

STATE OF MICHIGAN
COURT OF APPEALS

DAVID DWAYNE EVANS,

Plaintiff-Appellant,

v

JEROME L. FENTON,

Defendant-Appellee.

UNPUBLISHED

June 17, 2004

No. 244881

Oakland Circuit Court

LC No. 02-040224-NM

Before: Neff, P.J., and Zahra and Murray, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse.

Defendant's representation of plaintiff in a criminal matter ended on April 18, 2000. On April 8, 2002 plaintiff mailed a complaint alleging legal malpractice, an affidavit of indigency, and a certified copy of his institutional account to the circuit court. The circuit court received the documents on April 15, 2002,¹ but did not docket the complaint until April 25, 2002, after determining that a waiver of fees was appropriate. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7), finding that plaintiff's action was barred by the applicable two-year statute of limitations. MCL 600.5805(6).

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

In the simplest of terms MCR 2.101(B) provides that a civil action is commenced by the filing of a complaint with a court. The case before us turns on *when* a case is filed. Nowhere in the court rule² is there any requirement beyond that of receipt of the complaint by the court, which was accomplished in this case on April 15, 2002, three days before the expiration of the statute of limitations. A document is filed when it is delivered to the proper court officer to be

¹ Defendant's brief on appeal acknowledges that there is no dispute that the complaint was received by the Oakland County Circuit Court on April 15, 2002.

² See also MCR 2.107(G).

kept on file. *Keenan v Dep't of Corrections*, 250 Mich App 628, 634; 649 NW2d 133 (2002). See also 1 Dean & Longhofer, Michigan Court Rules Practice (4th ed), §§ 2.101-2.103, pp 71-74.

The failure of plaintiff to pay the filing fee (because of indigence) and the delay in the determination of his indigence for purposes of the waiver of fees does not render the filing untimely because the court rule does not so provide. While the Michigan Supreme Court could, by rule amendment, provide that payment of fees or waiver of fees be required before a complaint may be considered filed, it is not within the power of this Court to so amend the court rule, even if we were so inclined.³

Reversed and remanded for reinstatement of plaintiff's cause of action. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Brian K. Zahra

/s/ Christopher M. Murray

³We also note that MCL 600.2963 which provides for the filing of indigent prisoner civil suits or appeals does *not* provide that the filing of the complaint is suspended, is incomplete or is in any way delayed pending a finding of indigency by the court, giving further weight to our conclusion.