

**This Order Is Not Precedential
And Is Not To Be Cited**

FILED

No. 2--00--1145

JAN 22 2002

C. JANE BRADLEY, ACTING CLERK
APPELLATE COURT 2nd DISTRICT

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CLEAL AND DELVEAUX,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	No. 99--SC--6127
v.)	
)	
CONNIE L. ALEXANDER,)	Honorable
)	Kenneth A. Abraham,
Defendant-Appellant.)	Judge, Presiding.

RULE 23 ORDER

On December 13, 1999, plaintiff, Cleal and Delveaux, filed a small-claims complaint against defendant, Connie L. Alexander, to recover legal fees. Defendant moved to dismiss, arguing that the complaint was time-barred. See 735 ILCS 5/2--619(a)(5) (West 1998). The trial court denied the motion and entered judgment for plaintiff. Defendant appeals, reiterating the argument in her motion. We reverse.

In her motion, defendant alleged as follows. Plaintiff represented defendant in an action for dissolution of marriage. In that action, judgment was entered on May 15, 1997, "and became final" on June 14, 1997. Under section 508(c)(2) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/508(e)(2) (West 1998)), plaintiff had to file its complaint within one year after the date that "the dissolution judgment became final."

In denying the motion, the trial court ruled that (1) section 508 did not bar small claims; and (2) section 508 did not bar the "claim of [an attorney] whose work was completed prior to" June 1, 1997, when section 508(e)(2) took effect. See Pub. Act 89--712, eff. June 1, 1997 (adding 750 ILCS 5/508(e) (West 1998)).

Initially, defendant points out two defects in plaintiff's brief. First, plaintiff's statement of facts contains assertions that are related only to defendant's dissolution action and are not supported by the record in this case. We will disregard those assertions. See 188 Ill. 2d Rs. 341(e)(6), (f); In re Marriage of Drysch, 314 Ill. App. 3d 640, 643 (2000). Second, plaintiff's appendix contains documents that are not in the record. We will disregard those documents and any references to them. See 155 Ill. 2d R. 342(a); McGee v. State Farm Fire & Casualty Co., 315 Ill. App. 3d 673, 679 (2000).

We now proceed to the merits of this appeal. We review de novo a ruling on a motion to dismiss. Riverdale Industries, Inc. v. Malloy, 307 Ill. App. 3d 183, 185 (1999).

Section 508(e)(2) of the Act states as follows:

"(e) Counsel may pursue an award and judgment against a former client for legal fees and costs in an independent proceeding in the following circumstances:

(2) After the close of the period during which a petition (or praecipe) may be filed under subdivision (c)(5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue

such an award and judgment, provided the complaint in the independent proceeding is filed within one year after the close of the foregoing period." 750 ILCS 5/508(e)(2) (West 1998).

According to section 508(c)(5) (750 ILCS 5/508(c)(5) West 1998)), a petition or praecipe for fees may be filed within the period for filing a motion under section 2--1203 of the Code of Civil Procedure (735 ILCS 5/2--1203 (West 1998)). That period extends 30 days after entry of judgment. 735 ILCS 5/2--1203(a) (West 1998).

Here, it is undisputed that the dissolution judgment was entered on May 15, 1997. Thus, to timely commence an independent action for fees, plaintiff had to file its complaint within one year after June 14, 1997. Plaintiff failed to do so, and its complaint is barred.

In response, plaintiff offers a litany of arguments, none of which is availing. Plaintiff first relies on Nottage v. Jeka, 172 Ill. 2d 386 (1996). There, before section 508(e)(2) took effect, the supreme court held that an attorney could pursue an independent action for fees. See Nottage, 172 Ill. 2d at 395-96. Plaintiff notes that, in enacting section 508(e)(2), the legislature did not overrule Nottage. Plaintiff is obviously correct, as section 508(e)(2) expressly permits an attorney to pursue an independent action. However, the statute further imposes a one-year limitations period, and Nottage did not preclude that restriction.

Plaintiff also cites Kaufman, Litwin & Feinstein v. Edgar, 301 Ill. App. 3d 826 (1998). There, in addressing other provisions of section 508, the appellate court held:

"[T]he Act's provisions relating to attorney fees under section 508 are not mandatory. The Act does not prevent an attorney from enforcing contractual provisions pursuant to a common law breach of contract action. The challenged provisions only apply when an attorney uses section 508 of the Act to sue his or her client for fees in a dissolution case in which the attorney is representing the client." Kaufman, 301 Ill. App. 3d at 838.

From Kaufman, plaintiff draws two conclusions. First, plaintiff asserts that the right to file a common-law contract action must include "the right to file a claim within the time allowed by the statute of limitations applicable to such actions." Says plaintiff: "The court in Kaufman did not state that the right to file an independent action was now limited by section 508 to only one year." Indeed, the Kaufman court did not say that. However, plaintiff's problem is that section 508(e)(2) says it, and Kaufman did not bear on that provision in any way.

Plaintiff further claims that, under Kaufman, section 508 does not apply because plaintiff's action is independent. However, the court stated only that the "challenged provisions" did not apply to an independent action, and section 508(e)(2) was not among those provisions. Indeed, it could not have been; by its very terms, section 508(e)(2) governs independent actions. Kaufman, like Nottage, is inapplicable.

Next, plaintiff relies on the following provision, which immediately follows section 508(e)(2):

"In an independent proceeding, the prior applicability of this Section shall in no way be deemed to have diminished any other right of any counsel (or former counsel) to pursue an award and judgment for legal fees and costs on the basis of remedies that may otherwise exist under applicable law." 750 ILCS 5/508(e) (West 1998).

Plaintiff infers from this provision that the legislature did not intend to limit an attorney's right to pursue an independent action. However, in section 508(e)(2), the legislature obviously intended to limit that right by imposing a one-year limitations period. Nevertheless, plaintiff asks us to read the very next sentence to mean that no such limitation exists. Such a reading would nullify completely the plain language of section 508(e)(2), and we are not permitted to do so. See Sylvester v. Industrial Comm'n, 197 Ill. 2d 225, 232 (2001) (court must avoid "an interpretation which would render any portion of the statute meaningless").

Plaintiff next contends that, in violation of our federal and state constitutions (U.S. Const., art. I, §10; Ill. Const. 1970, art. I, §16), section 508(e)(2) substantially impaired plaintiff's pre-existing rights under its fee agreement. See Panzella v. River Trails School District 26, 313 Ill. App. 3d 527, 535 (2000). However, "[s]o long as a reasonable time exists for the presentation of a claim after enactment of a statute shortening the time in which suit may be brought, the legislature may validly shorten the time as to pre-existing causes of action." Meegan v. Village of Tinley Park, 52 Ill. 2d 354, 359 (1972). That the cause

of action is contractual is irrelevant. See, e.g., Meegan, 52 Ill. 2d at 359. When section 508(e)(2) took effect, plaintiff's one-year limitations period had not begun. Thus, plaintiff clearly had a reasonable time to enforce its rights under its fee agreement. Its rights were not substantially impaired.

Next, plaintiff cites section 508(g), which states that section 508(e)(2) applies only to "cases pending on or after June 1, 1997." 750 ILCS 5/508(g) (West 1998). According to plaintiff, defendant's dissolution case stopped pending on May 15, 1997, when judgment was entered. We disagree. It is true that "[a]n action is 'pending' from its inception until the rendition of final judgment." Black's Law Dictionary 1134 (6th ed. 1990). However, in this context, a "final judgment" is "one where 'the availability of appeal' has been exhausted or has lapsed." Bradley v. School Board of Richmond, 416 U.S. 696, 711 n.14, 40 L. Ed. 2d 476, ___ n.14, 94 S. Ct. 2006, 2015 n.14 (1974), quoting Linkletter v. Walker, 381 U.S. 618, 622 n.5, 14 L. Ed. 601, ___ n.5, 85 S. Ct. 1731, 1734 n.5 (1965). See also Deerwester v. Carter, 26 F. Supp. 2d 1080, 1082 (C.D. Ill. 1990) (action is "pending" until "a final judgment is rendered and appeal or reconsideration is no longer an option"); Diaz v. Shallbetter, 984 F.2d 850, 856 (7th Cir. 1993) (Lay, J., concurring) (consistent discussion of definition with supporting cases). Here, despite the entry of judgment, the parties to the dissolution case had until June 14, 1997, to appeal or seek reconsideration. See 735 ILCS 5/2--1203(a) (West 1998); 155 Ill. 2d R. 303(a)(1). Therefore, on June 1, 1997, the case was still pending. Section 508(e)(2) applies.

Plaintiff next adopts the trial court's ruling that, because plaintiff did not represent defendant on or after June 1, 1997, it should not be bound by section 508(e)(2). However, as plaintiff appears to concede, that position finds no support in the statute. Again, according to the plain language of section 508(g), section 508(e)(2) applies because the dissolution case was pending on June 1. It is irrelevant that plaintiff was not involved in the case at that point. Plaintiff's view may be logical, but, "[w]here the language of a statute is clear and unambiguous, a court must give it effect as written, without 'reading into it exceptions, limitations or conditions that the legislature did not express.' " Garza v. Navistar International Transportation Corp., 172 Ill. 2d 373, 378 (1996), quoting Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill. 2d 76, 83 (1994).

Finally, plaintiff argues that defendant is equitably estopped to assert a limitations defense. According to plaintiff, it failed to timely pursue its claim for fees only because defendant violated an order in the dissolution case. However, the record in this case contains no evidence of the alleged order or the alleged violation. Plaintiff's claim must fail.

For these reasons, the judgment of the circuit court of Du Page County is reversed.

Reversed.

CALLUM, J., with BOWMAN and KAPALA, JJ., concurring.