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by: Colin E. Flora
Associate Civil Litigation Attorney

Saving a Claim After Dismissal: Indiana's Journey's Account Statute

A 1991 article in *Res Gestae*—the Indiana State Bar Association's bar journal—may have best characterized Indiana's Journey's Account Statute through its title: *Journey's Account Statute: Litigator's Little-Known Friend*. This week, the Indiana Court of Appeals once more had occasion to address the often-overlooked legal mechanism. The purpose of the Journey's Account Statute “is to provide for continuation when a plaintiff fails to obtain a decision on the merits for some reason other than his own neglect and the statute of limitations expires while his suit is pending.” It “generally permits a party to refile an action that has been dismissed on technical grounds.” It reads:

- (a) This section applies if a plaintiff commences an action and:
 - (1) the plaintiff fails in the action from any cause except negligence in the prosecution of the action;
 - (2) the action abates or is defeated by the death of a party; or
 - (3) a judgment is arrested or reversed on appeal.
- (b) If subsection (a) applies, a new action may be brought not later than the later of:
 - (1) three (3) years after the date of the determination under subsection (a); or
 - (2) the last date an action could have been commenced under the

statute of limitations governing the original action;
and be considered a continuation of the original action commenced by
the plaintiff.

To see how the Journey's Account Statute works, let us turn to this week's case from the Court of Appeals of Indiana. *Munoz v. Woroszylo* stems from a car accident between a resident of Illinois and an Indiana resident. The collision occurred in Indiana. Just shy of two years after the accident, the Illinois driver filed suit in an Illinois federal court. The Indiana driver successfully sought dismissal of the case for lack of personal jurisdiction. We have previously discussed "personal jurisdiction" on the Hoosier Litigation Blog, so we will not delve fully into the subject again here. In short, personal jurisdiction is the requirement that a specific court has jurisdiction over a specific individual. Typically, to be subject to a court's jurisdiction, you must have availed yourself of the state's laws in which the court sits. Here, the federal court concluded that it lacked jurisdiction over the Indiana driver.

As an alternative to outright dismissal, the Illinois driver requested that the court transfer the case to an Indiana federal court. Although the Illinois federal court had the authority to do so, it was under no obligation to do so. Choosing not to exercise its discretion, the Illinois court dismissed the case. The Illinois driver then filed a new case in Indiana state court.

Between the time in which the case was filed in Illinois and when it was dismissed, the applicable statute of limitations expired. It is through this procedural backdrop that the Journey's Account Statute comes into play. Before the Indiana trial court, the Indiana driver argued that the Journey's Account Statute did not act to save the claim. The Illinois driver argued that the statute applied because the case was filed prior to expiration of the statute of limitations, the resolution of the case in Illinois was not an adjudication on the merits, and the case did not fail due to "negligence in the prosecution" as that phrase is applied in the statute. The trial court agreed that the statute applied and the Indiana driver appealed.

In order to utilize the Journey's Account Statute, a re-filing plaintiff "must have commenced a timely action that failed for reasons other than 'negligence in the prosecution.'" In that way, "[t]he Statute is designed to ensure that the diligent suitor retains the right to a hearing in court until he receives a judgment on the merits." In effectuating this design, courts construe the statute "liberally to protect such diligent suitors." The first part of that analysis—that the original case was not untimely—is a straightforward proposition. In this case, the Illinois suit was filed before the statute of limitations had expired. Therefore, the first part was met.

Where things get more complicated is in sorting out what “negligence in the prosecution” means.

On first impression, it is easy to conclude that “negligence in the prosecution” is akin to Indiana Trial Rule 41(E)’s failure to prosecute a claim language that can provide a basis for dismissal of a case. In this context, however, “negligence in the prosecution” is subject to a broader meaning, such that it “has been said to apply to ‘any failure of the action due to negligence in the prosecution.’” Of course, standing alone, such a statement is nothing more than a tautology. So, then, what does it mean?

This question is answered through an examination of prior cases. The best examples of “negligence in the prosecution” are where the case was dismissed for failure to pay filing fees or naming the wrong parties. It has also been found where a prisoner failed to first exhaust his administrative remedies before filing suit and where a medical malpractice claim had not been filed with the Indiana Department of Insurance prior to expiration of the statute of limitations. On the other hand, Indiana courts have previously determined that dismissal of a case from another jurisdiction for lack of personal jurisdiction is not “negligence in the prosecution.”

In light of on-point binding precedent, what then could the Indiana driver’s argument have been? The Indiana driver’s argument, aside from contending that the this particular plaintiff’s poor-judgment in filing his case first in Illinois was negligence, turned to an implicit requirement of the Journey’s Account Statute: the party acts in good faith. In resolving whether the Illinois driver had acted in bad faith, the Court of Appeals looked at the order from the Illinois court dismissing the case and noted that it recognized filing in Illinois was an “elementary mistake.” However, just because an action is “ill-advised” does not mean that it is in bad faith. The Court of Appeals concluded:

[H]airsplitting distinctions between “in good faith” and “not in bad faith” aside, there is no evidence that [the Illinois driver] filed suit in federal court with intent to abuse judicial process or create undue delay. As the Indiana Supreme Court observed in interpreting a prior version of the Indiana statute that provides for shifting attorney’s fees as a result of bad faith in litigation:

bad faith is not simply bad judgment or negligence. Rather, it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. It is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.

Because the Court of Appeals found neither bad faith nor negligence, it concluded that the Journey's Account Statute preserved this case.

As a last note, the court delved into a somewhat peculiar critique of the Illinois federal court's decision not to transfer the case to an Indiana federal court.

[The] decision to file suit in the Northern District of [Illinois] was bad judgment. Bad judgment is not, however, bad faith. Indeed, we note that while the federal court had discretionary authority to decline [Illinois driver]'s request that his case be transferred into the U.S. District Court for the Northern District of Indiana, if [he] had brought suit in an improper venue in an Indiana state court, transfer to an Indiana court with proper venue would have been mandatory under Indiana's venue rules. This reflects Indiana courts' general preference for deciding cases on their merits and for avoiding the construction of procedural obstacles to the presentation of such cases. Indeed, the very same policy is served by the Journey's Account Statute.

Join us again next time for further discussion of developments in the law.

Sources

- *Munoz v. Woroszylo*, ---N.E.3d---, No. 79A02-1409-CT-679, 2015 WL 1637795 (Ind. Ct. App. Apr. 13, 2015) (Bailey, J.).
- *Thomas v. Timko*, 428 F. Supp. 2d 855 (N.D. Ind. 2006).
- *Mayfield v. Cont'l Rehab. Hosp. of Terre Haute*, 690 N.E.2d 738 (Ind. Ct. App. 1998), *trans. denied*.
- Indiana Journey's Account Statute, codified at Ind. Code § 34-11-8-1.
- Ind. Trial Rule 41(E).
- Colin E. Flora, *7th Circuit: Personal Jurisdiction & the Role of State Long-Arm Statutes*, HOOSIER LITIG. BLOG (May 9, 2014).
- Brett R. Fleitz and Charles P. Ward, *Journey's Account Statute: Litigator's Little-Known Friend*, 35 RES GESTAE 60 (1991).

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