

**FELECIA MCDOUGLE**

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**NO. 2005-CA-0061**

**VERSUS**

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**COURT OF APPEAL**

**LOCKHEED MARTIN  
CORPORATION MICHOU  
SPACE SYSTEMS**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2001-12612, DIVISION "I-14"  
HONORABLE PIPER GRIFFIN, JUDGE

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**JUDGE MICHAEL E. KIRBY**

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(Court composed of Judge James F. McKay III, Judge Michael E. Kirby,  
Judge Terri F. Love)

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Plaintiff Felicia McDougale seeks a reversal of the trial court's dismissal of her case with prejudice on grounds of prescription and denying the plaintiff's Motion for a New Trial.

### **FACTS**

The plaintiff originally brought this case claiming that she was discriminated against based on gender and race while working as an employee at Lockheed Martin, the defendant-herein. The plaintiff was employed by the defendant between January 1999 and April 2000. The plaintiff was terminated on April 20, 2000 for not returning to work when asked to do so by her supervisors. The defendant fired the plaintiff for insubordination.

Plaintiff filed suit alleging she was terminated due to her race and sex, and that she was a victim of sexual harassment while on the job. When the plaintiff filed her initial lawsuit she had a co-plaintiff, Trina Weber, who was also a former employee of defendant. The initial petition filed by the

plaintiffs was filed via fax on July 17, 2000. Because it was a fax filing, the plaintiffs were notified that under La. R.S. 13:850.B the appropriate filing fees must be paid within five days. However, the plaintiff did not pay the fees until September 12, 2000. After receiving service of the original petition, the defendant removed the lawsuit to federal court. On March 20, 2001, the federal court granted the defendant's Motion to Sever the plaintiffs' two cases and remanded both cases to state court since neither plaintiffs alleged their individual claims were worth more than \$75,000.

On July 16, 2001, the state trial court at the request of the defendant, entered an order requiring plaintiffs to sever and refile one of the lawsuits. Ms. McDougle then filed her individual suit on August 3, 2001, once again via fax per La. R.S. 13:850, which allows five days to pay the filing fee. The certified copy of the Clerk's docket sheet reflects that the plaintiff failed to pay the proper filing fees within the time allotted by La. R.S. 13:850 (5 days). The defendant filed an answer to Ms. McDougle's new lawsuit denying all of her claims.

Defendant deposed Ms. McDougle about her troubled work history. Defendant also filed affidavits by Lockheed Martin Employers that plaintiff was not fired for any sexual or race based reason, but rather for her refusal to work. Defendant then filed a motion for summary judgment.

On March 3, 2004, the defendant filed a Peremptory Exception of Prescription. Defendant filed in the record a Transmission Report from Civil District Court which was intended to confirm the receipt of the fax filing of Ms. McDougle's second petition and notify plaintiff of the total filing fee due. Nevertheless, the Transmission Report in the record stated clearly that this facsimile document was not confirmed.

On July 9, 2004, the trial court held a hearing to consider defendant's motion for summary judgment and the exception of prescription. At the hearing the trial court gave the plaintiff five days from the hearing date to present proof of payment of the filing fees. On July 19, 2004, a judgment granting defendant's exception of prescription and dismissing plaintiff's case with prejudice was signed. Additionally, on July 19, 2004 the plaintiff filed a Motion for New Trial, referring to the signing of the Judgment on July 12, 2004. On October 9, 2004, the trial court denied the plaintiff's Motion for a New Trial. Subsequently, on October 13, 2004 the plaintiff filed a petition for a devolutive appeal, alleging the trial court committed legal error in granting the defendant's Peremptory Exception of Prescription.

## **DISCUSSION**

La. R.S. 13:850 states:

C. Any paper in a civil action may be filed with

the court by facsimile transmission. All clerks of court shall make available for their use equipment to accommodate facsimile filing in civil actions. Filing shall be deemed complete at the time that the facsimile transmission is received and a receipt of transmission has been transmitted to the sender by the clerk of court. The facsimile when filed has the same force and effect as the original.

C. Within five days, exclusive of legal holidays, after the clerk of court has received the transmission, the party filing the document shall forward the following to the clerk:

- C. The original signed document.
- (2) The applicable filing fee, if any.
- (3) A transmission fee of five dollars.

C. If the party fails to comply with the requirements of Subsection B, the facsimile filing shall have no force or effect. The various district courts may provide by court rule for other matters related to filings by facsimile transmission.

Under this statute any paper in a civil action may be filed with the court by facsimile (fax) transmission. The filing will be deemed complete at the time that the fax transmission is received and the clerk of court has transmitted a receipt of the transmission to the sender. Additionally, under La. R.S.13:850.B, within five days the party filing the document shall forward to the clerk the original signed document, the applicable filing fees, and a transmission fee of five dollars. Finally, under La. R.S. 13:850.C, if a

party fails to comply with the requirements of subsection B, the fax filing “shall have no force or effect.” In addition to La. R.S. 13:850, the plaintiff must also obviously adhere to the normal prescriptive period for her cause of action, which is outlined in La. C.C. art. 3492 and states that the prescriptive period for a tort action is one year.

In *Antoine v. McDonald’s Restaurant*, 98-1736 (La. App. 3 Cir. 5/5/99), 734 So.2d 1257 the Third Circuit Court of Appeal held that the requirements of fax filing under La. R.S. 13:850.B are mandatory. Additionally, the court established that if those mandatory requirements are not met prescription is not interrupted. *Id.* at 1260. In *Antoine* the plaintiff brought suit against the defendant for a slip-and-fall injury that occurred at the defendant’s restaurant. *Id.* at 1258. The plaintiff filed suit by fax transmission at 10:00 P.M. on March 17, 1997, exactly one year after the injury had occurred. *Id.* However, the clerk’s office did not receive the petition until March 18, 1997, one day after the prescriptive period had expired. *Id.* On April 23, 1998 the defendant filed an Peremptory Exception of Prescription based on the plaintiff’s failure to timely file the suit and for the plaintiff’s failure to adhere to the guidelines of La. R.S. 13:850. *Id.* at 1259. The trial court granted the defendant’s exception holding that the fax filing after the clerk’s closing hours on the night of March 17<sup>th</sup> did not

interrupt prescription. *Id.* Additionally, the court held that the plaintiff did not adhere to the requirements of La. R.S. 13:850.B because she failed to timely submit the five dollars transmission fee after faxing her petition, as required under subsection B(3) of the statute, and therefore the fax filing of the petition was ineffective. *Id.*

Also, in *Bryant v. Milligan*, 200-2524 (La. App. 1 Cir. 6/6/01) 808 So.2d 660, the First Circuit Court of Appeal held that the requirements of the statute governing fax filing of pleadings are mandatory. The court emphasized that a litigant can use the benefits of fax filing only if the litigant ensures that all the mandatory requirements set forth in La. Rev. Stat. 13:850 are met. *Id.* at 663. The plaintiff in *Bryant* filed a petition for damages for injuries allegedly sustained while she was closing the business for her employer. *Id.* at 661. The petition was fax filed by plaintiffs on April 27, 2000. *Id.* However, the original petition was not received by the Clerk of Court's office until May 4, 2000, more than five days after the petition had been faxed. *Id.* The court held that prescription had not been interrupted by the plaintiff's fax filing, as she did not meet all requirements for fax filing set forth in La. R.S. 13:850.B. The court emphasized that a party is obliged to file a pleading within a time limitation and must ensure actual delivery, and when that actual delivery takes place is what determines whether the

pleading has been timely filed. *Id.* at 662. Therefore, the court held that because the plaintiffs did not meet every mandatory requirement of La. Rev. Stat. 13:850.B, prescription was not interrupted and their petition was not timely received. *Id.* at 663.

Here, plaintiff argues that the trial court noted that the record contains an original pleading of the instant suit and that originals are not placed in the record until suits are paid for. Therefore, we assume she argues that the fees were paid since there was an original petition in the record. Nevertheless, the record contains the certificate of the Clerk of Court that payment was not timely. Since this plaintiff's argument is based on circumstantial or indirect evidence, and the Clerk's record is direct evidence, we find this argument has no merit.

Plaintiff also argues that because the federal court severed the initially filed petition, that the Clerk of Court should have followed that order and reallocated one of these two cases, obviating the need to refile. *Ansalve v. State Farm Mutual Automobile Ins. Co.*, 95-0211 (La. App. 4 Cir. 2/15/96) 669 So.2d 1328, stands for the proposition that orders entered by a federal district court prior to its remand of a case to state court for lack of jurisdiction were without effect since federal court was not a court of competent jurisdiction at the time rulings were rendered. For this reason, the



state trial court order granting a severance is the only operational order due to the federal court's lack of jurisdiction.

Similar to the facts in both *Antoine* and *Bryant*, the plaintiff has failed to establish that the requirements of La. Rev. Stat. 13:850.B were met and adhered to. Plaintiff correctly argues that defendant did not prove that the clerk of court complied with its duty to transmit a notice of receipt of transmission or confirmation to plaintiff. Nevertheless, we do not read the statute to allow for additional time to pay the fee when the clerk of court fails to send a confirmation. The statute with which one must comply is a courtesy to parties that allows for a non-traditional method of filing. The plaintiff has failed to submit any evidence that a fax filing fee was paid within the statutory timeline of five (5) days. As a result of this failure it remains that under the statutory requirements set forth in La. R.S. 13:850, the fax filing of the petition by the plaintiff is rendered ineffective and prescription is not interrupted. Therefore, because there is no evidence of her compliance with the statutory requirements, specifically no evidence of her paying the appropriate filing fees, we affirm the trial court's dismissal of the plaintiff's case with prejudice.

**AFFIRMED**