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SC No. 102016-3

COA No. 84057-6-I

**COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON**

MICHAEL WALL, Appellant,

v.

SHIPRA GROVER, Respondent.

RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals correctly applied Washington law regarding constructive filing and tolling the statute of limitations for this tort action. Wall argues again for the application of federal precedent on constructive filing with dissimilar facts. There is no dispute that the summons and complaint had to be filed or served before 4:30p.m. on November 2, 2021 for this action to be commenced within the applicable statute of limitations. This did not occur.

II. IDENTITY OF RESPONDENT

Respondent Shipra Grover requests that the Court deny review of the Court of Appeals decision.

III. RESTATEMENT OF ISSUE

Whether Appellant Wall's Summons and Complaint were received by the Superior Court Clerk before the statute of limitations expired.

IV. RESTATEMENT OF THE CASE

This case arises out of a car accident that occurred on November 2, 2018. Appellant Wall alleges that

Respondent Grover was negligent in causing the accident involving them.¹ Counsel for Wall asserts that he personally supervised his legal assistant, Syrena Pendley, as she electronically filed the subject Summons and Complaint at 1:58pm on November 2, 2021.² There is no evidence that the Complaint was actually received by the Snohomish County Clerk. Wall's first filing was under envelope #57731 and was rejected with a listed reason of "complaint required to initiate case."³

Notice of the rejected filing was sent to Syrena Pendley via email at 2:56pm on November 2, 2021.⁴ The same return reason was listed in this email, complaint required to initiate case.⁵ No cause number was given and no complaint was received.⁶ Wall then electronically filed his Summons and Complaint at 4:37pm on November 2, 2021, after court closure.⁷

¹ See CP 37-38.

² CP 23.

³ CP 27.

⁴ CP 29.

⁵ *Id.*

⁶ *Id.*

⁷ CP 31.

Dena Carmel, a Judicial Process Supervisor from the Snohomish County Clerk's Office, reviewed the court file submission from Counsel for Wall, where he indicated that he sent the Complaint with the Summons at 1:58pm. Ms. Carmel confirmed that no complaint was received within court hours on November 2, 2021.⁸ Court hours at Snohomish Superior Court are from 8:30am to 4:30pm.

Grover served and filed a motion to dismiss on February 4, 2021.⁹ The hearing was noted for February 15, 2021 in compliance with local rules.¹⁰

On February 15, 2021, the Honorable Anita L. Farris granted Grover's motion to dismiss Wall's claims.¹¹

On April 24, 2023, the Court of Appeals affirmed the trial court's decision.

⁸ *Id.*

⁹ CP 11, 13, 34.

¹⁰ *Id.* at 11.

¹¹ CP 5-6.

V. ARGUMENT

A. Statute of Limitations

Under RCW 4.16.080(2), personal injury actions, such as the present action, are limited to three years. Under RCW 4.16.170 and 4.28.010, actions are deemed commenced when the Complaint is filed or Summons is served, whichever occurs first. In this case, the Complaint was not filed and the Summons was not served on Ms. Grover within the three year statutory period. The Complaint was filed on November 3, 2021. Therefore the action was not timely commenced and must be dismissed.

B. The Complaint Cannot be Constructively Filed When It Was Never Received By The Clerk.

Wall has admitted that GR 30(c) requires that electronically filed documents are received by the clerk's designated computer during the clerk's business hours.¹² GR 30(c) also provides that documents received outside of clerk's business hours are considered filed at the

¹² See GR 30(c).

beginning of the next business day.¹³ Rejected filings from the clerk under GR 30(c)(3), must notify the filing party and provide a reason therefor.¹⁴ Wall filed his Summons during regular business hours on November 2, 2021.¹⁵ Wall failed to file his Summons and the Complaint electronically during normal business hours on the last possible day.

Further, the rejected filing was returned to Wall prior to the close of normal business hours and with a reason—no complaint received. Wall had a little over 90 minutes to re-file the summons and complaint. He did not do so.

There are no Washington cases that have recognized the concept of “constructive filing” when the Complaint was never in the possession of the Clerk. Similarly, the court of appeals previously rejected the idea

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CP 29.

of “constructive acceptance” of a filing under RCW 4.16.170.¹⁶

Wall argues for application of federal precedent where the clerk had actual possession of the Complaint prior to the close of business hours. There, the filing deficiencies are not comparable to the present action.

In Ordonez¹⁷ and Loya¹⁸, the rejected pleadings were not compliant with a “requirement of form” rule but were actually in the clerk’s possession within the applicable statutory period. Here, we do not have the wrong size paper, wrong size font, incorrect citations, unsigned complaint, failure to provide judge’s copies, or a missing cover sheet.¹⁹

¹⁶ *Margetan v. Superior Chair Craft Co.*, 92 Wn. App. 240, 963 P.2d 907 (1998).

¹⁷ See *Ordonez v. Johnson*, 354 F.3d 814 (9th Cir. 2001), filing rejected per local rule requiring an additional copy for Judge’s use upon filing.

¹⁸ See *Loya v. Desert Sands Unified School Dist.*, 721 F.2d 281 (9th Cir.1983), filing rejected for incorrect paper size submitted to clerk prior to expiration of statute of limitations.

¹⁹ Examples of form requirements that federal courts have permitted the application of “Constructive Filing”.

In this case, the pleading required to commence litigation and confer jurisdiction, the complaint, was never received by the clerk within normal business hours.

VI. *The Court Should Award RAP 18.9 Terms*

This Court may deny a petition for review and order the petitioner to pay fees for a frivolous petition pursuant to RAP 18.9. An award of sanctions is an extraordinary action and should not be done lightly. However, in this case, sanctions are warranted.

VII. CONCLUSION

Respondent respectfully asks the Court to deny Wall's petition for review and award fees and costs to Grover for this frivolous appeal.

I declare this brief to contain 1,130 words.

DATED this 24th day of July, 2023.



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