

The Supreme Court of the State of Louisiana

DANIEKA PETIT-BLANC

No.2021-CC-00094

VS.

QUANISHA R. CHARLES AND STATE FARM
MUTUAL INSURANCE COMPANY

IN RE: Quanisha R. Charles - Applicant Defendant; State Farm Mutual Automobile Insurance Company - Applicant Defendant; Applying For Supervisory Writ, Parish of Terrebonne, 32nd Judicial District Court Number(s) 187520, 1st Circuit Court of Appeal, Number(s) 2020 CW 0950;

April 20, 2021

Writ application granted. See per curiam.

JLW

SJC

JTG

WJC

JBM

Hughes, J., dissents.

Griffin, J., dissents.

Supreme Court of Louisiana

April 20, 2021



Chief Deputy Clerk of Court
For the Court

04/20/21

SUPREME COURT OF LOUISIANA

No. 2021-CC-00094

DANIEKA PETIT-BLANC

VS.

**QUANISHA R. CHARLES AND STATE FARM MUTUAL INSURANCE
COMPANY**

On Supervisory Writ to the 32nd Judicial District Court, Parish of Terrebonne

PER CURIAM

This case arises from an automobile accident which occurred on November 18, 2018. On November 13, 2019, plaintiff filed a petition for damages with the clerk of court through facsimile transmission. The clerk of court received plaintiff's original petition and fee on Monday, November 25, 2019.¹

Subsequently, defendants filed a peremptory exception raising the objection of prescription. Defendants argued plaintiff failed to comply with the requirements of the facsimile filing statute, La. R.S. 13:850, and the petition therefore failed to interrupt prescription. The district court denied the exception, and the court of

¹ The petition is actually stamped "November 26, 2019." However, the date was late changed by hand to "November 25, 2019." At the hearing, all parties stipulated the filing was actually received by the clerk's office on November 25, 2019 and the November 26, 2019 date was in error.

appeal denied defendants' application for supervisory writs. Defendants' application to this court followed.

Subsection B of La. R.S. 13:850 provides that when a document is filed by facsimile transmission, the original document and fees "shall be delivered to the clerk of court" within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing. In this case, plaintiff submitted her facsimile filing on November 13, 2019, making the seventh day from that date Friday, November 22, 2019. Defendants point out plaintiff's original document was stamped by the clerk's office on Monday, November 25, 2019, demonstrating it was delivered outside of the seven-day period.

Plaintiff does not dispute her original document was stamped as received by the clerk on November 25, 2019. However, she maintains her original document was mailed to the clerk on November 14, 2019 and must have been delivered to the clerk's post office box sometime prior November 25, 2019.

At the hearing on defendants' exception, a representative of the clerk's office testified that mail delivered to its post office box after 11:00 a.m. on a Friday would not be picked up until the following Monday. Nonetheless, the representative admitted she could not say if the document in this case had been received on any day before November 25, 2019.

As originally enacted La. R.S. 13:850(B) required that the party filing the document “shall forward” the original document and fees to the clerk within seven days of the facsimile transmission. In *Hunter v. Morton’s Seafood Rest & Catering*, 08-1667 (La. 3/17/09), 6 So.3d 152, 156, we interpreted the term “forward” to mean the litigant must only send or transmit the document to the clerk, explaining “[t]he definition of this term does not include the concept of ‘delivery’ or ‘receipt.’”

In 2016, the legislature amended La. R.S. 13:850(B) by Acts 2016, No. 109, eff. August 1, 2016. As currently drafted, the statute provides the party shall “deliver” the original document to the clerk within seven days of the facsimile transmission. Black’s Law Dictionary (6th Ed. 1990) defines “delivery” as “[t]he act by which the res or substance thereof is placed within the actual or constructive possession or control of another.” Citing this definition, the court of appeal in *Clark v. Wal-Mart Stores, Inc.*, 18-0052 (La. App. 5 Cir. 10/31/18), 259 So.3d 516, held a petition was “delivered” to the clerk of court when a clerk’s office employee signed a green card for plaintiff’s certified mail.

In the present case, plaintiff asserts she sent her original document to the clerk’s office sometime prior to the November 22, 2019, but she cannot establish the petition was placed in the actual or constructive possession of the clerk’s office at any time prior to November 25, 2019. Considering the 2016 amendment to the statute, we must conclude merely transmitting an original document within the

deadline is insufficient; rather, the litigant must establish the document was delivered to the clerk within the deadline. Plaintiff has not done so here.

Subsection C of La. R.S. 13:850 provides, “[i]f the filing party fails to comply with any of the requirements of Subsection B of this Section, the facsimile filing shall have no force or effect.” Because plaintiff failed to establish compliance with the procedures set forth in La. R.S. 13:850(B), her November 13, 2019 facsimile filing is without force and effect and could not serve to interrupt the prescriptive period. Accordingly, the district court erred in denying defendants’ exception.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgments of the lower courts are reversed. The peremptory exception raising the objection of prescription filed by defendants, Quanisha R. Charles and State Farm Mutual Automobile Insurance Co., is maintained, and the action against defendants is dismissed with prejudice.