

Health Law

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Legal Disability Can Toll the Statute of Limitations and Statute of Repose Despite A Pending Lawsuit

The Illinois Court of Appeals, Third District, recently answered a certified question regarding the tolling provisions for disabled persons in a medical negligence action in *Gavlin v. Adventist Bolingbrook Hosp.*, 2022 IL App (3d) 200282, ¶ 1. In answering the question, the Third District held that the filing of a cause of action by the representative of a disabled person did not stop the tolling provision of section 13-211 of the Code of Civil Procedure for defendants not named in the original lawsuit so long as the disability had not been terminated. *Gavlin*, 2021 IL App (3d) 200282, ¶ 30.

Background Facts

The plaintiff, Linda Gavlin, was the Special Administrator of the Estate of Jennifer Andrules, who is disabled. In 2016, Gavlin filed a medical negligence action against Adventist Bolingbrook Hospital (“Adventist”). Later, in 2019, she amended her complaint and added Lakewood Nursing and Rehabilitation Center (“Lakewood”) as a new defendant. Gavlin alleged that Andrules suffered two falls. *Gavlin v. Adventist Bolingbrook Hospital*, 2021 IL App (3d) 200282, ¶¶ 1-4. Her first fall occurred on May 22, 2014 at Adventist and resulted in surgery for a fracture the right femoral head to her right leg. *Id.* ¶ 4. Her second fall occurred approximately a month later at Lakewood and also necessitated surgery on the same leg. *Id.* ¶ 4.

In filing her third amended complaint, Gavlin included a physician’s certificate, which provided “Lakewood and its staff were negligent in their care and treatment of Jenny Andrules resulting in her fall on June 3, 2014, necessitating a second more extensive surgery, with pain, disability and damages some of which will remain permanent and continue for the rest of her life and increased living costs and expenses ***.” *Gavlin*, 2021 IL App (3d) 200282, ¶ 6. Lakewood filed a motion to dismiss count II of the third-amended complaint and argued that the allegations against it were untimely. The trial court initially granted Lakewood’s motion, but then reversed its ruling upon Gavlin’s motion to reconsider. In its order, the trial court noted that “Lakewood may file an interlocutory appeal pursuant to [Supreme Court Rule] 308 and shall submit proposed certified questions to Plaintiff for review and possible agreement. ***” *Id.* ¶ 7.

Lakewood then filed a Motion to Approve Certified Question Pursuant to Supreme Court Rule 308 by submitting the following question for appeal: “Does Plaintiff’s removal of the disability tolling statute (735 ILCS 5/13-211) by filing a Complaint against Joint Tortfeasor A, act as a removal of the disability tolling statute as to Joint Tortfeasor B, if Plaintiff pled actual knowledge of Joint Tortfeasor B’s involvement?” *Id.* ¶ 7.

Relevant Statutes

On appeal, the Third District analyzed the certified question by evaluating and comparing both the statute of limitations and statute of repose for medical negligence actions (735 ILCS 5/13-212(a)) with the disability tolling statute, 735 ILCS 5/13-211(a). The Third District noted that Section 13-212(a) provides, in relevant part:

[N]o action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, *** but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death. 735 ILCS 5/13-212(a).

Gavlin, 2022 IL App (3d) 200282, ¶ 11.

The medical negligence statute of limitations places a two-year limitation period on a claim that commences when a party “knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused.” *Gavlin*, 2021 IL App (3d) 200282, ¶ 12, citing *Young v. McKiegue*, 303 Ill. App. 3d 830, 387 (1st Dist. 1999). The statute of repose commences when a specific event occurs, regardless of whether an action has accrued. The statute of repose places “a cap on the applicability of the discovery rule so that the outer limit terminates the possibility of liability after a definite period of time, regardless of a potential plaintiff’s lack of knowledge of his cause of action.” *Gavlin*, 2021 IL App (3d) 200282, ¶ 12, *Serafin, v. Seith*, 284 Ill. App. 3d 577, 588 (1st Dist. 1999).

The tolling provisions for negligence actions are found in Sections 13-211(a) and 13-212(c) of the Illinois Code of Civil Procedure. *Gavlin*, 2021 IL App (3d) 200282, ¶ 13. Section 13-211(a) applies to general negligence actions and provides: “If the person entitled to bring an action ***, at the time the cause of action accrued is, *** under a legal disability, then he or she may bring the action within 2 years after *** the disability is removed.” 735 ILCS 5/13-211(a). Section 13-212(c) applies to medical negligence claims and provides: “If the person entitled to bring an action described in this Section is, at the time the cause of action occurred, under a legal disability other than being under the age of 18 years, then the period of limitations does not begin to run until the disability is removed.” 735 ILCS 5/13-212(c).

Third District’s Analysis

In its analysis, the Third District initially observed the importance of disability tolling provisions by noting their necessity in protecting the interests of mentally disabled people and preserving their day in court until they are able to bring suit of their own. *Gavlin*, 2021 IL App (3d) 200282, ¶ 15, citing *Fess v. Parke, Davis & Co.*, 113 Ill. App. 3d 133, 135 (1st Dist. 1983).

The court further noted that in Illinois, the appointment of a guardian for a disabled individual or a minor does not terminate the tolling statute and begin the running of the applicable statute of limitations. *Gavlin*, 2021 IL App (3d) 200282, ¶ 19. This is because the cause of action is owned by the minor or disabled person, not the guardian. The court reasoned that as the owners of the cause of action, minors and disabled people should not be deprived of their rights by

the actions or inactions of their guardians. Thus, the statute of limitations continues to be tolled upon the approval of a guardian, and tolling continues until the disability is removed. *Id.*

The court continued its analysis by examining various jurisdictions and concluded that many have allowed a plaintiff to bring an action on behalf of a minor or disabled person to name a new defendant to an existing cause of action years after filing the original complaint because the statute of limitations remained tolled. *Id.* ¶ 25.

In *Gavlin*, Lakewood argued that the court should answer the certified question affirmatively because (1) Andrules' rights were adequately protected when Gavlin filed a complaint on her behalf and (2) it is unfair to subject it to liability for Andrules' injuries for her entire lifetime because of her disability. *Id.* ¶ 26. In the alternative, Lakewood argued that the doctrine of laches applies. *Id.*

The court disagreed with Lakewood's arguments and held that removing the protection of a tolling statute when a representative of a disabled person files suit does not adequately protect a disabled person in the judicial process. Thus, it is reasonable to require statutes of limitations and repose to be tolled until the disability is removed. *Gavlin*, 2021 IL App (3d) 200282, ¶27. The court reasoned that "[t]he disability of a person of unsound mind is not only the lack of access to the courts, but also the inability to participate in, control, or even understand the progression and disposition of their lawsuit." *Id.*; citing *Ruiz*, 868 S.W.2d at 755. The court further observed that legislatures considered "not merely the inability to sue, but also the difficulties of the incompetent for giving information and testifying" when creating tolling statutes. *Gavlin*, 2021 IL App (3d) 200282, ¶ 27, citing *Wolf v. United States*, 10 F. Supp. 899, 900 (S.D. N.Y. 1935).

The Third District further observed that courts have rejected the argument that it is unfair for the defendant's potential liability to extend throughout the lifetime of a disabled person because there is a need to protect a plaintiff who is unable to protect him or herself, and this need continues "so long as the plaintiff remains incompetent." *Gavlin*, 2021 IL App (3d) 200282, ¶ 28, citing *Tzolov v. International Jet Leasing, Inc.*, 232 Cal. App. 3d 117, 120 (1991). To hold that a tolling statute terminates prior to a disabled person becoming competent "would constitute tampering with the significant public policy reflected" in tolling statutes: "the protection and preservation of the substantive rights of the mentally incompetent persons." *Id.* ¶ 28, citing *Paavola v. Saint Joseph Hospital Corp.*, 325 N.W. 3d 609, 611 (Mich. Ct. App. 1982). Courts will not imply exceptions to the disability tolling statutes where they have not been expressly provided by the legislature. *Gavlin*, 2021 IL App (3d) 200282, ¶ 27.

As to Lakewood's second argument, the court noted that the doctrine of laches bars an action where an unreasonable delay in bringing a suit has caused a party to be misled, to be prejudiced or to take action it would not have otherwise taken. *Gavlin*, 2021 IL App (3d) 200282, ¶ 29. A disabled person "cannot be held accountable for any apparent delay, negligence, or laches in seeking redress through the courts, and he is not affected by the limitations period in the statute." *Id.*; citing *Haas v. Westlake Community Hospital*, 82 Ill. App. 3d 347, 349 (1st Dist. 1980).

The court answered the certified question in the negative and concluded that the tolling due to a disability terminates only upon the occurrence of (1) the death of the disabled person, or (2) the removal of the disability. *Gavlin*, 2021 IL App (3d) 200282, ¶ 30. In this case, because Andrules was still alive and disabled when Gavlin filed the claim against Lakewood, it was not untimely. Therefore, the trial court properly denied Lakewood's motion to dismiss. *Id.*

Conclusion

In *Gavlin*, the Third District provides insight as to why courts will give special consideration to disabled individuals when tolling the statute of limitations and statute of repose. In doing so, the court stressed the importance of protecting the interests of the mentally disabled and preserving their day in court until they are able to bring suit of their own instead of applying the statute of limitations and statute of repose in favor of the medical provider defendant. *Id.* ¶ 15.



While all parties can agree that a disabled individual's legal interests should be protected, defense counsel should also pay close attention of the timeline when a case involves a disabled individual. In *Gavlin*, a new defendant was added to the cause of action three years after the filing of the original lawsuit and five years after the alleged negligence. Therefore, defense counsel should anticipate that cases involving a disabled individual may be prolonged.

About the Authors

Ann Barron is a Shareholder at *Heyl, Royster, Voelker & Allen, P.C.* and serves as the Co-Chair of the Appellate Department. Ms. Barron handles medical malpractice, environmental and commercial litigation pending in state and federal court. Before joining Heyl Royster, she served as in-house counsel at Valero in San Antonio, Texas, where she managed complex environmental, commercial, class action and tort litigation. After graduating from the University of Illinois College of Law in 1994, Ms. Barron began her legal career serving as a law clerk to the Honorable James D. Heiple of the Illinois Supreme Court. After her clerkship, she worked for two law firms in the St. Louis area. She represented clients in environmental, class action, commercial, and personal injury matters pending throughout the country. Ms. Barron has represented clients before the Seventh Circuit Court of Appeals, the Illinois Supreme Court and various appellate courts in Illinois and Missouri.

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