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Division I
State of Washington
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No. 84057-6-1
COURT OF APPEALS
DIVISIONS I
OF THE STATE OF WASHINGTON

MICHAEL WALL, an individual
Appellant,
SHIPRA GROVER
Respondent.

PETITION FOR REVIEW IN SUPREME COURT

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Court Rules

GR 30 (c) P. 11

Cases

Loya v. Desert Sands Unified School Dist., 721 F.2d 279, (9th Cir. 1983)
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Ordonez v. Johnson, 254 F.3rd 814 (9h Cir. 2001) P. 12

IDENTIFY OF PETITIONER

The Petitioner is Michael Wall, the Appellant.

COURT OF APPEALS DECISION

Review is sought from the attached Court of Appeals Opinion,
filed April 24, 2023. Petitioner did not request reconsideration.

ISSUE PRESENTED FOR REVIEW

Issue: Should this Court recognize the concept “constructive filing” and hold that this case was “constructively filed” timely where (1) according to Plaintiff’s Counsel’s sworn Declaration, the Complaint **was** timely submitted through the Clerk’s e-filing system, but (2) the filing “envelope” was (erroneously) “rejected” by the Clerk’s Office; (3) upon discovering that the “envelope” had been rejected, Counsel called the Clerk’s office and, (4) when told that the Summons had been filed properly but the Complaint had not been, asked if he could file the Complaint under the timely “envelope” but was refused, (5) counsel told the Clerk’s office employee that he would immediately refile the Complaint and asked that she be on the “lookout”, and (6) the Complaint was indeed filed, and receipt acknowledged, albeit 7 minutes after the Clerk’s office “closed”. Id.

STATEMENT OF THE CASE

This case was “e-filed” online at 1:58 on the afternoon of November 2nd, 2021, the three-year anniversary of the accident in question. Cp 5, p.1. “Fully aware that the Statute of Limitations would expire”, Plaintiff’s counsel “personally supervised [his] legal assistant” as she did the filing. Id. Counsel is “100% certain” that both the Summons and Complaint were uploaded onto the online filing portal. Id. Counsel “would not have left [his legal assistant’s] workstation until satisfied to that effect.

The E-filing “docket entry” of that filing shows receipt of the Summons, but apparently not the Complaint. CP 5, Ex. 1.

The Clerk’s Office employee on duty “rejected” the filing, because, supposedly, the Complaint was not received. Counsel has “no idea how such a thing is/was possible and with all due respect to the hard-working and always gracious employees at the Snohomish County Clerk’s office, absent absolute proof to the contrary, I regard it as for more likely that an error was made there than in my office.” CP 5, p.2.

The Clerk notified counsel’s legal assistant that the filing had been rejected by email timed at 2:56 that afternoon. CP 5, Ex.2 Counsel’s legal assistant didn’t see the email and inform him of the situation until about 4:15 that afternoon. CP 5, p.2.

Counsel immediately called the Clerk's office and was told, again, that the Complaint had not been filed and that he now had about 9 minutes to get it done. Id.

Counsel asked if the Complaint could be "re-submitted" under the original filing "envelope", since the original acknowledgment of receipt says to "allow up to 2 business days for clerk's office processing" and was told: "No". CP 5, p.2.

Counsel told the Clerk's office employee that he would be immediately re-filing and to please watch out for it. Id.

The Complaint and Summons were refiled online, the process being completed at 4:37. CP 5, p. 3. Counsel received an acknowledgement from the Clerk's office stating that the filing "has been submitted to the Clerk's office for review". CP 5, Ex. 3.

The next morning at about 7:01 Counsel's legal assistant received a "dated" copy of the Complaint, indicating that it had been "accepted". The copy was "dated" November 3rd, though

it had undisputedly been in the Clerk's office's possession the afternoon of the 2nd.

Defense counsel appeared and moved to dismiss the case as being untimely filed. CP 4. The Motion was granted. CP 9.

This appeal timely followed. CP 12. The Court of Appeals affirmed with the attached unpublished opinion.

ARGUMENT

The Court Can Hold That The Complaint Was Constructively Filed

According to GR 30 (c), “an electronic document is filed when it is received by the clerk’s designated computer during the clerk’s business hours”. According to Williams’ Declaration, the Complaint was filed within the Clerk’s “business hours” but erroneously rejected by the Clerk’s office. And it was indisputably “submitted to the Clerk for review” that afternoon, albeit 7 minutes after the Clerk’s “designated hours” had concluded.

Federal cases have recognized the concept of “constructive filing”.

In Ordonez v. Johnson, 254 F.3rd 814, 816 (9th Cir. 2001), the District Court dismissed a case where the Complaint had been timely filed but returned because it

did not comply with a local rule; the 9th Circuit reversed, saying:

“We conclude that the district court abused its discretion because Ordonez constructively filed his first amended complaint on March 2nd, 2000, five days before the deadline. ‘We have previously held that a complaint is filed when it is placed in the actual or constructive custody of the clerk [of the court], despite any subsequent rejection by [the clerk] of the pleading for non-compliance with a provision of the local rules [citation]” (emphasis added)

In Loya v. Desert Sands Unified School Dist., 721

F.2d 279, 281, (9th Cir. 1983), the Court held:

“[F]or purposes of the statute of limitations the district court should regard as "filed" a complaint which arrives in the custody of the clerk within the statutory period but fails to conform with formal requirements in local rules.” (emphasis added)

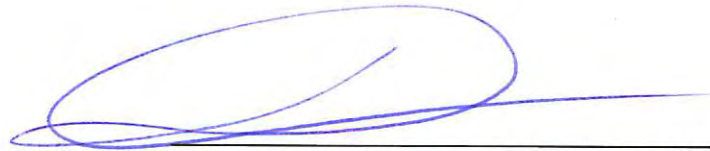
Again, the Complaint was received and acknowledged by the Clerk’s office on November 2nd, albeit at 4:37, within the statutory period.

Notably, the Complaint was “**accepted**” at 7:01 in the morning the day after it was filed---well outside the Snohomish County Clerk’s published office hours. But the Complaint was found to be “untimely” because it was **filed** at 4:37 the afternoon before---*seven minutes outside those hours*, and this with at least one employee in the Clerk’s office well aware that it was coming! Was the Clerk’s Office deserted those seven minutes later?

CONCLUSION

Appellant asks the Court to hold that under the circumstances of this case, the Complaint was constructively filed in a timely manner.

Date this 24 day of May, 2023



David A. Williams, WSBA #12010
Attorney for Appellant

APPENDIX

Court of Appeals Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHAEL WALL, an individual,

Appellant,

v.

SHIPRA GROVER,

Respondent.

No. 84057-6-I

DIVISION ONE

UNPUBLISHED OPINION

CHUNG, J. — Three years after Michael Wall and Shipra Grover were in a car accident, Wall electronically filed a summons for a civil action for negligence against Grover. However, the court did not receive his electronically filed complaint until 4:37 PM, after the clerk’s office closed, and therefore the clerk did not consider it filed until the next day at 8:30 AM. Under RCW 4.16.170 a statute of limitations is tolled either when a complaint is filed or a defendant is served. Under GR 30, electronic documents received by a clerk after business hours are considered filed the next day. The trial court granted Grover’s motion to dismiss Wall’s claim because the statute of limitations had expired. We affirm.

FACTS

On November 2, 2018, a car accident occurred between Michael Wall and Shipra Grover. On November 2, 2021, three years later to the day, Wall attempted to electronically file a new civil case with the Snohomish County Superior Court at 1:58 in the afternoon. Wall’s attorney avers he “was 100% certain that both the Summons and Complaint were uploaded into the online filing portal.” However, at 2:56 PM, the e-filing

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system sent Wall's attorney's office a "rejected filing notification" via email, stating the filing was rejected because a "[c]omplaint [is] required to initiate [a] case."

Wall's attorney became aware of the rejection about 4:15.¹ He immediately called the Snohomish County Clerk, who informed him he had "about 9 minutes to" file the complaint. He asked and was specifically told he could not re-submit the complaint "under the original filing 'envelope,' " i.e., as an amendment to his earlier filing.

Wall's attorney "raced" to electronically file the complaint. The court's e-filing system notified him by e-mail at 4:37 PM, that the complaint had been submitted. At 7:01 AM the next morning, November 3, Wall's attorney received an email showing that his electronic filing had been processed. The complaint was stamped "Electronically Filed 11/3/2021 8:30 AM."

Subsequently, in February 2022, after checking the filing history at Grover's request, the Snohomish County Clerk's office "verif[ied] that the Clerks office [sic] did not receive the complaint on the Wall v. Grover matter on November 2, 2021." Grover then moved to dismiss because "[t]he three-year statute [of limitations] expired the day before" Wall filed his lawsuit on November 3, 2021. The trial court granted Grover's motion to dismiss with prejudice. Wall timely appeals.

ANALYSIS

Wall assigns error to the trial court's dismissal of his claim as untimely filed. Generally, we review de novo a trial court's decision to dismiss a case based on statute of limitations. In re Parentage of M.S., 128 Wn. App. 408, 412, 115 P.3d 405 (2005).

¹ Appellant's brief states counsel "became aware of the situation about 4:20," but counsel's declaration submitted to the trial court states that his legal assistant saw the clerk's email at about 4:15.

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However, when the court considers the pleadings as well as materials submitted by the parties in deciding the motion to dismiss,² this court reviews the order of dismissal as a summary judgment and engages in the same inquiry as the trial court. Ellis v. Barto, 82 Wn. App. 454, 457, 918 P.2d 540 (1996). We review issues of law de novo. Id.

Statutes of limitation reflect the importance of finality and settled expectations in our civil justice system. Fowler v. Guerin, 200 Wn.2d 110, 118, 515 P.3d 502 (2022). Such statutes protect defendants, and courts, from the burdens of litigating stale claims by requiring prospective plaintiffs to assert their claims before the relevant evidence is lost. Id. at 118-19.

In Washington, personal injury actions must be commenced within three years. RCW 4.16.080(2). To toll the statute of limitations, either the defendant must be properly served or a complaint must be properly filed with court. RCW 4.16.170.³

An electronic document is electronically filed when it is received “by the clerk’s designated computer during the clerk’s business hours.” GR 30(c)(1). An electronic document received after business hours “is considered filed at the beginning of the next business day.” GR 30(c)(1). The clerk “shall issue confirmation to the filing party that an electronic document has been received.” GR 30(c)(2). Clerks “may reject” a document that fails to comply with applicable electronic filing requirements. GR 30(c)(3). And the clerk “must” notify a filing party of a rejection and the reason. GR 30(c)(3).

² Appellant submitted a declaration from counsel and defendant submitted an unverified email as an exhibit. The order granting the motion to dismiss states that the court “reviewed the documents filed herein.”

³ Under RCW 4.16.170, either the filing of the complaint or service of the summons will toll the statute of limitations so long as the other act is completed within 90 days. Margetan v. Superior Chair Craft Co., 92 Wn. App. 240, 244, 963 P.2d 907 (1998).

Wall acknowledges that he filed a complaint after the Snohomish County Clerk's published business hours.⁴ Wall "asks that under the circumstances of this case, the Court rule that the Complaint was constructively filed November 2, 20[21] [sic]."⁵ Wall reasons that because the clerk's office sent him an email acknowledging receipt on November 2, 2021, at 4:37 PM, it was in the court's custody.

This court previously rejected the idea of constructive acceptance of a filing under RCW 4.16.170. In Margetan v. Superior Chair Craft Co., 92 Wn. App. 240, 963 P.2d 907 (1998), the plaintiff, via legal messenger, had placed the complaint in the court's "Rapid Filing Box," which was labeled with instructions including "Case Number and Caption Required" and "No Documents requiring a filing fee." Id. at 242-43. The court did not accept the filing because plaintiff failed to pay the filing fee. Id. at 243. The plaintiff argued that the court constructively accepted the filing because the messenger left the complaint in the rapid filing box. Id. at 248. The court rejected this argument, holding that a complaint is filed for purposes of commencing an action under RCW 4.16.170 only when the required filing fee is paid. Id.

Despite our rejection of the constructive filing argument in Margetan, Wall points to two federal Ninth Circuit cases for support of this argument, Ordonez v. Johnson, 254 F.3d 814, 815 (9th Cir. 2001), and Loya v. Desert Sands Unified Sch. Dist., 721 F.2d 279, 280 (9th Cir. 1983). Not only are these cases not precedential in this court, as we

⁴ Neither party submitted evidence regarding the court clerk's office's business hours, though Grover states, without citation, "Court hours at the Snohomish Superior Court are from 8:30am to 4:30pm." However, Wall does not dispute that 4:37 PM is outside the clerk's business hours.

⁵ Appellant's brief omits the full year and simply states "November 2nd, 20"; we assume this is a clerical error and 2021 was intended.

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noted in Margetan, we must exercise caution when relying on federal cases as persuasive authority because their analysis depends on different statutes, rules, and local rules. See Margetan, 92 Wn. App. at 244 n.3. Indeed, in both the federal cases Wall cites the plaintiff's complaints were dismissed because they failed to conform with local rules regarding form. Ordonez, 254 F.3d at 815 (Local Civil Rule 3.5.1 required an extra copy of all documents for the judge); Loya, 721 F.2d at 280 (Local Rule 4 required 8½ by 11 inch paper). Wall ignores that in cases he cites the complaint itself was timely filed. Ordonez, 254 F.3d at 815 ("the clerk of the court received Ordonez's first amended complaint, five days before the March 7, 2000, deadline."); Loya, 721 F.2d at 280 ("A copy of the plaintiff's complaint arrived at the office of the Clerk . . . within the 90-day limitation period"). Unlike those cases, where the clerk had received the plaintiff's complaint within the relevant statute of limitation, here, the clerk did not receive Wall's electronic filing until after business hours on the last day of the limitations period.

Wall nevertheless points to the fact that the court system sent an email on November 3, 2021, at 7:01 AM stating that his filing had been processed. He argues that because the court "accepted" the filing before business hours, likewise, it should not matter that the filing on November 2 was outside business hours, and it should be deemed timely. But GR 30 expressly provides that electronic documents are filed when they are received "during the clerk's business hours; otherwise the document is considered filed at the beginning of the next business day." GR 30(c)(1).

The clerk of the court followed GR 30 and deemed Wall's complaint filed on November 3, as it was received after business hours on November 2. The trial court

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properly dismissed his complaint because, under RCW 4.16.170, Wall's action was not commenced by November 2.

Affirmed.

Chung, J.

WE CONCUR:

Birk, J.

Smith, C.G.

LAW OFFICE OF DAVID WILLIAMS

May 24, 2023 - 8:35 AM

Transmittal Information

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Appellate Court Case Title: Michael Wall, Appellant v. Shipra Grover, Respondent
Superior Court Case Number: 21-2-05175-2

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