

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MISSOURI

**Melvin Strickland v. CVS Pharmacy, Inc.; Missouri CVS Pharmacy,
LLC**

Strickland · No. 4:25-cv-00278-RK · Decided February 20, 2026

SUMMARY

The United States District Court for the Western District of Missouri denied CVS Pharmacy, Inc. and Missouri CVS Pharmacy, LLC’s motion for summary judgment in a medical negligence action involving alleged erroneous dispensing of Duloxetine. The court held that the plaintiff’s refiled action was timely under Missouri’s savings statute, notwithstanding his failure to serve CVS or file the required healthcare provider affidavit in the original action.

CASE DETAILS

COURT	United States District Court for the Western District of Missouri
WRITING FOR THE COURT	Roseann A. Ketchmark
JURISDICTION	United States District Court for the Western District of Missouri
DECIDED	February 20, 2026
DOCKET	4:25-cv-00278-RK
DISPOSITION	other
PROCEDURAL POSTURE	After CVS removed Plaintiff's Missouri medical negligence action to federal court, CVS moved for summary judgment on the ground that Missouri's two-year statute of limitations barred the claim. The court denied the motion.
STANDARD OF REVIEW	Summary judgment is proper under Federal Rule of Civil Procedure 56 when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court does not weigh evidence or make credibility determinations and views the evidence and reasonable inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

summary judgment

statute of limitations

medical malpractice

service of process

civil procedure

PRACTICE AREAS

civil procedure

medical malpractice

statute of limitations

summary judgment

QUESTIONS PRESENTED

1. Whether Plaintiff's December 30, 2024 medical negligence action was barred by Missouri's two-year statute of limitations.
2. Whether failure to serve CVS within 180 days under Missouri Revised Statutes section 516.105.2 prevented Plaintiff from invoking Missouri's savings statute.
3. Whether failure to file the healthcare provider affidavit required by Missouri Revised Statutes section 538.225 prevented the original action from qualifying as a commenced action for purposes of the savings statute.

HOLDINGS

1. The refiled action was timely because the original action was filed within the applicable limitations period, was voluntarily dismissed as a nonsuit, and the second action was filed within one year of that nonsuit.
2. Failure to serve CVS within the 180-day period prescribed by section 516.105.2 did not prevent Plaintiff from invoking the savings statute.
3. Failure to file the healthcare provider affidavit required by section 538.225 did not prevent the original action from being commenced for purposes of the savings statute.

KEY QUOTATIONS

“Under Missouri law, a civil action is commenced for purposes of the savings statute upon the filing of a petition.” (Discussion)

“Neither § 516.105 nor the savings statute indicate that the savings statute shall only apply if Plaintiff has satisfied section 516.105.2’s service of process timeliness requirement” (Discussion)

“Plaintiff’s December 30, 2024 filing of this action is timely by operation of Missouri’s saving statute.” (Conclusion)

FACTUAL BACKGROUND

Plaintiff was prescribed Duloxetine in varying dosages and, beginning in January 2020, CVS dispensed both 60 mg and 30 mg capsules, leading Plaintiff to ingest 150 mg per day rather than the intended 90 mg per day. Plaintiff alleged adverse health effects from the over-dosing. He filed a Missouri medical negligence action in January 2022, but did not serve CVS or file the required healthcare provider affidavit, voluntarily dismissing the action in July 2024 before refiling in December 2024.

PROCEDURAL HISTORY

Plaintiff filed the original medical negligence action in the Circuit Court of Clay County, Missouri, on January 20, 2022, but did not serve CVS or file the required healthcare provider affidavit. Plaintiff voluntarily dismissed that action on July 23, 2024, and refiled on December 30, 2024. CVS was served in March 2025 and removed the action to the Western District of Missouri. The federal court held that the second action was timely under Missouri's savings statute and denied summary judgment.

DISPOSITION

other

CASES CITED

- Fed. Ins. Co. v. Great Am. Ins. Co., 893 F.3d 1098, 1102 (8th Cir. 2018)
- Woodsmith Pub. Co. v. Meredith Corp., 904 F.2d 1244, 1247 (8th Cir. 1990)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)
- Morris v. City of Chillicothe, 512 F.3d 1013, 1018 (8th Cir. 2008)
- C.H. v. Infertility Ctr. of Saint Louis, 681 S.W.3d 579, 584 n.6 (Mo. Ct. App. 2023)
- Zinke v. Orskog, 422 S.W.3d 422, 424 (Mo. Ct. App. 2013)
- Ostermueller v. Potter, 868 S.W.2d 110, 111 (Mo. banc 1993)
- Bailey v. Innovative Mgmt. & Inv., Inc., 890 S.W.2d 648, 652 (Mo. banc 1994)
- Korman v. Lefholz, 890 S.W.2d 771, 774 (Mo. Ct. App. 1995)
- Brick v. Koeppen, 672 S.W.3d 62, 64 n.4, 67 (Mo. Ct. App. 2023)
- New LLC v. Bauer, 586 S.W.3d 889, 897 (Mo. Ct. App. 2019)
- State ex rel. Weigman v. Moentmann, 942 S.W.2d 441, 444-45 (Mo. Ct. App. 1997)