IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE IN AND FOR KENT COUNTY

DOLORES L. SOLBERG,)	
)	C.A. No. CPU5-11-001475
Plaintiff,)	
)	
)	
ν.)	
•)	
NATIONWIDE INSURANCE COMPAN	(Y,)	
JOHN SNOW AND/OR)	
PATRICIA COLMAN,)	
INSURANCE COMMISSIONER FOR)	
NATIONWIDE FOR SHIRLEY C. WHI	ГЕ)	
AND/OR LISA PINDER C/O)	
NATIONWIDE INSURANCE CO.,)	
)	
Defendants.)	

August 3, 2012

Ms. Dolores L. Solberg P O Box 10 Marydel, DE 19964 Self-Represented Plaintiff Sean A. Dolan, Esq. Law Office of Cynthia G. Beam Christiana Executive Campus 131 Continental Drive, Suite 407 Newark, DE 19713-4301 Attorney for Defendants

DECISION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Dolores L. Solberg filed this civil action with the Court of Common

Pleas seeking recovery against the defendants, Nationwide Insurance Co., John Snow,

Patricia Colman, Shirley C. White and Lisa Pinder, for personal injuries she received as

the result of an automobile accident. The defendants have moved for summary judgment seeking dismissal of the action on the grounds that the plaintiff's claims are time barred by the applicable statute of limitations.¹ Two evidentiary hearings were held for this matter and the Court reserved decision.² After carefully considering all the evidence on the record and the arguments of the parties, the Court finds that the plaintiff filed her action after the applicable statute of limitations had run. Therefore, her claims as contained in the action are dismissed and the defendants' Motion for Summary Judgment is granted.

DISCUSSION

The plaintiff was involved in an automobile accident on August 25, 2009. She contends that she suffered personal injuries as a direct result of the accident. These injuries consist of "physical and mental/psychological injuries, including confusion and inability to concentrate." She filed the current civil action with the Court on Monday, August 29, 2011, seeking recovery from the defendants for her injuries. The plaintiff contends that while she was concerned about filing her current action on time, on Thursday, August 25, 2011, she was distracted because she was a single sixty year old woman and needed to prepare for a coming hurricane. However, she did get to Dover, Delaware, in the afternoon of that day to file her lawsuit over a library computer, as she

¹ The defendants' motion was filed as a Motion to Dismiss. However, it included exhibits and necessitated evidentiary hearings. Therefore, it has become a Motion for Summary Judgment.

² Two hearings were held for this matter due to the plaintiff's contention that someone, possibly a member of Court of Common Pleas staff, advised her that she could file her action late due to a hurricane that was about to hit the area. In particular, the plaintiff alleged that she was advised that the Court would make "concessions." The plaintiff was unable to remember the identity of the person who advised her that she could be late with her filing. The Court took extraordinary measures to assist the plaintiff in identifying the individual and made all employees with the Court statewide, five in all, that could potentially have advised her about filing her action, available as witnesses at a hearing.

believed she could file via the internet.³ While at the library, she discovered that she could not file her Complaint electronically. The plaintiff further proffers that she called the Court on that day to explain her situation to Court staff and was advised by an unidentified "someone," that she could come in the next day to file her action. She was also allegedly advised that due to the emergency weather situation developing, the Court would make "concessions" for her, which she took to mean that she could file her lawsuit late. The plaintiff then attempted to file the paperwork to commence her civil action against the defendants with the Court the next day, on the afternoon of Friday, August 26, 2011, however, the courthouse, and Court were closed.⁴ Therefore, the plaintiff waited until Monday, August 29, 2011, to file her lawsuit against the defendants.⁵

In response to the lawsuit, the defendants have filed this Motion for Summary Judgment seeking dismissal of the claims contained therein on the grounds that the plaintiff's claims are barred by the applicable statute of limitations. The plaintiff's claims as contained in her civil action are for personal injuries. Section 8119 of Title 10 of the Delaware Code provides the statute of limitations for such actions. In pertinent part, it provides that "[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of two years from the date upon which it is claimed that the personal injuries were sustained. . ." 10 Del. C. § 8119. Since the plaintiff sustained her injuries, "physical and mental/psychological," on August 25, 2009, but, did not file her action until August 29, 2011, over two years later, it appears as

³ See paragraph nine of the plaintiff's Complaint.

⁴ The Governor of the State of Delaware declared a State of Emergency on that day and the Court closed at noon.

⁵ It should be noted that during hearings for this matter, the plaintiff appeared easily confused and disorganized. At various points in the hearing, she suggested that people thought she was crazy and were conspiring against her.

though the claims contained in her current action are time barred. However, the plaintiff contends that her action should not be dismissed as in violation of the applicable statute of limitations because her untimely filing was due to representations by the Court's staff that the Court would make "concessions" if she filed late due to the hurricane and her need to prepare for it.

While 10 Del. C. § 8119 mandates that a personal injury action be filed within 2 years:

[C]ourts have inherent authority under certain circumstances to recognize implied exceptions where legislative intent is not contravened. Such exceptions are warranted where an authority such as a court or its staff prevents the exercise of a legal right by a plaintiff. To justify such an exception, a party must show that the action of the court itself prevented the exercise of the right and the plaintiff acted with due diligence.

Fleming v. Jackson, 888 A.2d 231, at *2 (Del. 2005) (citing Bivens v. Mattero, 2004 WL 1732213 (Del. Super.)). Therefore, if the plaintiff can show that Court staff misled her as to when her Complaint could be filed, the ordinarily "strictly construed" statute of limitations may be extended to prevent injustice. Id. However, the actions of Court staff must be such that the Complaint would have been filed on time but for an error of the Court's staff. Wilson v. King, 673 A.2d 1228, 1232 (Del. Super. 1996). The burden remains on the plaintiff to prove by a preponderance of the evidence that the actions of Court staff misled her and resulted in the filing of her Complaint being delayed. Id. at 1231.

The main issue before the Court is whether the plaintiff has shown, by a preponderance of the evidence, that staff of the Court misled her in such a way that she was justified in filing the current action late, in violation of the applicable statute of

limitations provided by 10 *Del. C.* § 8119. The Court finds that she has failed to meet this burden of proof.

The Court finds that the plaintiff was never misled by the staff of the Court when she attempted to file the current action. The plaintiff initially attempted to file her lawsuit on the afternoon of Thursday, August 25, 2011, on the two year anniversary of her automobile accident. The plaintiff did not go to the courthouse to commence her action, but, rather tried to file it via the internet by going to the library in Dover, Delaware.6 Given the testimony of Court staff, the Court finds that the plaintiff did not receive any assurances that she could file the action late and get "concessions" from the Court prior to the close of business on Thursday, August 25, 2011. The earliest anyone could remember speaking to the plaintiff was on Friday, August 26, 2011, the day after the two year statute of limitations had run. Even then, the conversation centered on why the plaintiff could not file her action over the internet.⁷ There was no conversation about deadlines or a pending statute of limitations. Although the plaintiff spoke to Court staff when she filed her action on Monday, August 29, 2011, any of those conversations regarding problems with a statute of limitations are irrelevant because the statute of limitations for the plaintiff's personal injury claims had already run.8

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⁶ The Court has trouble understanding the plaintiff's decision to go to the library in Dover to file her lawsuit instead of the Court, which is in close proximity thereto.

⁷ There is a procedure to e-file civil actions via the internet with the Court. However, anyone using that procedure needs to create an account with the Court and complete a three hour training course that is given once a month prior to submitting any e-filings.

⁸ The Court finds that even on Monday, August 29, 2011, its staff did not mislead the plaintiff in any way. A potential statute of limitations problem was discussed on that day. Court staff advised the plaintiff that she could file her action and it would be up to a judge to decide if the case could go forward. She was further advised that if there was a statute of limitations problem, she would lose her filing fee.

CONCLUSION

As a result of the Court's finding of fact, which is based upon the entire record, including all written submissions filed with the Court plus all evidence proffered and introduced at the hearings for this matter, and the reasonable inferences therefrom, along with the Court's above-referenced conclusions of law, the defendant's Motion for Summary Judgment dismissing the plaintiff's current civil action is granted. The action is time barred by the applicable statute of limitations provided at 10 *Del. C.* § 8119 for personal injury actions. The plaintiff failed to establish an exception to the statute of limitations by a preponderance of the evidence. Therefore, this action, along with the plaintiff's claims contained therein, is dismissed with prejudice.

IT IS SO ORDERED this 3^{rd} day of <u>AUGUST</u>, 2012.

CHARLES W. WELCH

JUDGE