

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

FRED W. BRYANT, by and	:	
through his Legal Guardian, ANNA	:	C.A. No: 06C-05-001 (RBY)
M. PERRY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BAYHEALTH MEDICAL CENTER,	:	
INC., t/a KENT GENERAL	:	
HOSPITAL,	:	
	:	
Defendant.	:	

Submitted: December 1, 2006

Decided: December 8, 2006

John E. O'Brien, Esquire, Brown, Shiels & O'Brien, LLC, Dover, Delaware for Plaintiff.

Mason E. Turner, Jr., Esquire, Prickett, Jones & Elliott, P.A., Dover, Delaware for Defendant.

Young, J.

FACTS

This case arises out of circumstances allegedly occurring at Kent General Hospital on or about April 29, 2004. The parties agree, that the applicable statute limiting actions is 18 *Del. C.* §6856, providing for a filing expiration date of two years, which would terminate the ability to file this action after the end of April, 2006. In as much as April, 2006 expired on a weekend, pursuant to Super. Ct. Civil. R. 6(a), Plaintiff was afforded until the completion of Monday, May 1, 2006, the next day on which the office of the Prothonotary is open, to file the action.

On May 1, 2006, the Plaintiff asserts that he filed with the Kent County Prothonotary the Case Information Sheet, Praecipe, Summons, Complaint, Affidavit and Certificate of Value.¹ A Civil Action Number was issued on that date. On May 2, 2006, the Plaintiff received from the Prothonotary a “Notice of Non-Conforming Documents.” This notice stated that the Plaintiff’s May 1st filing was rejected because it must be eFiled.² That same day, the Plaintiff eFiled the documents filed the day before in the Prothonotary’s Office. Because the Plaintiff failed to comply with all requirements to bring about service of process, the Prothonotary did not issue a summons to the Kent County Sheriff to serve the documents on the Defendant until

¹ Attached to the Plaintiff’s Response to the Defendant’s Motion for Summary Judgment are copies of the Case Information Sheet, Praecipe and Complaint the Plaintiff alleges were filed on May 1. These documents bear the Prothonotary’s time stamp, which reads “RECEIVED AND FILED 06 MAY - 1 KENT COUNTY PROTHONOTARY.”

² Pursuant to Super. Ct. Civ. R. 79.1(b), the President Judge of the Superior Court issued Administrative Directive No. 2003-7. This directive stated that “[e]ffective October 6, 2003, all new civil actions filed with the Prothonotary in any county in which counsel for the claimant(s) has certified pursuant to Civil Rule 16.1 that damages exceed one hundred thousand dollars (\$100,000) exclusive of interest and costs shall be filed using the LexisNexis File & Serve eFiling system.” Simultaneously, the President Judge issued Administrative Directive No. 2003-8, which sets out the administrative procedures that are to govern the eFiling of documents.

June 28, 2006.³ On July 5, 2006, the Defendant was successfully served.

STANDARD OF REVIEW

A motion for summary judgment should be granted if the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.⁴ The facts must be viewed in the light most favorable to the non-moving party.⁵ Summary judgment may not be granted if, from the evidence produced, there is a reasonable indication that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.⁶ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.⁷ The burden of proof is initially borne by the moving party.⁸ However, if the movant can meet its burden, then the burden shifts to a non-moving party to demonstrate the existence of material issues of fact.⁹

³ This followed the filing of a new Praecipe on June 21, 2006. It appears this filing took the form of a hard copy filing, instead of an eFiling, since this filing is not noted on the eFile docket but a Praecipe bearing the Prothonotary's time stamp, and reading "RECEIVED AND FILED 06 MAY - 21 KENT COUNTY PROTHONOTARY," is attached as an exhibit in both the Defendant's Motion for Summary Judgment and the Plaintiff's Response to the Defendant's Motion for Summary Judgment. The Praecipe carries a time stamp overwritten with the word: "VOID."

⁴ Super. Ct. Civ. R. 56(c).

⁵ *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

⁷ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

⁸ Super. Ct. Civ. R. 56(e); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979) (citing *Ebersole v. Lowengrub*, 180 A.2d 476 (Del. 1962)).

⁹ *Moore*, 405 A.2d at 681 (citing *Hurt v. Goleburn*, 330 A.2d 134 (Del. 1974)).

DISCUSSION

The Defendant argues that the two-year statute of limitations contained within 18 *Del. C.* § 6856¹⁰ was not met in this case because the Plaintiff failed properly to file his action pursuant to Super. Ct. Civ. R. 3(a). The Defendant maintains that the Plaintiff's failure entitles it to judgment in its favor. The Plaintiff responds that he properly filed his action within the limitations period, when he filed the Case Information Sheet, Praecipe, and Complaint with the Prothonotary's Office on May 1, 2006. The Plaintiff further argues that, had the Prothonotary notified him on May 1 that his action needed to be eFiled, he would have done so. He concludes that, because the failure to file timely was attributable to court-related personnel, he should not be penalized.

The Plaintiff has presented evidence that on May 1, 2006, he filed a complaint and praecipe with the Prothonotary. However, Administrative Directive No. 2003-7 requires that all civil actions filed with the Prothonotary, in which counsel for the claimant has certified that damages exceed \$100,000 exclusive of interest and costs, shall be filed using the Lexis Nexis File & Serve eFiling system. Plaintiff's counsel has certified that damages in this case exceed \$100,000. Thus, the Prothonotary notified the Plaintiff that he must eFile the action. He did file on May 2 certain eFile materials.

¹⁰ The statute states, "No action for the recovery of damages upon a claim against a health care provider for personal injury . . . arising out of medical negligence shall be brought after the expiration of 2 years from the date upon which such injury occurred." This provision also contains two exceptions to the two year limitations period, the date of discovery exception and the minor under the age of 6 exception; both are inapplicable in this case.

Because the May 2 eFiling falls outside the statute of limitations, the question arises as to whether or not the May 1 filing was sufficient to toll the statute. Neither Super. Ct. Civ. R. 3(a) nor the relevant eFile Administrative Procedure contained within Administrative Directive 2003-8 directly addresses this situation. Rule 3(a) states the circumstances in which an action is properly commenced. The Rule does not condition the commencement of the action on the acceptance of the documents by the Prothonotary. Furthermore, Administrative Procedure 10, contained within Administrative Directive 2003-8, states that “[i]f the electronic filing is not filed with the Prothonotary . . . because of . . . (3) rejection by the Prothonotary . . . the Court may upon satisfactory proof enter an order permitting the document to be filed . . . to the date it was first attempted to be sent electronically.” While no request or proof concerning such order exists here, and while this procedure is clearly intended only to apply to electronic filing errors, the language is instructive to the matter presented by this case. If the Prothonotary’s rejection of an electronically filed document on the last day of the statute of limitations period would not necessarily bar such a plaintiff’s civil action, then there appears to be a basis to accept the May 1 filing of the Complaint. When the Plaintiff was notified that he needed to eFile, he did so promptly.

In any event, the Court holds that under these circumstances, an action sufficient to toll the statute of limitations would be considered to be commenced on May 1, so long as all requirements are met.

That, however, is not the only difficulty Plaintiff confronts. On July 14, 2006, Plaintiff was served with two Requests for Admission, both concerning the praecipe, which Plaintiff associates with the May 2 e-filing. In Delaware, pursuant to Civil Rule 3(a), an action is not commenced merely upon the filing of a Complaint. Rather,

in addition to that ,“a praecipe directing the Prothonotary to issue the writ” must exist. In this case, a document has been attached to the Plaintiff’s response to this motion, which is entitled “Praecipe.” It carries a Prothonotary stamp dated May 1, 2006, but it is over-written: “VOID.” Then, and of critical significance, after the corrected e-filing was commenced, the said Requests for Admission were filed. These stated that the e-filed praecipe was filed – not on May 2, but – on June 21, 2006, and that the “praecipe was the first legally cognizable document filed with the Court requesting service of process upon the defendant.” The Request also correctly pointed out that, pursuant to Civil Rule 36(a), a failure to respond to the requests within 30 days would create an admission as to their accuracy. Well before the end of August 2006, Plaintiff’s 30 day response time expired. Rule 36 does allow the Court to consider extending that time period. However, as of this date, more than three months after the Rule’s expiration provision; and more than two months after Defendant moved for summary judgment based upon this admission; no request, let alone justification, was brought to the Court to vitiate the effect of Rule 36 (a).

Accordingly, Plaintiff’s action was not commenced within the statutorily prescribed period of two years from the occurrence of the event alleged.

Defendant's Motion for Summary Judgment is, therefore, GRANTED.
SO ORDERED.

/s/ Robert B. Young
J.

RBV/sal

oc: Prothonotary

cc: Opinion Distribution