-15 (1989). Therefore, "the cause of action is the wrongful act, neglect, or default causing death, and not merely the death itself." *Id.*

The medical malpractice statute of repose, codified at 735 ILCS 5/13-212(a), establishes a four-year period to file a medical negligence action that is triggered by the occurrence of the act or omission caused by the injury and "may preclude recovery for an injury arising out of patient care even before the plaintiff knows or discovers the injury." *Lawler*, 2017 IL 120745 at ¶ 18. The repose period was intended to curtail exposure to medical malpractice claims by placing a time limit within which an action must be commenced. *Id.*

The relation-back statute, codified at 735 ILCS 5/2-616(b), allows a claim to be added through an amended pleading after the statute of limitations has run if that claim relates back to the original cause of action. *Id.* at ¶ 20. The original pleading must have been timely filed and the amendment must grow out of the same transaction or occurrence set up in the original pleading. *Id.* at ¶ 21.

In this case, the "wrongful act, neglect or default causing death" was the defendants' failure to diagnose Jill Prusak's lymphoma between November 5, 2007 and July 2009. Jill Prusak discovered she had lymphoma on August 7, 2009, following a brain biopsy, triggering the two-year statute of limitations. She timely filed her original medical negligence case within those two years. However, the four-year statute of repose simultaneously began to run on the date of the last act of alleged medical treatment in July 2009 and expired in July 2013. When Jill Prusak died on November 24, 2013, her next of kin's wrongful death action accrued, but the statute of repose period for medical negligence claims had already expired four months before her death.

The defendants argued that "the statute of repose 'extinguished' the wrongful death claim before it accrued," yet the supreme court explained that the relation-back statute specifically precludes amendments to pending complaints from being time-barred. *Lawler*, 2017 IL 120745 at ¶ 28-29. The issue was not that Jill Prusak filed her original complaint for medical negligence after the repose period. In fact, the parties conceded the original complaint filed on August 4, 2011 was timely. *Id.* at ¶ 28. Further, the supreme court found that the wrongful death claim was based on the same alleged acts of medical malpractice as the original complaint and that the wrongful death allegations were "taken verbatim" from the allegations of the original complaint. *Id.* Since plaintiff had satisfied the requirements of the relation-back statute, her wrongful death claim was not time-barred even though it accrued after the statute of repose period expired.

The defendants further argued the relation-back statute was not intended to "preserve" a cause of action that is time-barred, relying on *Real v. Kim*, 112 Ill.App.3d 427 (1983) and *Evanston Insurance Co.* *Lawler*, 2017 IL 120745 at ¶ 30. The supreme court noted that neither of those cases addressed the relation-back statute or the propriety of amending a pending complaint. The *Real* case involved a wrongful death action alleging medical negligence originally filed after the repose period had already expired, and *Evanston* involved a legal malpractice complaint that was initially dismissed as the cause of action had not accrued. *Id.* The plaintiff then tried to file another complaint entitled a "second amended complaint" after the cause of action accrued but after the repose period had expired. *Id.* at ¶ 31-32. The court in *Evanston* pointed out that there was no amendment to a pending complaint. The second complaint was a new complaint filed after the repose

period expired, which is why the court ruled it was time-barred. *Id.* The difference was that Jill Prusak filed her *original* complaint timely and the substituted plaintiff sought to amend the complaint after the wrongful death action accrued. The supreme court highlighted that allowing amendments to pending complaints after the limitations period had expired is not new to Illinois jurisprudence or in other jurisdictions, and that such amendments have been permitted when the conditions of the relation-back statute were met.

Defendants further argued the statute of repose should control because it is the more specific statutory provision and the relation-back statute is procedural. *Lawler*, 2017 IL 120745 at ¶ 40. The court disagreed, finding that the relation-back statute was the more specific provision in these circumstances. *Id.* The supreme court reasoned that the relation-back statute governs amendments without being subject to time limitations, and when applied, it does not bar an amendment “as long as there is a pending timely filed original complaint and the same transaction or occurrence test is satisfied.” *Id.* The court did not find this interpretation to be contrary to legislative intent or creating an exception to the statute of repose. Rather, the court concluded

[w]hen there is a pending complaint based on medical malpractice and a wrongful death claim is added to that complaint, these concerns are not implicated. A defendant would already be aware of a claim for medical malpractice, and the wrongful death claim would not be stale if it is based on the same transaction or occurrence as the original complaint. *Id.*

The court, therefore, held that the relation-back statute applied to the wrongful death claim filed on behalf of Jill Prusak’s estate and was not barred by the statute of repose.

Conclusion

The main consideration when determining the timeliness of a later added wrongful death claim is whether the original complaint was timely filed. If the first complaint had not been filed until after Jill Prusak died on November 24, 2013, the Court agreed her wrongful death claim would have been barred by the statute of repose because her death occurred more than four years after the last act of medical negligence. However, because her original medical negligence complaint was timely filed and merely amended after her death to allege a wrongful death claim stemming from the same act of medical negligence, the relation-back statute applied. When evaluating any wrongful death action, know the date of the last act of medical negligence at issue, calculate the statute of limitations and repose period, calculate whether the original complaint was timely filed, and ensure that the wrongful death action actually concerns the same acts of medical negligence identified in the original complaint. If there is a question as to any of these factors, prepare a section 2-619 motion to dismiss to challenge the timeliness of the claim.

About the Author

Edna L. McLain is a partner at *Tressler LLP* in Chicago. She focuses her litigation practice on defense of corporate clients in toxic tort and general liability cases, as well as the defense of nursing homes nurses, and other medical personnel in medical negligence cases. She has she successfully argued an appeal before the Second District Appellate Court. In



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