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AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER**

M. Karl Shurtliff, as guardian ad litim for
the minor child, Tabetha Currington,

Plaintiff,

vs.

Sacred Heart Medical Center, a
Washington Corporation, Northwest
Medstar, a Washington Corpopration,
Wausau Benefits Inc., a Delaware
Corporation.

Defendants.

Case No. **S CV 2003 282**

**MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
SECOND RENEWED MOTION FOR
SUMMARY JUDGMENT**

I. BACKGROUND.

On June 6, 2006, this matter came before the Court on oral argument on plaintiff's (Currington) Second Renewed Motion for Partial Summary Judgment. That motion was filed back on April 19, 2005. Part of the delay in hearing this matter to issue was the fact that in the fall of 2005, Judge Verby, who was originally assigned to this case, recused himself just before the trial of this case was scheduled. On March 21, 2006, the Administrative District Judge assigned this case to the undersigned. At oral argument on June 6, 2006, Currington was represented by Joe Jarzabek. Defendant Sacred Heart Medical Center (Sacred Heart) and defendant MedStar were represented by Michael Hague.

Plaintiff's Second Renewed Motion for Summary Judgment contains briefing to the Court, and asks the Court to dismiss Sacred Heart's counter-claims based on the applicable statute of limitation. Plaintiff's Second Renewed Motion for Summary Judgment, p. 2. Sacred Heart and MedStar responded on May 26, 2005, with its Memorandum in Opposition to Plaintiff's Second Renewed Motion for Summary Judgment.

Tabetha Currington was injured as a result of a December 3, 1998, accident caused by Wes Olson Trucking, Inc., and their driver, Gary Ralph, who was insured by Wausau Insurance. Currington was flown by MedStar to Sacred Heart Medical Center for treatment. That accident and damages became the subject of litigation in Bonner County Case No. CV 2000 1356. Affidavit of Joseph Jarzabek dated January 20, 2004, Exhibit 4, p. 1.

Currington filed this lawsuit (Bonner County Case No CV 2003 282) on February 28, 2003, against Sacred Heart, MedStar and Wausau, seeking a declaration from the Court that Sacred Heart and MedStar have no lien on the \$79,354.20 insurance proceeds Wausau continued to hold for Sacred Heart and MedStar and Currington, and a declaration from the Court that Wausau pay those insurance proceeds to Currington. Complaint and Demand for Jury Trial, p. 4.

II. ANALYSIS.

MedStar provided services to Tabetha Currington on December 3, 1998, the date she was flown to Sacred Heart. Sacred Heart's services ended on December 19, 1998, the date she was released from the hospital. Currington argues the statute of limitation found in Idaho Code § 5-217 places a four-year limitation on actions based "upon contract, obligation or liability not founded upon an instrument in writing." Second Renewed Motion

for Summary Judgment, p. 3. That would have placed MedStar's limitation date at December 3, 2002, and Sacred Heart's limitation date at December 19, 2002. *Id.*, p. 4. Sacred Heart and MedStar's counter-claim in this case was not filed until December 4, 2003.

Currington raised this Idaho Code § 5-217 statute of limitation issue in her Renewed Motion for Summary Judgment filed October 20, 2004. At that time Sacred Heart and MedStar simply responded that *Anderson v. Ferguson*, 56 Idaho 554, 57 P.2d 325 (1936) was dispositive in their favor. However, on January 31, 2005, Judge Verby concluded that Currington's Renewed Motion for Summary Judgment "shall be heard at a later time." Order dated January 31, 2005, p. 14. On August 4, 2004, Judge Verby granted summary judgment against Sacred Heart and MedStar on their counter-claims against Currington based on medical liens. Order dated August 4, 2004, p. 18.

Through discovery, Sacred Heart and MedStar indicated the only fact that would prohibit the statute of limitation from running against them is the fact that plaintiff allowed funds to be deposited with the Court. Second Renewed Motion for Summary Judgment, p. 6. However, Currington first notes that in *Anderson*, the money was deposited with the Court at the beginning of litigation, well before the statute of limitation had run. *Id.* In the present case, the money was not deposited at any place (Court or bank) anywhere near the inception of the litigation because the litigation originally was about whether Sacred Heart and MedStar had a lien. *Id.*, pp. 6 and 8. Second, in the present case, the money was not deposited with the Court, but with Panhandle State Bank so that interest could accrue. *Id.*, p. 7. Third, Currington claims that even if the deposit could be construed to be analogous to deposit with the Court, the stipulation and deposit occurred after the statute of limitation had run. *Id.*

Sacred Heart and MedStar make the following argument:

Plaintiff's assertion that the money in question is not in control of the court stretches credulity. These funds are in control of the Court, and under the circumstances, Sacred Heart is not barred by any statute of limitations from seeking their recovery.

Memorandum in Opposition to Plaintiff's Second Renewed Motion for Summary Judgment,
p. 3.

The Court is not persuaded by Currington's argument that "the money was not deposited with the Court", since the funds were deposited with Panhandle State Bank pursuant to Court order in this case. Currington's attorney Joseph Jarzabek, filed an affidavit in this case on January 20, 2004. Attached to that Affidavit as Exhibit 6 is a copy of the Order Directing Deposit filed in this case on November 18, 2003. That Order directs Wausau to pay into an account at Panhandle State Bank, Sandpoint, Idaho, all monies presently retained by them which are the subject of this action. Order Directing Deposit, p. 1. Thus, these funds, while not on deposit *with* the Court, were on deposit pursuant to a Court order, and this Court finds that to be the functional equivalent of being deposited *with* the Court. That November 18, 2003, Order Directing Deposit in this case, was entered well after the four-year statute of limitation had run.

However, that does not end the inquiry. The next level of inquiry is: *When* were those funds deposited with the Court (via the Court's Order Directing Deposit). Obviously, the answer to that question is no later than November 18, 2003, the date of the Court's Order. That date is beyond the applicable statute of limitation. In order for Sacred Heart and MedStar to prevail, they must be able to show that these funds were deposited with the Court (or pursuant to Court order) prior to that time.

In February 2002, Currington, through her parents, along with her attorney Joseph Jarzabek, signed a "Release and Settlement Agreement" with Wausau, insurer of Wes

Olson Trucking. Affidavit of Joseph Jarzabek dated January 20, 2004, Exhibit 4. That “Release and Settlement Agreement” states that: “Defendant and its carrier will withhold an additional Seventy-nine Thousand Three Hundred Fifty-four and 20/100 dollars (\$79,354.20) regarding alleged medical liens claim by MedStar (\$4,521.20) and Sacred Heart Medical Center (\$74,833) which Plaintiff disputes until such time as Plaintiff has resolved said claims claimed by these two health care providers.” Affidavit of Joseph Jarzabek dated January 20, 2004, Exhibit 4. There is nothing in that release that forces payment of these disputed amounts to the Court, a bank or to anyone. Nothing in that release places the imprimatur of any court on these amounts or the agreement. On the other hand, on February 2, 2002, Judge Hosack did place his imprimatur on the “Order on Petition for a Compromise of the Disputed Claim of the Minor Children, Tabettha Currington and Brahmin Currington”. Affidavit of Joseph Jarzabek dated January 20, 2004, Exhibit 3. Unfortunately, from MedStar and Sacred Heart’s standpoint, that “Order on Petition for a Compromise of the Disputed Claim of the Minor Children, Tabettha Currington and Brahmin Currington” is completely silent as to these disputed funds. Thus, it appears that at some time in February 2002 money should have been available to pay MedStar and Sacred Heart, but it was never placed in the hands of any Court, nor were such funds addressed by any Court. It has not been made clear to the Court why it took twenty months, from February 2002 to November 18, 2003, for the Order Directing Deposit filed in this case to be issued. Affidavit of Joseph Jarzabek dated January 20, 2004, Exhibit 6. But what appears beyond dispute, is that no Court placed its imprimatur on these funds or this part of the dispute over these funds until November 18, 2003, long after the four year statute of limitation had run under Idaho Code § 5-217.

Next, the Court must analyze the facts of this case in light of *Anderson*. *Anderson*,

involved a lawsuit between plaintiff Anderson (party A) against defendants H.K. Ferguson, Maud M. Ferguson, and Clifford Ferguson (collectively, party B). That action was filed in October 1928 and resulted in a herd of hogs being sold and the proceeds immediately being deposited in Court by November 1928. More than four years later in 1932, Kenneth Ferguson (party C) filed a complaint in intervention, claiming an interest in the funds on deposit. The trial court dismissed the complaint in intervention on the grounds that the applicable statute of limitation had run, but the Supreme Court reversed. The reason the Idaho Supreme Court reversed the district court was because since the funds were immediately tendered into court, the statute of limitation is not applicable to a court clerk or registrar as to the funds coming in their custody. 56 Idaho at 562. “Execution does not run against *money* in custody of the court.” *Id.*

Sacred Heart and MedStar argue the ruling in *Anderson* is underscored by the points raised in the dissent in *Anderson*. Memorandum in Opposition to Plaintiff’s Second Renewed Motion for Summary Judgment, p. 2. The first point argued by Sacred Heart and MedStar is Kenneth Ferguson, the intervenor in *Anderson*, was not a party to the suit between the original litigants until he filed his complaint in intervention. Sacred Heart and MedStar note they were not a party to the suit between Currington and the underlying tortfeasor. Thus, for what it is worth, *Anderson* and the present case have that fact in common; they were not parties to the original lawsuit.

Second, Sacred Heart and MedStar argue that in *Anderson*, Ferguson had an independent cause of action for the same remedy he sought in his complaint in intervention, but the statute of limitation had already run before the suit in intervention was filed. Memorandum in Opposition to Plaintiff’s Second Renewed Motion for Summary Judgment, p. 2. Sacred Heart and MedStar could have filed suit against

plaintiff's ward, her parents or the tortfeasor but did not do so until the applicable statute of limitation had run. Again, *Anderson* and the present case have that fact in common.

Sacred Heart and MedStar then argue because of these similarities, the holding in *Anderson* should apply to the present case. That holding is: "There is no provision of law by which lapse of time will either bar a claimant from asserting his right to such a fund or prevent the Court hearing his application and directing the money to be paid to the one rightly entitled thereto." 56 Idaho 562. Memorandum in Opposition to Plaintiff's Second Renewed Motion for Summary Judgment, p. 3. The problem with Sacred Heart and MedStar's argument is two-fold. First, just because the present case and *Anderson* have two factual similarities that are of no material consequence does not mean the holding should follow. Second, the holding of *Anderson* does not apply to the facts of the present case due to the crucial factual *difference* between *Anderson* and the present case...the statute of limitation had run by the time the Court directed deposit of the funds in Panhandle Bank in the present case, and the funds were almost immediately deposited in *Anderson*, long before the statute of limitation had run.

Currington distinguishes *Anderson* by saying that her case is unlike *Anderson* in that: 1) *Anderson* involved a suit over a promissory note and her case does not; 2) in *Anderson* the money was submitted to the jurisdiction of the court and in this case it was not (the Court has already discussed why it is not persuaded with this argument); 3) in the present case the stipulation was signed and the money deposited with the bank after the statute of limitation had already run, and 4) even if the funds had been deposited with the Court and the statute had not run already, *Anderson* still would not apply because *Anderson* was about money that had been placed in the court at the beginning of the litigation, where the current litigation regarded the non-existence of a

lien on property not in the custody of the Court. Second Renewed Motion for Summary Judgment, p. 7. It is this third distinction that in the present case “the stipulation was signed and the money deposited with the bank after the statute of limitation had already run” that is dispositive of Currington’s Motion for Partial Summary Judgment, and which truly distinguishes this case from *Anderson*.

Sacred Heart and MedStar also argue the quotes from *Anderson* that “the running of the statute of limitation does not pay the debt or satisfy the obligation”, and “It is a mere privilege, personal only to the party at liable and is only a statute of repose” (56 Idaho 562-563), is the foundation for the rule that “a statute of limitation does not bar a counter-claim arising from the same transaction as the plaintiff’s complaint.”

Memorandum in Opposition to Plaintiff’s Second Renewed Motion for Summary Judgment, p. 3, *citing Viehweg v. Thompson*, 103 Idaho 265, 268, 647 P.2 311 (Court of Appeals 1982). First of all, *Anderson* is not mentioned in the *Viehweg* decision.

Second, the facts of *Viehweg* are not the facts in this case. While “a statute of limitation does not bar a counter-claim arising from the same transaction as the plaintiff’s complaint”, we are not in the present case dealing with a counter-claim among parties that already exist in the same lawsuit (as in *Viehweg*). We are dealing with a third party seeking funds from a party in an underlying separate action brought by Currington. In an entirely different setting than *Anderson*, *Viehweg* held similar to *Anderson*: “that a statute of limitation does not extinguish a debt, but simply affords a repose against the remedy of a lawsuit to collect the debt.” The problem here is Sacred Heart and MedStar needed to have had the monies deposited, pursuant to Court order, with Panhandle State Bank before the statute of limitation had run in order for them to be able to pursue their debt. Otherwise, and according to the facts of this case, the statute of limitation

has run, the statute of repose has run. The debt may still be there, “but there is a repose against the remedy of a lawsuit to collect the debt.” *Viehweg*, 103 Idaho at 268. Since there is a repose against Sacred Heart and MedStar’s ability to sue on the debt, Currington has a defense against Sacred Heart’s and MedStar’s counter-claims.

III. CONCLUSION.

According to the Order Directing Deposit filed in this case on November 18, 2003, there were funds not on deposit *with* the Court as in *Anderson*, but funds that were ordered by the Court, ordering Wausau to pay into an account at Panhandle State Bank, Sandpoint, Idaho, all monies presently retained by them which are the subject of this action. Order Directing Deposit, p. 1. Thus, these funds, while not on deposit *with* the Court, were on deposit *pursuant to a Court order*. This Court finds that to be the functional equivalent of being deposited *with* the Court. The problem from Sacred Heart and MedStar’s standpoint is the November 18, 2003, Order Directing Deposit in this case, was entered well after the four-year statute of limitation had run. That fact distinguishes this case from *Anderson*, and that fact causes the statute of limitation to be a bar against Sacred Heart and MedStar to claim these funds from Currington.

IV. ORDER.

IT IS HEREBY ORDERED plaintiff’s Second Renewed Motion for Summary Judgment is GRANTED against the defendants on their counter-claims, based on the statute of limitation found in Idaho Code § 5-217.

Entered this 25th day of July, 2006.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of October, 2006, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Joseph Jarzabek

Fax #
208 263-0795

| **Lawyer**
Michael B. Hague

Fax #
208 664-6338

Secretary