

Second District Civil Decision Digest

September 2020

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*The content, citations, and analysis provided are for informational use only. No legal advice is being presented herein. An in-person consultation coupled with in-depth and independent research should be made before citing a case.

**Cases are arranged by type, and then chronologically by decision posting date with the most recent appearing last in the section.

*** We are pleased to announce that, commencing with the November 2020 Digest, the Decision Digest will be adding a Criminal Digest for Criminal Decisions issued by the Second District Appellate Court.

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Aliens, Immigration, and Citizenship

In re Parentage of Ervin C.-R., 2020 IL App (2d) 200236

Date Published: 9/30/2020

Facts: All the parties were native to Guatemala. The child, Ervin, was born in August 2006, and the alleged father, Jasinto, was present when his son was born. Jasinto told his family that he was happy to have a son, and he is acknowledged as Ervin's father on Ervin's birth certificate from Guatemala. In November 2006, however, Jasinto left Guatemala and came to the United States. The last contact the mother, Enriqueta, had with Jasinto was in April of 2007. In 2013, Enriqueta left Ervin with her parents, in Guatemala, and she came to the United States. Ervin, in 2016, went to the United States, but was intercepted by federal authorities and placed with his mother. Enriqueta searched for Jasinto, but was unable to find him. Enriqueta then filed a petition to establish parentage, alleging that Ervin had been abandoned by his father. The court's oral ruling questioned whether Ervin was actually abandoned and whether there was a moot point because the status quo would not change in granting the petition. The court, therefore, found that the child was not abandoned.

Issues on Appeal: Whether the trial court erred in its interpretation of the word "dependent" in the applicable statute and whether a child may be considered abused, neglected, or abandoned when

only one parent has abused, neglected, or abandoned the child, but the other has not.

Holding: Reversed and Remanded

Analysis: The trial court's determination that the minor was not "dependent" on the court was in error. A judicial order allocating sole decision-making responsibility and parenting time is, unquestionably, an order affecting a child's custody and care. As to the second issue, the plain language and precedent find that the language "on or both" follows the logic that use of the disjunctive indicates that abuse, neglect or abandonment by one parent is sufficient to support the predicate finding. Enriqueta presented sufficient evidence for the trial court to determine whether it was in Ervin's best interest to return to Guatemala or to remain here with his mother.

Contracts

Mayster v. Santacruz, 2020 IL App (2d) 190840

Date Published: 9/30/2020

Facts: Mayster formed a company to purchase and operate two Mathnasium franchises. However, in negotiating and executing the agreements, Santacruz terminated the transaction based on his "increasing uncertainty as to the financial status

of the company," and was found to be in breach of the agreement. The trial court then went on to decide on an affirmative defense of mitigation of damages, finding the Plaintiff failed to mitigate damages. As such, the trial court entered judgment in favor of the defendants. The court subsequently denied a Motion to reconsider.

Issues on Appeal: (1) Whether the trial court was justified in finding that there was a failure to mitigate damages and (2) whether a failure to mitigate damages bars recovery.

Holding: Affirmed

Analysis: The measure of damages for a breach of contract is the amount that will compensate the aggrieved party for the loss that

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the breach entailed. The purpose of damages is to put the nonbreaching party into the same position, but not a better position, as if the contract had been performed. Where the contract pertains to something that is obtainable in the market, the measure of damages is the difference between the contract price and the fair market value at the time of the breach. The general rule is that a person who is injured by a breach of contract must make a reasonable effort to avoid damages therefrom. The issue of damages is a question of fact, and a trial court's finding of damages will not be disturbed unless it was against the manifest weight of the evidence. As to that issue, Mayster had previously received offers of \$120,000 and \$110,000 from other potential buyers and was under an obligation to sell the franchise at whatever price could be taken. Moreover, while Mayster might have had offers above \$100,000 before Santacruz's offer, none of those offers materialized into a sale. Mayster had no offers after she relisted Barrington for \$130,000, which makes her refusal to reduce the price unreasonable. As the court noted, it is common sense that reducing the sales price would make it easier to sell. Therefore, the trial court's finding of a failure to mitigate is supported by the evidence. As to the issue of whether the trial court misapplied the doctrine of avoidable consequences, Illinois has long recognized the doctrine of avoidable consequences. The injured party incurs no liability to the breaching party by failing to take appropriate steps to mitigate its damages. The injured party is expected to take such affirmative steps as are appropriate in the circumstances to avoid loss. Here, the deal fell apart and there was a chance to restate it. However, Mayster refused and tried to sell the franchise at a higher price. When Mayster received no offers, she closed the business purely for personal reasons. As noted, the law does not require Math to pay for Mayster's voluntary decision to close the business. Moreover, the appellate court will not reverse a case to permit recovery of nominal damages.

Foreclosures & Real Estate Transactions

Wilmington Savings Fund Society, FSB v. Barrera, 2020 IL App (2d) 190883

Date Published: 9/21/2020

Facts: Plaintiff was the holder of a mortgage on property, and filed to foreclose the mortgage due to default in payment. The Barreras appeared through counsel and filed a motion to dismiss the complaint under sections 2-619(a)(4) and (a)(9) of the Code of Civil Procedure. Defendants cited the single refiling rule under Section 13-217 as their affirmative matter, indicating that a previous holder of the mortgage had filed 2 actions to foreclose previously, and those had been dismissed. The trial court dismissed the action. The court ruled that the suit was barred because the default dates alleged in the third complaint were at issue in the earlier two actions.

Issues on Appeal: Whether the dismissed foreclosure complaint alleged a separate subsequent default and therefore did not violate the single re-filing rule.

Holding: Reversed and Remanded

Analysis: The single refiling rule cannot bar a complaint based on a later default. The allegations of the Complaint were new and subsequent to the previous matters. However, the Appellate Court further stated that the single re-filing rule follows res judicata cases. Under res judicata principles, a later suit cannot be barred unless it asserts the same cause of action as an earlier suit; the transactional test is used to determine whether an identity exists between causes of action. Notably, the single-refiling rule, unlike res judicata, does not require a final adjudication on the merits in the prior lawsuit. Under the transactional test, separate claims are treated as the same cause of action when they arise from a single group of operative facts. Under res judicata principles, "a defendant's continuing course of conduct, even if related to conduct complained of in an earlier action, creates a separate cause of action." The Appellate Court then applied the "new-default rule." Potential future defaults cannot pragmatically be treated as part of the same group of operative facts as actual defaults. A default that has not yet occurred is a paradigmatic hypothetical issue; further, it is not definite and concrete. Thus, a default that has not occurred typically cannot be litigated. In the present matter, the ongoing failure to pay taxes and fees constituted new defaults that were not barred by the single-filing rule. Thus, dismissal was not appropriate.

John Franklin & Dorothy Bickmore Living Trust v. Nanavati, 2020 IL App (2d) 190710

Date Published: 9/23/2020

Facts: The plaintiffs listed their property for sale and received an offer for purchase from 2 offerors. The Contract, however, identified only a single seller, when in fact there were two. The contract provided that the seller would convey good-andmerchantable title to the buyers by warranty deed. It also provided that, in any litigation "with respect to this Contract," the "prevailing party ... shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction." Shortly after the first seller signed the contract, the other buyer became dissatisfied with the sale price and reneged. The contract did not give the seller the right to rescind the contract. Also of interest was an unrecorded quitclaim deed held by the other seller. Regardless, based upon the facts, the Trial Court entered judgment against the Defendants for breach of contract and awarded damages.

Issues on Appeal: Whether the trial court's finding of breach of contract was in error as a matter of law and whether the Plaintiffs were entitled to attorneys' fees and costs pursuant to the contract.

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Holding: Affirmed

Analysis: The Appellate court found that the contract was binding. While the second seller had not signed the contract, the contract is still binding upon the seller who does sign it, especially when they are named as the sole seller. Therefore, that seller was still bound to transfer their interest, even though the contract would not be binding on the other party. As to the matter of attorneys' fees, a hearing on fees, more than a typical nonevidentiary hearing, invites the introduction of new facts through attorney representations. However, the appellants failed to supply an adequate record upon which the appellate court could make a ruling. As the appellate court has to resolve against the appellant any doubts that arise from the incompleteness of the record, this ended the matter.

Mandamus

Sharp v. Baldwin, 2020 IL App (2d) 181004

Date Published: 9/11/2020

Facts: Plaintiff is in the custody of the Illinois Department of Corrections (IDOC), serving a sentence of 30 to 125 years for the 1970 murder of a Chicago police officer. In May 2018, plaintiff filed a complaint for mandamus, pursuant to section 14-101 of the Code. In his complaint, plaintiff alleged that, effective January 1, 2018, the legislature had amended the Corrections Code. The Defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure. After supplemental briefing and argument, the trial court granted the motion to dismiss

Issues on Appeal: Whether the Plaintiff was entitled to credit for programs completed prior to an amendment to the Illinois Correction Code.

Holding: Affirmed

Analysis: Mandamus is an extraordinary remedy used to compel a public official to perform a purely ministerial duty where no exercise of discretion is involved. A writ of mandamus will issue only if the petitioner establishes (1) a clear right to the relief requested, (2) a clear duty of the public official to act, and (3) clear authority in the public official to comply with the writ. The plain language of Public Act 100-3 requires sentence credit for program participation for persons, like plaintiff, who were convicted of first degree murder "for credit earned on or after the effective date of this amendatory Act." Plaintiff is seeking to force defendant to grant him credit for program participation that occurred prior to the effective date of the amendatory act. Thus, construing the allegations of the complaint in the light most favorable to plaintiff, the Appellate court found that the allegations were insufficient to establish a cause of action upon which relief may be granted. Therefore, dismissal pursuant to section 2-615 of the Code was appropriate.

Wills & Probate Estates

Young v. Weiland, 2020 IL App (2d) 191042

Date Published: 9/9/2020

Facts: Mary Young died in 2014, leaving four surviving children. Six years after Mary's death, her children's disagreements persist over matters concerning the disposition of her estate and the parties are before the Second District again to resolve those differences. Shortly after Mary died, plaintiff filed a will contest and later a multicount complaint. The trial court later dismissed the complaint for want of prosecution. Plaintiff moved to vacate the DWPs and the trial court reopened the estate for the purpose of filing objections and set a time for a response to the motion to vacate. Plaintiff then refiled the complaint, seeking a constructive trust and accounting and alleging conversion, fraud and duress, undue influence, and tortious interference with inheritance expectancy. The next day, plaintiff moved to withdraw his motion to vacate the DWPs. The trial court later dismissed the refiled complaint pursuant to a 2-619 motion brought by the defendants.

Issues on Appeal: Whether plaintiff was precluded from refileing his complaint under section 13-217 before he withdrew his pending motion to vacate the Dismissal for want of prosecution of the original complaint.

Holding: Reversed and Remanded

Analysis: section 13-217 provides that, when an action is dismissed for want of prosecution, "then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff *** may commence a new action within one year or within the remaining period of limitation, whichever is greater, after *** the action is dismissed for want of prosecution." Section 13-217 operates as an extension of the applicable statute of limitations. Here, the plaintiff timely filed the new action pursuant to the statute. Therefore, the statute was satisfied. Plaintiff also argued that the refiling of the complaint while the motion to vacate was still pending was consistent with the statute and promoted judicial economy, which the Appellate Court agreed to. In general, where defendants have not articulated (and we cannot discern) how they were prejudiced by plaintiff's refiling and neither the statute nor case law prohibit a refiling prior to the withdrawal of a motion to vacate a DWP, the trial court's dismissal warrants reversal. Judicial economy weighs in favor of finding no error with the refiling here. Also, the fact that the statute does not preclude such a result promotes the goal of avoiding statutory interpretations that lead to absurd, inconvenient, or unjust consequences. IN A SPECIAL CONCURRENCE, Justice McLaren commented: I specially concur because I do not see the need for further analysis once we determined that the statutory language clearly relates that the refiling time starts from the date

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the DWP order is entered and that the refiling here was timely. The remaining analysis is merely judicial dictum.

About the Contributor

Andrew J. Mertzenich is appellate counsel at Prime Law Group, LLC. Andrew has argued before the Second District Appellate Court for the State of Illinois and contributes opinions on amicus briefs for organizations wishing to file into cases. Andrew also presents CLE on Appellate Practice for bar associations throughout the area and provides consultation services to local attorneys and litigants on how best to approach their appellate issues. He publishes the quarterly *Second District Civil Decision Digest* with several local bar associations.

Outside of law, Andrew is a passionate musician. He is Principal Organist at Court Street United Methodist Church in Rockford, IL. Andrew also volunteers with the Land of Lincoln Theatre Organ Society as a technician and performer. He donates regularly to several causes and sits on the Boards of the American Guild of Organists – Rockford Chapter and the Land of Lincoln Theatre Organ Society. He is also a regular listener and contributor to National Public Radio (NPR).

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