

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SERENA FLEMING, individually and as )  
agent for SEBRON FLEMING, ) No. 228, 2005  
)  
Appellants/Defendants, ) Court Below: Superior Court  
Below, ) of the State of Delaware in  
) and for New Castle County  
v. )  
) C.A. No. 04C-07-028  
IRENE JACKSON and TIFFANY )  
HUNTER, individually and as Next )  
Friend for JAMIYAH GRIFFIN, a minor, )  
)  
Appellees/Plaintiffs, )  
Below, )

Submitted: November 10, 2005

Decided: November 23, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

***ORDER***

This 23<sup>rd</sup> day of November 2005, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. On July 6, 2004, the plaintiffs-below and appellees, Irene Jackson, Tiffany Hunter and Jamiyah Griffin, filed a complaint in Superior Court against the defendants-below and appellant, Serana Fleming and Sebron Fleming for injuries resulting from an automobile collision that occurred on July 3, 2002.<sup>1</sup> Fleming

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<sup>1</sup> For ease of discussion, any reference to “Jackson” includes the two other plaintiffs, Hunter and Griffin. Likewise, any reference to “Fleming” includes both defendants, Serana and Sebron Fleming.

filed a motion to dismiss in Superior Court claiming that the two-year statute of limitations period for personal injury claims pursuant to 10 *Del. C.* § 8119 barred Jackson's suit because the suit was not filed by Saturday July 3, 2004. A Superior Court judge denied the motion and held that Delaware Superior Court Civil Rule 6(a) extended the time period permitting Jackson to file her suit on July 6, 2004. Fleming, claiming that Delaware Superior Court Civil Rule 6(a) is inapplicable, filed this interlocutory appeal. Because the last day to file this timely suit under 10 *Del. C.* § 8119 was a Saturday, Delaware Superior Court Civil Rule 6(a) extended the statute of limitations period to the next day the Prothonotary was open, July 6, 2004. Accordingly, the trial judge's ruling is AFFIRMED.

2. Fleming argues Delaware Superior Court Civil Rule 6(a) cannot be applied to extend the statute of limitations. Citing *Bivens v. Mattero*,<sup>2</sup> Fleming suggests that courts may recognize exceptions to the limitations period only when (1) the court prevented the plaintiff from exercising a legal right; and (2) the plaintiff acted with due diligence.<sup>3</sup> In response Jackson argues that Delaware Superior Court Civil Rule 6(a) appropriately tolled the two-year statute of limitations period provided under 10 *Del. C.* § 8119 because the last day of the limitations period was a Saturday.

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<sup>2</sup> *Bivens v. Mattero*, 2004 Del. Super. LEXIS 236 (Del. Super. Ct. 2004).

<sup>3</sup> *Id.* at \*2.

3. The Superior Court’s construction of a statute is a determination of law and is reviewed *de novo*.<sup>4</sup> This Court will determine whether the Superior Court judge “erred in formulating or applying legal precepts.”<sup>5</sup>

4. Pursuant to 10 *Del. C.* § 561(a), the Superior Court Rules govern practice and procedure with respect to the “commencement, trial, hearing and determination of civil actions in the Superior Court.” Under 10 *Del. C.* § 561(c), once rules are adopted, they “supersede all statutory provisions in conflict or inconsistent therewith.” Further, 10 *Del. C.* § 561(d) provides that any inconsistency or conflict between a court rule and a statute be resolved in favor of the court rule.

5. The relevant statute here, 10 *Del. C.* § 8119, provides that “[n]o action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of two years from the date upon which it is claimed that such alleged injuries were sustained.” The computation of the two-year period, however, is governed by Delaware Superior Court Rule 6(a) which reads:

In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the office of the

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<sup>4</sup> *Colonial Ins. Co. of Wisconsin v. Ayers*, 772 A.2d 177, 179 (Del. 2001).

<sup>5</sup> *Id.*

Prothonotary is closed, in which event the period shall run until the end of the next day on which the office of the Prothonotary is open.

6. Here, the accident occurred on July 3, 2002; therefore, the last day to file timely under 10 *Del. C.* § 8119 would be July 3, 2004. July 3, 2004, however, fell on a Saturday and thus was not included in the computation of the two-year period under the rule. Further, Monday July 5, 2004 was a recognized legal holiday<sup>6</sup> and was likewise not included in the computation. Thus, Tuesday July 6, 2004, was the last day Jackson could file her case. Jackson properly filed her case on July 6, 2004 and her claim is not barred by the two-year statute of limitations period.

7. Fleming relies on *Bivens*<sup>7</sup> for her claim that Delaware Superior Court Rule 6(a) does not apply here. In *Bivens*, the plaintiff, Jacqueline Bivens, brought suit in the Superior Court for injuries arising from a motor vehicle accident. There, as here, 10 *Del. C.* § 8119 provided for a two-year statute of limitations period. The final day of the two-year period was Saturday, March 15, 2003. Bivens attempted to use the Saturday filing procedures on March 15, 2003 but was unable to gain entry to the courthouse. Bivens then filed her suit on Monday, March 17, 2003, the next day the courthouse was open. The defendant filed a motion for summary judgment claiming that the statute of limitations barred the lawsuit. The

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<sup>6</sup> July 5, 2004 was a legal holiday because Independence Day fell on a Sunday.

<sup>7</sup> *Bivens*, 2004 Del. Super. LEXIS 236.

Superior Court denied the motion for summary judgment. While recognizing that statutes of limitations are generally to be strictly construed the court stated:

[C]ourts have inherent authority under certain circumstances to recognize implied exceptions where legislative intent is not contravened. Such exceptions are warranted where an authority such as a court or its staff prevents the exercise of a legal right by a plaintiff. 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 with due diligence.<sup>8</sup>

Finding that Bivens exercised due diligence in attempting to file her suit on Saturday, and that the locked courthouse doors made filing an impossibility, the court denied the defendant's motion for summary judgment.<sup>9</sup>

8. Fleming suggests that because Jackson did not attempt to file on Saturday, July 3, 2004, Jackson cannot meet the exception applied in *Bivens*. Thus, Fleming claims, Jackson's suit is barred by the statute of limitations. Fleming's reliance on *Bivens* is misplaced. The recognized implied exception in *Bivens*<sup>10</sup> is not an exclusive exception that renders Delaware Superior Court Rule 6(a) inapplicable.

9. Fleming also argues a Superior Court drop box and modern technology have made Rule 6(a) superfluous because the Prothonotary is "always

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<sup>8</sup> *Bivens*,

<sup>9</sup> While the trial judge in *Bivens* could have applied Delaware Superior Court Rule 6(a) because the last day to file under 10 *Del. C.* § 8119 fell on a Saturday, it does not appear that the argument was before the court.

<sup>10</sup> The implied exception the trial judge applied has been recognized in several cases. *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)).

open.” Even if, as Fleming suggests, the Prothonotary is “always open” and Rule 6(a) is, therefore, arguably superfluous, Rule 6(a) remains applicable here because the rule only applies, in relevant part, when the last day of the limitations period falls on a Saturday, Sunday, or legal holiday. Jackson’s reliance on this long-standing rule is therefore justified,<sup>11</sup> and this Court will not bar Jackson’s suit based on a theory that the rule lacks any meaningful purpose. Moreover, the rule still appears to be functional as the situation in *Bivens* does indicate that the Superior Court is not “always open.” Until and if the Superior Court modifies Rule 6(a), its language cannot be deemed superfluous.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>11</sup> *Associated Transport, Inc. v. Pusey*, 118 A.2d 362, 365 (Del. Super. Ct. 1955)(stating that Delaware Superior Court Rule 6(a) “has had the force and effect of legislative enactment since 1948.”).