

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

KEITH BIVENS, JAQUELINE BIVENS, and)
GWEN GIBBS, Individually, and as next friend)
of CHANTEL MANN, a minor,)

Plaintiffs,)

v.)

CA No. 03C-03-159-JEB

TERESA MATTERO,)

Defendant.)

Submitted: April 28, 2004

Decided: July 30, 2004

OPINION

*Defendant's Motion for Summary Judgment.
Denied.*

Appearances:

George E. Evans, Esquire, Wilmington, Delaware.
Attorney for Plaintiffs.

Arthur D. Kuhl, Esquire, Wilmington, Delaware.
Attorney for Defendant.

JOHN E. BABIARZ, JR., JUDGE.

In this personal injury case, Plaintiffs' counsel filed the complaint on the Monday after the Saturday on which the statute of limitations period expired. Defendant filed a motion to dismiss on grounds that the complaint was not timely filed. The Court decides the motion under the standard for summary judgment because submissions were made in addition to the motions themselves.¹ For the reasons explained below, Defendant's motion is denied.

FACTS

This case arises out of a car accident that occurred on March 15, 2001, when a car driven by Plaintiff Jacqueline Bivens collided with a car driven by Defendant Teresa Mattero.

It is undisputed that the statute of limitations for Plaintiffs' case expired on Saturday, March 15, 2003, and that the complaint was filed on Monday, March 17, 2003. At oral argument on the motion, it became clear that further information was needed regarding the procedure for after-hours filing in the New Castle County Courthouse, which opened its doors in August 2002. The Court granted the parties' request to conduct depositions regarding counsel's efforts to file the complaint and after-hours drop-off procedures at the New Castle County Courthouse.

Deposition testimony was taken from George Evans, Esquire, Plaintiff's

¹*Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845, 847 (Del. Super. 1980).

counsel; Sharon Agnew, New Castle County Prothonotary; and Sergeant John Kirkpatrick, Delaware Capitol Police.

Mr. Evans testified that he went to the Courthouse on Saturday, March 15, 2003, between 2:00 p.m. and 5:00 p.m. to file the complaint. He pulled on the front doors but was unable to open them. When he looked inside and saw no one, he decided to leave and file the suit on Monday, March 17, 2003. The complaint was clocked in with the Prothonotary on Monday, March 17, 2003.

Ms. Agnew testified that there is one drop box for Superior Court and one for Chancery Court, both of which are available for evening and weekend filings. She stated that two guards are supposed to be on duty after hours but that if one calls in sick there may be only one. She stated that there is no buzzer and that a person seeking entry on a week-end would have to “bang hard or have eye contact.”² Although she is familiar with these procedures by virtue of her job, she is not involved with security measures in the Courthouse.

Sergeant Kirkpatrick testified that he serves as supervisor of the Capitol Police, the security guards and contract personnel from Bennett Security Company. The contract security guards work week-ends from 4:00 p.m. on Friday until 7:00 a.m. Monday. They are the only security personnel on duty on weekends. Sgt. Kirkpatrick

²Agnew deposition at 14.

stated that the drop boxes and the time clock for night or weekend filings are located near the metal detectors inside the front entrance. After hours, a guard is stationed at the desk approximately 30 feet from and directly in front of the main entrance. Another guard is assigned to walk through the building. There is no door bell or buzzer, but Sgt. Kirkpatrick testified that a guard can see and hear anyone approaching the door. When individuals arrive to use the drop box, the guard lets them in and out of the building. Sgt. Kirkpatrick referred to Bennett Security's sign-in log showing that one guard was on duty watching the front door from 4:00 p.m., Friday, March 14, 2003, through midnight, Saturday, March 15, 2003, which is the relevant time frame. He also referred to the Courthouse employee after-hours logbook to show that numerous employees gained entrance during the weekend in question.

STANDARD OF REVIEW

Summary judgment may be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.³ The Court must view the evidence in the light most favorable to the non-moving party.⁴

DISCUSSION

³*Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁴*Id.*

In a personal injury suit, the complaint must be filed within two years of the alleged incident, as provided in DEL. CODE ANN. tit. 10, § 8119:

No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained.

...

Defendant argues that § 8119 is a jurisdictional statute and that this Court has no jurisdiction over the matter because the complaint was filed late. In support of this proposition, Defendant relies on *Williams v. Singleton*,⁵ wherein the Delaware Supreme Court affirmed this Court's dismissal of an appeal from a decision of a Justice of the Peace because the appeal was untimely under DEL. CODE ANN. tit 10, § 9578. However, as *Williams* states, "[s]ection 9578(a) is a jurisdictional statute governing the right of appeal from judgments recovered before a Justice of the Peace. If such a statute is not complied with the appellate court has no jurisdiction."⁶ Section 8119 is not a such a statute. It does not confer appellate jurisdiction on this Court; rather, it establishes a deadline for the filing of the complaint in personal injury cases. As a constitutional court of general jurisdiction,⁷ this Court has subject matter jurisdiction of the case regardless of whether the parties meet their statutory

⁵160 A.2d 376 (Del. 1960).

⁶*Id.* at 377.

⁷DEL. CONST. art. IV, § 7 (1897).

deadlines. In fact, the Court exercises its jurisdiction when it decides whether a filing is timely made. As the United States Supreme Court has recently stated, the label “jurisdictional” is best used “not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court’s adjudicatory authority.”⁸ Without question, this case falls within the jurisdiction of the Superior Court.

The questions before the Court are whether § 8119 permits any exceptions and, if so, whether an exception is warranted in this case. The relevant facts are undisputed and the determinations to be made are matters of law.

Generally, statutes of limitations are generally to be strictly construed, but courts have inherent authority under certain circumstances to recognize implied exceptions where legislative intent is not contravened.⁹ Such exceptions are warranted where an authority such as a court or its staff prevents the exercise of a legal right by a plaintiff.¹⁰ To justify such an exception, a party must show that the action of the court itself prevented the exercise of the right and that plaintiff acted

⁸*Scarborough v. Principi*, 158 L.Ed. 674, 687 (2004) (citations omitted).

⁹*Wilson v. King*, 673 A.2d 1228, 1231 (Del. Super. 1996) (citing *Mergenthaler v. Asbestos Corp. of Am.*, 500 A.2d 1357, 1365 (Del. Super. 1985)).

¹⁰*Id.* at 1232.

with due diligence.¹¹ Due diligence has been defined as

Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.¹²

In this case, the parties do not dispute that the Courthouse was locked when Mr. Evans came to the Courthouse on Saturday, March 15, 2003. Nor does Defendant challenge the credibility of Mr. Evans' testimony about his efforts to gain entry. In addition to Mr. Evans' assertion that no one was at the door when he arrived, the evidence shows that one guard may have been stationed at the front door but that necessity may have compelled him to be elsewhere. Defendant concedes that there is no buzzer to reach the ears of a guard not at the front desk, nor a telephone to call and request admittance. The Court finds that Mr. Evans reasonably expected to be able to make a Saturday filing and acted with due diligence in attempting to do so. Plaintiffs will not be denied their day in court because their attorney was locked out of the Courthouse on the final day of the limitations period. Nor will the Court impose on counsel a duty to return to a locked Courthouse on Sunday, which in

¹¹*Mergenthaler v. Asbestos Corp. of America*, 500 A.2d 1357, 1365 (1985).

¹²BLACK'S LAW DICTIONARY 411 (5th ed. 1979).

Delaware is still a *dies non juridicus*.¹³ The Court concludes as a matter of law that the circumstances in this case warrant an exception to the general prohibition against extending the statute of limitations.

CONCLUSION

For the reasons stated above, Defendant's motion for summary judgment on grounds of the statute of limitations is *Denied*.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr/ram/bjw
Original to Prothonotary

¹³*Associated Transport, Inc. v. Pusey*, 118 A.2d 362 (Del. Super. 1955).