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2025 IL App (3d) 230367-U

Order filed March 31, 2025

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2025

BETTY KAY KARDASZ,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
Plaintiff,	)	Du Page County, Illinois.
	)	
v.	)	
	)	
KATHERINE PATERNO,	)	
	)	
Defendant.	)	
	)	
-----	)	
	)	
KATHERINE PATERNO, as Personal	)	
Representative and Co-Trustee and on behalf	)	
of the Phillip G. Kardasz Living Trust, dated	)	
October 1, 2006, as Restated and Amended,	)	
Individually and as a Beneficiary, and on behalf	)	
of the Kardasz beneficiaries,	)	
	)	
Counterplaintiff-Third-Party Plaintiff	)	
and Appellant,	)	
	)	Appeal No. 3-23-0367
v.	)	Circuit Nos. 20-MR-923 & 20-MR-
	)	310
BETTY KAY KARDASZ,	)	
	)	
Counterdefendant-Appellee,	)	
	)	
DEBRA ROPER, KAREN MILLS, GARY	)	
HOLLANDER, KATHRYN CLANCY,	)	

ADVENTIST MIDWEST HEALTH, an Illinois )	
Not-for-Profit Corporation f/k/a AMITA ST. )	
THOMAS HOSPICE and d/b/a )	
ADVENTHEALTH ST. THOMAS HOSPICE, )	
and JOANNE DONOGHUE, )	
)	
Third-Party Defendants-Appellees, )	
)	
SHANNON DAY QUINN, ROBERT )	
PATRICK DAY, STEVEN A. DAY, )	
TIMOTHY M. DAY, and UNKNOWN )	
PARTIES, )	The Honorable
)	Bryan S. Chapman,
Third-Party Defendants. )	Judge, presiding.

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JUSTICE HETTEL delivered the judgment of the court.  
Presiding Justice Brennan and Justice Bertani concurred in the judgment.

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## ORDER

¶ 1       *Held:* In a case involving consolidated actions regarding a trust, we lack jurisdiction to review the dismissal of two of the defendant-counterplaintiff-appellant's counterclaims. Additionally, we hold that the circuit court did not err when it dismissed six of her third-party claims for reasons including that two claims violated a statute permitting only one refiling after a voluntary dismissal, two claims were barred by the absolute-litigation privilege, one claim was filed after the relevant statute of limitations expired, and one claim was not a proper third-party action.

¶ 2       The plaintiff-counterdefendant-appellee, Betty Kay Kardasz, sued the defendant-counterplaintiff-appellant, Katherine Ann Kardasz Paterno, based on a document Katherine produced after Betty's husband and Katherine's father, Phillip G. Kardasz, died. The document purported to amend Phillip's trust. Katherine countersued Betty and sued numerous other defendants, including Debra Lynne Kardasz Roper, attorneys Karen Mills and Gary Hollander, Adventist Midwest Health, registered nurse Joanne Donoghue, and attorney Kathryn Clancy, alleging various claims such as wrongful death and fraud. After two of Katherine's counterclaims

and six of her third-party claims were dismissed, she appealed. On appeal, Katherine challenges each of the dismissals. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

On October 1, 2006, Phillip executed a will and a living trust (hereinafter the Trust). At that time, Phillip had been married to Betty since 1983. Phillip had four living adult children from a previous marriage, including Katherine, who is an attorney, and Debra. Betty also had four adult children from a previous marriage.

¶ 5

Phillip's will directed all his property to be distributed to the Trust and that, upon his death, a marital trust and a family trust would be created. The will also named Betty or Katherine, or the survivor of them, as personal representatives. The Trust named Phillip as trustee during his life and Betty as successor.

¶ 6

The Wisconsin-based attorney who prepared the documents for Phillip also prepared one amendment to the Trust, which was dated August 27, 2011. In part, the amendment contained a schedule of specific property distributions. The schedule included that the surviving spouse would have life use of the marital home and all household goods and furnishings. The schedule also stated that "[n]one of the children are permitted to remove or take any contents of the house without the surviving spouse's written permission." When the surviving spouse died, three of Phillip's children and three of Betty's children would each get a one-sixth share of the marital home.

¶ 7

Phillip died on July 5, 2020, after having been in hospice care since December 2019, which was provided by Adventist Midwest Health and Donoghue. Subsequently, Katherine produced a document, prepared by herself and dated August 1, 2018, purporting to be Phillip's restatement of, and second amendment to, the Trust. The document added Katherine as co-trustee and changed

certain property distributions. These developments set in motion substantial litigation among the family members, culminating in the consolidation of three circuit court cases.

¶ 8 One of the circuit court cases, 20-MR-923, was initiated by Betty in October 2020. Betty filed an amended complaint for declaratory judgment in January 2021, seeking a ruling that the document produced by Katherine was invalid because it (1) was the product of forgery and fraudulent intent, (2) was contrary to the recorded Trust, and (3) did not meet minimum validity requirements. The complaint also alleged that Katherine breached her fiduciary duty by naming herself trustee and removing items from Betty's home. In part, this second count requested an accounting of the property removed from Betty's home. A third count alleged defamation in that Katherine (1) accused Betty of forcing Phillip off dialysis, thereby killing him; (2) accused Betty of converting certain possessions that had been in the Kardasz family since Phillip's childhood; and (3) directed others to make defamatory statements about Betty.

¶ 9 Notably, Betty's original complaint from October 2020 contained allegations regarding two quitclaim deeds executed in 2017. First, an August 2017 quitclaim deed divided the marital home 50% to Phillip and 16.67% each to three of Betty's children. The August 2017 deed was prepared and notarized by attorney Clancy. Second, a December 2017 quitclaim deed conveyed the three 16.67% interests in the marital home from Betty's children to Betty. The deed further noted that the conveyance placed the marital home into tenancy by the entirety for Phillip and Betty as trustees of their respective living trusts. The December 2017 deed was prepared and notarized by Katherine.

¶ 10 Another circuit court case, 21-MR-310, was initiated by Katherine in March 2021. Katherine filed a complaint seeking to have Betty removed as trustee and for declaratory judgment. The complaint included a count for defamation against Debra. Additionally, Katherine's complaint

included allegations of a fraudulent scheme by Betty and her children to disinherit Phillip from the marital home. These allegations referenced the August 2017 deed prepared and notarized by Clancy and alleged that Phillip's signature had been forged.

¶ 11 The circuit court cases were consolidated in August 2021. Then, in September, Katherine filed a new complaint that included counterclaims and third-party claims. In part, Katherine set forth claims for intentional interference with inheritance expectancy and fraud against Debra. Several days later, Katherine voluntarily dismissed the complaint she had filed in March 2021 before the cases were consolidated.

¶ 12 Katherine amended her counterclaims and third-party claims several times. Of note, she filed for leave to amend her counterclaims and third-party claims on February 14, 2022. The circuit court granted Katherine her requested leave two days later. Notably, the amended counterclaims and third-party claims contained no counts against Debra. Accordingly, as a part of the court's February 16 order, Debra was voluntarily dismissed from the case. The court's order, which was prepared by counsel for Katherine, stated that Katherine had leave to refile any claims against Debra within one year. On June 21, 2022, in her second amended countercomplaint and third-party complaint, Katherine included a count against Debra for civil conspiracy.

¶ 13 After dismissals of her prior complaints with leave to amend, Katherine filed a third amended complaint in January 2023 that contained six counterclaims and 10 third-party claims. The counterclaims relevant to this appeal were as follows. Count I set forth a wrongful death claim against Betty. The count alleged, *inter alia*, that Betty forged documents to convert joint assets to herself and then pressured Phillip to discontinue dialysis, knowing that it would cause his death. Count II alleged that Betty's actions also constituted elder abuse.

¶ 14 The third-party claims relevant to this appeal were as follows. Count V set forth civil conspiracy and fraud claims against Debra, alleging that she conspired with certain individuals to “discredit” Katherine and convert property from the Trust. Count VI alleged Debra aided and abetted Betty’s scheme to defraud the Trust. Count VII set forth a wrongful death claim against Adventist Midwest Health and registered nurse Donoghue, alleging that they knew Phillip did not want to discontinue dialysis but were nonetheless complicit in Betty’s scheme to force him off dialysis and convert Trust assets. Count VIII alleged attorney Mills aided and abetted Betty’s scheme by intentionally misrepresenting “documents in all pleadings and motions filed since the inception of this cause.” Count IX set forth civil conspiracy, fraud, and aiding and abetting claims against Clancy, alleging, *inter alia*, that she prepared, notarized, and recorded forged deeds around June to August 2017 to effectuate Betty’s scheme to convert Trust assets. Katherine also alleged in count IX that Clancy later filed an affidavit falsely claiming that she had met with Phillip to execute the quitclaim deed giving his 50% of the marital home to Betty. Katherine claimed that “Phillip would never have done [this] as his 50% interest went to his descendants only.” Count X alleged attorney Hollander aided and abetted Betty’s scheme by, *inter alia*, intentionally misrepresenting Trust documents.

¶ 15 Betty filed a motion to dismiss Katherine’s counterclaims. The other defendants filed motions to dismiss the third-party claims against them.

¶ 16 On July 13, 2023, the circuit court announced its ruling on the motions to dismiss. The court addressed Debra’s motion to dismiss first, finding that pursuant to section 2-603 of the Code of Civil Procedure (Code) (735 ILCS 5/2-603 (West 2022)), counts V and VI of Katherine’s third-party claims failed to state a plain, concise statement of a cause of action. Additionally, the court found that the counts would be dismissed under section 13-217. In that regard, the court noted that

the claims against Debra had been brought twice before and were voluntarily dismissed both times, with the second voluntary dismissal occurring by agreement of the parties on February 16, 2022.

The court then stated:

“The Court wants to make clear that the language of the order entered on February 16th, 2022 is not evidence of an agreement to allow for refiling; rather, it is standard language that does not itself override the clear mandates of 13-217. There is no evidence of an agreement to allow for refiling. Counsel for [Katherine] at the time entered that order. It was not counsel from the other side. As a result, there is nothing to suggest that the one refiling rule, some kind of exception applies in this case. The Court does not find it. Therefore, the claims against Debra Roper are dismissed with prejudice pursuant to 603 and 217.”

The court also gave Rule 304(a) language on its ruling.

¶ 17 Next, the court addressed Betty’s motion to dismiss. In relevant part, the court found that Katherine lacked standing to bring counts I and II of the countercomplaint because “she has not been a court-appointed representative or administrator or executor of the estate.” However, because “things could change” in that regard, the court added that the dismissal of those counts would be without prejudice. The court declined Katherine’s request for Rule 304(a) language on this portion of the ruling.

¶ 18 Next, the court addressed the motion to dismiss filed by Adventist Midwest Health and Donoghue. The court found that count VII of Katherine’s third-party complaint was not properly pled. The court stated, “[t]here is no scenario or the Court cannot decipher a scenario in which Adventist or Nurse Donoghue would somehow be liable for what liability [Katherine] would have

to [Betty], which is the intellectual underpinnings of a third-party complaint here.” The court added,

“This is a wholly separate cause of action. It’s a medical malpractice claim. I understand there is allegations of sort of collusion of sorts, but fundamentally a wrongful death claim and specific allegations of Count 7 involve negligent medical care, and that is a different type of lawsuit. There does need to be a 622 affidavit. It is not provided. This is not the type of third-party complaint that can stand. It’s a separate cause of action for a separate claim. And so this count is dismissed.”

The court dismissed the count without prejudice but did not give Katherine leave to replead. On a later date, Katherine asked for the count to be dismissed with prejudice so the court would give Rule 304(a) language on its ruling.

¶ 19 Lastly, the court addressed the motion to dismiss filed by Mills and Hollander. Counsel for Mills and Hollander confirmed for the court that their only involvement in the case was limited to their representations of defendants. Accordingly, the court found that the absolute litigation privilege barred counts VIII and X of Katherine’s third-party complaint and dismissed those counts with prejudice. Rule 304(a) language was given.

¶ 20 Clancy’s motion to dismiss was addressed at a later hearing, as the circuit court had allowed additional briefing on the matter. The court ultimately ruled that the absolute-litigation privilege did not apply, but the two-year statute of limitations did apply. In that regard, the court found that by late October 2020 (when Betty filed her original complaint, which referenced the quitclaim deed prepared by Clancy), Katherine had sufficient information to conclude that actionable conduct may have occurred, as her declaratory judgment filing “attached and contained allegations of the 8-24-17 quit claim deed prepared and notarized by Clancy.” Accordingly, because count IX



of Katherine’s third-party complaint was not filed until January 2023, the court found that the two-year statute of limitations barred the claim and dismissed it with prejudice. Rule 304(a) language was given.

¶ 21 Katherine filed timely notices of appeal from the court’s orders.

¶ 22 II. ANALYSIS

¶ 23 Katherine’s first argument on appeal is that the circuit court erred when it dismissed counts I and II of her third amended countercomplaint. Katherine claims this court has jurisdiction to consider this issue under Illinois Supreme Court Rule 304(b)(1) (eff. March 8, 2016).

¶ 24 In relevant part, Rule 304(a) requires:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. \* \* \* In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.” *Id.* R. 304(a).

Rule 304(b)(1) provides one instance in which a judgment or order may be appealed without Rule 304(a) language: “[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.” *Id.* R. 304(b)(1).

¶ 25 Katherine’s specific argument is that the court’s dismissal of counts I and II of her countercomplaint was “determinative of the Kardasz descendent beneficiaries [*sic*] rights relating to the administration of Phillip Kardasz’s Trust.” She cites to cases for the general proposition that

“[a] proceeding relating to the administration of a trust had been determined to be a ‘similar proceeding’ that can generate orders appealable under Rule 304(b)(1).” Katherine’s argument fails to acknowledge, as a preliminary matter, the impact of the circuit court’s dismissal *without* prejudice.

¶ 26 It is well settled that “[a]n order dismissing an action without prejudice is not final.” *DeLuna v. St. Elizabeth’s Hospital*, 147 Ill. 2d 57, 76 (1992). However, “[a]n order meant to be interlocutory and directing for further proceedings may nonetheless ‘so completely adjudicate the rights of the parties as to constitute a final and appealable order.’ ” *Dilenbeck v. Dilenbeck-Brophy*, 2020 IL App (3d) 190541, ¶ 22 (quoting *Altschuler v. Altschuler*, 399 Ill. 559, 570 (1948)). Thus, “ ‘[t]he question of finality must be considered with reference to the particular facts and circumstances of each case.’ ” *Id.* (quoting *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 350 (2002)).

¶ 27 In *Dilenbeck*, this court found that a dismissal entered without prejudice was nonetheless final in nature because it constituted a substantive disposition in the case; namely, the trust provisions required the co-trustee plaintiff-appellant to obtain approval from the special co-trustee before bringing a particular claim. *Id.* ¶ 23-24. The instant case is distinguishable. Here, the circuit court’s dismissal without prejudice did not substantively interpret the Trust’s provisions or prevent Katherine from proceeding with her claims against Betty. The court’s finding that Katherine had to be “a court-appointed representative or administrator or executor of the estate” to bring her wrongful death and elder abuse claims in no way has prevented her from bringing those claims, unlike how the co-trustee plaintiff-appellant in *Dilenbeck* was blocked through the interpretation of trust provisions. *Id.* Under these circumstances, we hold that we lack jurisdiction to hear

Katherine's challenge to the circuit court's dismissal without prejudice of counts I and II of the countercomplaint.

¶ 28 Katherine's second argument on appeal is that the circuit court erred when it granted Debra's motion to dismiss counts V and VI of Katherine's third amended third-party complaint.

¶ 29 Section 2-619.1 of the Code allows a party to combine motions to dismiss pursuant to sections 2-615 and 2-619 in a single motion. 735 ILCS 5/2-619.1 (West 2022). Motions to dismiss brought pursuant to section 2-615 attack the sufficiency of the complaint (*id.* § 2-615), while motions to dismiss brought pursuant to section 2-619 assert some other affirmative matter outside the pleading that operates to defeat the claim (*id.* § 2-619). A motion to dismiss granted pursuant to section 2-619.1 is reviewed *de novo*. *Kennedy v. City of Chicago*, 2022 IL App (1st) 210492, ¶ 16.

¶ 30 Section 2-1009(a) of the Code provides that a plaintiff may voluntarily dismiss "his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause." 735 ILCS 5/2-1009(a) (West 2022). Section 13-217 of the Code operates in conjunction with section 2-1009 to provide a one-year time limit for the plaintiff to refile the action. 735 ILCS 5/13-217 (West 2022); see *SP Consulting, Inc. v. Exceleo Business Consulting, Inc.*, 2024 IL App (1st) 230995, ¶ 19. It is well settled that section 13-217 contains a limit of one refiling of a claim. *Flesner v. Youngs Development Co.*, 145 Ill. 2d 252, 254 (1991) (citing with approval cases that "all stand for the proposition that section 13-217 expressly permits one, and only one, refiling of a claim even if the statute of limitations has not expired").

¶ 31 In this case, Katherine initially filed a claim against Debra in 21-MR-310 in March 2021, alleging, essentially, that Debra had conspired with Betty to discredit Katherine by stating she had stolen certain property from Betty's house. After 21-MR-310 was consolidated with the case Betty

initiated (20-MR-923), Katherine filed a new complaint in September 2021, which contained two counts against Debra for intentional interference with inheritance expectancy and fraud. Due to the filing of a new complaint, Katherine voluntarily dismissed her original complaint. Then, in February 2022, Katherine was allowed to file an amended complaint, which contained no counts against Debra. In the February 16, 2022, order that granted Katherine leave to file her amended complaint, Katherine voluntarily dismissed Debra from the case.

¶ 32 It is inconsequential that the February 16, 2022, order prepared by counsel for Katherine contained language indicating that she had one year to refile any claims against Debra. By that point, Katherine had filed two distinct complaints, one of which she then voluntarily dismissed, and subsequently voluntarily dismissed Debra from the case when she amended her second complaint. The one-refiling rule contained in section 13-217 of the Code clearly operated to foreclose Katherine from refiling any claims against Debra past February 16, 2022. See *D’Last Corp. v. Ugent*, 288 Ill. App. 3d 216, 220 (1997) (holding that “[f]or purposes of section 13-217, a complaint is said to be a refiling of a previously filed complaint if it contains the same cause of action as defined by *res judicata* principles”); *Schrager v. Grossman*, 321 Ill. App. 3d 750, 755 (2000) (holding that “[s]eparate claims are considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts”); *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484, 490-91 (1993) (holding that “[a]lthough a single group of operative facts may give rise to the assertion of more than one kind of relief or more than one theory of recovery, assertions of different kinds or theories of relief arising out of a single group of operative facts constitute but a single cause of action”). Accordingly, we hold that the circuit court did not err when it granted Debra’s motion to dismiss counts V and VI of Katherine’s third amended third-party complaint.

¶ 33 Katherine's third argument on appeal is that the circuit court erred when it granted Mills's and Hollander's motion to dismiss counts VIII and X of Katherine's third amended third-party complaint. Katherine claims that the absolute-litigation privilege does not apply to prevent her claims; however, her argument does nothing more than (1) state in a conclusory fashion that Mills and Hollander aided and abetted Betty's alleged fraud and (2) restate her allegations against them without any citation to authority or attempt to show that their conduct occurred outside of their representation of defendants in this case.

¶ 34 Again, we review *de novo* a motion to dismiss granted pursuant to section 2-619.1. *Kennedy*, 2022 IL App (1st) 210492, ¶ 16.

¶ 35 To the extent that Katherine's argument even complies with our supreme court's requirements for presenting developed arguments on appeal (Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020)), it is without merit. The Second District has recently summarized the absolute-litigation privilege as follows:

“The absolute litigation privilege is an affirmative defense. *Bedin v. Northwestern Memorial Hospital*, 2021 IL App (1st) 190723, ¶ 39. ‘The absolute-litigation privilege immunizes certain statements and conduct by attorneys in the course of litigation.’ *Doe v. Williams McCarthy, LLP*, 2017 IL App (2d) 160860, ¶ 19. The purpose of the privilege is to allow attorneys ‘ “the utmost freedom in their efforts to secure justice for their clients.” ’ *Kurczaba v. Pollock*, 318 Ill. App. 3d 686, 701-02 (2000) (quoting Restatement (Second) of Torts § 586 cmt. a, at 247 (1977)). The privilege is based on section 586 of the Restatement (Second) of Torts, which provides that an attorney is ‘absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of,

a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.’ Restatement (Second) of Torts § 586 (1977). Under section 587 of the Restatement (Second) of Torts, a private party to the litigation ‘enjoys the same privilege.’ (Internal quotation marks omitted.) *Bedin*, 2021 IL App (1st) 190723, ¶ 39 (citing Restatement (Second) of Torts § 587 (1977)).

For the litigation privilege to apply, ‘“the communication must pertain to proposed or pending litigation.”’ *Id.* ¶ 40 (quoting *Scarpelli v. McDermott Will & Emery LLP*, 2018 IL App (1st) 170874, ¶ 19). However, the pertinency requirement is not strictly construed, and the privilege can be applied to statements or actions related to the subject controversy and those not confined to specific issues related to the litigation. *Id.* Any doubts related to pertinency must be resolved ‘in favor of finding the communication pertinent to the litigation.’ *Doe*, 2017 IL App (2d) 160860, ¶ 19. When the privilege applies, ‘no liability will attach even at the expense of uncompensated harm to the plaintiff.’ *O’Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 25. The privilege applies to communications made before, during, and after litigation, regardless of the defendant's motive or the unreasonableness of his conduct. *Bedin*, 2021 IL App (1st) 190723, ¶ 40.” *Goodman v. Goodman*, 2023 IL App (2d) 220086, ¶¶ 25-26.

The allegations Katherine levied against Mills and Hollander in this case indisputably relate to their statements and conduct made during the course of this litigation, and Katherine makes no attempt in her brief to argue otherwise. Under these circumstances, we hold that the absolute-litigation privilege operates to bar Katherine’s claims against Mills and Hollander. See *id.* Accordingly, we hold that the circuit court did not err when it dismissed counts VIII and X of Katherine’s third amended third-party complaint.

¶ 36 Katherine’s fourth argument on appeal is that the circuit court erred when it granted Clancy’s motion to dismiss count IX of Katherine’s third amended third-party complaint. Katherine argues that her claim against Clancy was timely because a five-year statute of limitations applied. Alternatively, Katherine argues that even if the two-year statute of limitations applied, her claim was timely filed because it was based on Clancy’s May 2022<sup>1</sup> affidavit in which she falsely claimed Phillip signed a quitclaim deed in her presence.

¶ 37 As previously stated, a motion to dismiss granted pursuant to section 2-619.1 is reviewed *de novo*. *Kennedy*, 2022 IL App (1st) 210492, ¶ 16.

¶ 38 In relevant part, section 13-214.3(b) of the Code provides that

“[a]n action for damages based on tort, contract, or otherwise \*\*\* against an attorney arising out of an act or omission in the performance of professional services \*\*\* must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought.” 735 ILCS 5/13-214.3(b) (West 2022).

Section 13-214.3(b) incorporates the discovery rule, “which delays commencement of the statute of limitations until the plaintiff knew or reasonably should have known of the injury and that it may have been wrongly caused.” *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1997).

¶ 39 In this case, Katherine’s third amended third-party complaint was filed in January 2023. That pleading set forth, for the first time, claims against Clancy in count IX. That count alleged that Clancy prepared, notarized, and recorded forged deeds around June to August 2017, which was part of Betty’s scheme to disinherit Phillip from the marital home. While Katherine alleges in

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<sup>1</sup> We note that the affidavit to which Katherine refers was signed by Clancy on April 5, 2022.

her brief on appeal that this “aiding and abetting” claim is based on the 2022 affidavit Clancy filed in which she said she had met with Phillip and witnessed him sign the quitclaim deed, that clearly is a disingenuous claim. It is indisputable that Katherine’s count IX was premised on Clancy’s conduct in the performance of professional services that occurred in 2017, not 2022. Accordingly, pursuant to section 13-214.3(b), Katherine had two years to file her claims against Clancy.

¶ 40 Katherine further argues that the discovery rule operated to toll the statute of limitations regarding her claims against Clancy. More specifically, she argues that the statute of limitations did not begin to run until May 27, 2021, when a forensic examiner’s report indicated that Phillip’s signature on the August 2017 deed was a forgery. Katherine’s argument is disingenuous. First, the August 2017 deed was referenced in and attached to Betty’s October 2020 complaint. Second, Katherine *herself* prepared and notarized the December 2017 deed, which related to the August 2017 deed’s change to the marital home’s interest, indicating that she knew about the transfer. Third, in her March 2021 complaint, Katherine first set forth her claims of the allegedly fraudulent scheme by Betty and her children to disinherit Phillip from the marital home. Within those claims, Katherine alleged that the August 2017 deed contained Phillip’s forged signature. Despite these claims, Katherine did not set forth any claims against Clancy. Rather, she did not include claims against Clancy until January 2023—well beyond two years from any date that Katherine reasonably should have known about the alleged wrongful conduct (see *Janousek v. Katten Muchin Rosenman LLP*, 2015 IL App (1st) 142989, ¶ 13 (holding that “[a] statute of limitations begins to run when the purportedly injured party ‘has a reasonable belief that the injury was caused by wrongful conduct, thereby creating an obligation to inquire further on that issue’” (quoting *Dancor*, 288 Ill. App. 3d at 673))). Under these circumstances, we hold that the circuit court did not err when it dismissed count IX of Katherine’s third amended third-party complaint.



¶ 41 Katherine’s fifth argument on appeal is that the circuit court erred when it granted Adventist’s and Donoghue’s motion to dismiss count VII of Katherine’s third amended third-party complaint. Katherine argues only that the court mischaracterized count VII, as it was not a medical malpractice claim. She emphasizes that the claim was not based on any malpractice for medical treatment.

¶ 42 Once again, we reiterate that we review *de novo* a motion to dismiss granted pursuant to section 2-619.1. *Kennedy*, 2022 IL App (1st) 210492, ¶ 16.

¶ 43 Section 2-406 of the Code addresses bringing in new parties for third-party proceedings. 735 ILCS 5/2-406 (West 2022). More specifically, section 2-406(b) states that “[w]ithin the time for filing his or her answer or thereafter by leave of court, a defendant may by third-party complaint bring in as a defendant a person not a party to the action who is or may be liable to him or her for all or part of the plaintiff’s claim against him or her.” *Id.* § 2-406(b). Third-party claims are based on derivative liability; accordingly, most third-party claims are indemnity or contribution claims. *Kerschner v. Weiss & Co.*, 282 Ill. App. 3d 497, 502 (1996). “In a proper third-party action, the liability of the third-party defendant is dependent on the liability of the third-party plaintiff to the original plaintiff.” *People v. Brockman*, 143 Ill. 2d 351, 368 (1991). “The proper focus for determining section 2-406 derivative liability is on the substance of the complaint.” *Id.*

¶ 44 A review of count VII of Katherine’s third amended third-party complaint reveals that it is not a proper third-party claim. Betty is the original plaintiff in this case. Under section 2-406(b), Katherine, as the purported third-party plaintiff, could bring in a third-party defendant *if* that new party was liable to Katherine for any part of Katherine’s liability to Betty. As the circuit court in this case astutely noted, “[t]here is no scenario or the Court cannot decipher a scenario in which Adventist or Nurse Donoghue would somehow be liable for what liability [Katherine] would have

to [Betty].” Under these circumstances, we hold that Katherine has not pled a proper third-party claim involving Adventist and Donoghue. Accordingly, we hold that the circuit court did not err when it dismissed count VII of Katherine’s third-amended third-party complaint.

¶ 45

### III. CONCLUSION

¶ 46

The judgment of the circuit court of Du Page County is affirmed.

¶ 47

Affirmed.