

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

---

No. 1D19-941

---

CHRIS ROEDER,

Appellant,

v.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Appellee.

---

On appeal from the Circuit Court for Leon County.  
Ronald W. Flury, Judge.

August 3, 2020

MAKAR, J.

In this employment discrimination case, Roeder appeals from the final judgment granted in favor of the Florida Department of Environmental Protection. The issue presented is whether the trial court erred in granting summary judgment despite the existence of a factual dispute as to when Roeder's complaint was first filed.

Roeder first filed his complaint on Friday, April 12, 2013, at 1:13pm via facsimile to the Equal Employment Opportunity Commission ("EEOC"). It was received by the EEOC on that date but was not time-stamped until Monday, April 15th. An affidavit of the EEOC concedes that the complaint was received on April 12th but inadvertently not stamped as received until April 15th.

The complaint was forwarded to Florida’s Commission on Human Relations (“Commission”), which marked it as received on April 18th; it completed its investigation on October 10, 2013, which resulted in a finding of no cause.

Time-stamping is of critical importance because of the requirement that an investigation into the complaint be completed within 180 days of its date of filing. § 760.11(3), Fla. Stat. (2020). Failure to complete an investigation within 180 days allows a complainant to bypass administrative remedies and file directly in circuit court. § 760.11(8), Fla. Stat.

Here, Roeder claims the relevant filing date is April 12, 2013, and that the deadline for an investigation to be done within 180 days was October 9, 2013, making the Commission’s response of October 10, 2013, a day late. If so, Roeder’s complaint in circuit court was permissible.

The statute at issue makes clear that a complaint can be first filed with either the Commission or the EEOC (or other defined state fair-employment practices agency). § 760.11(1), Fla. Stat. The statute also makes clear that the earliest filing date governs. *Id.* (“The date the complaint is filed with the commission for purposes of this section is the earliest date of filing with the Equal Employment Opportunity Commission, the fair-employment-practice agency, or the commission.”). The Department does not contest that filing with the EEOC occurred first, but it urges that the date of filing is April 15th (when the EEOC stamped Roeder’s complaint as received) rather than April 12th (when the EEOC concedes Roeder’s complaint was filed). As mentioned earlier, the EEOC acknowledges that it made a mistake and admitted that the correct date stamp of receipt should be April 12, 2013.

The Department, like the trial court, says that the language of section 760.11 is clear and unambiguous because it, in part, says that “[i]f the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing.” § 760.11(1), Fla. Stat. The Department’s argument, however, sidesteps another portion of the statute that says that the Commission has a responsibility to ensure that time-stamping is done on the date of filing, not the next day or some indeterminate time thereafter. *Id.*

(“*On the same day* the complaint is filed with the commission, the commission *shall clearly stamp* on the face of the complaint the date *the complaint was filed* with the commission.”) (emphasis added). The EEOC, likewise, has an obligation to accurately and promptly time-stamp the filings it receives. 29 C.F.R. § 1601.13 (a)(4)(i)(A) (2020) (“All such documents shall be dated and time stamped upon receipt.”).

To accept the Department’s argument that the time stamp on the complaint is irrefutably accurate and the controlling legal filing date is to accept that the Commission (or EEOC) can fail at (or even ignore) its time-stamping responsibilities. Our supreme court rejected this position in a similar case involving filings in judicial proceedings. In concluding that a time stamp is not always dispositive, the court in *Strax Rejuvenation & Aesthetics Inst., Inc. v. Shield*, 49 So. 3d 741, 743 (Fla. 2010), addressed a court rule that said the “date of filing is that shown on the face of the paper by the judge’s notation or the clerk’s time stamp.” It held that it was error to interpret this language as “referring to the clerk’s time stamp as creating a bright-line rule that the clerk’s time stamp is dispositive of the date of filing. We find that this interpretation is incorrect.” *Id.*; see also *Pro Tech Monitoring, Inc. v. State, Dept. of Corr.*, 72 So. 3d 277, 280 (Fla. 1st DCA 2011) (holding that it was “patently unreasonable” for agency to deem filing untimely when it was stamped in timely at a “security guard’s desk [that] operated as the agency clerk’s constructive office for the purposes of filing”).

A time stamp can establish a presumption, but the presumption can be challenged where an error with the time stamp has occurred. *Strax*, 49 So. 3d at 744 (explaining that the language of the rule “create[s] a rebuttable presumption that the filing date is the date shown by the clerk’s time stamp placed on the face of the document”); see also *Mansfield v. R.J. Reynolds Tobacco Co.*, 230 So. 3d 181, 183 (Fla. 5th DCA 2017) (“The effect of a clerk’s date stamp on a document is to create a rebuttable presumption that the document was filed on that day. Nevertheless, the clerk’s date stamp is not conclusive proof of the filing date and may be rebutted by the submission of competent substantial evidence that the complaint was actually received in the clerk’s office by the filing deadline.”) (citations omitted). For like reasons, *Strax* controls and requires that the final judgment

be reversed and the case remanded for an evidentiary hearing. *Mansfield*, 230 So. 3d at 183 (“In *Strax*, the court ruled that in those rare cases where a paper is delivered to the clerk’s office within the jurisdictional time frame but, for some reason, through inadvertence or error is not timely stamped by the clerk, it is appropriate to remand for an evidentiary hearing to determine if the document was timely filed.”).

It bears emphasizing that if the Legislature intended that the statutory language in section 760.11 establish that all time stamps—even if negligently or intentional erroneous—were to be conclusive and irrebuttable it could have said so, but it did not. Plus, conclusive and irrebuttable presumptions are disfavored, and in some cases are unconstitutional. *See Recchi Am. Inc. v. Hall*, 692 So. 2d 153, 154 (Fla. 1997); *State Farm Mut. Auto. Ins. Co. v. Malmberg*, 639 So. 2d 615, 616 (Fla. 1994); *Pub. Health Tr. of Dade Cty. v. Valcin*, 507 So.2d 596, 599 (Fla.1987); *Straughn v. K & K Land Mgmt., Inc.*, 326 So. 2d 421, 424 (Fla. 1976). As such, it is all the more important that summary judgment not be granted where a genuine issue of material fact exists as to the accuracy of a time stamp.

REVERSED and REMANDED for an evidentiary hearing.

RAY, C.J., and KELSEY, J., concur.

---

***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

---

Marie A. Mattox of Marie A. Mattox, P.A., Tallahassee, for Appellant.

Brian C. Keri of The Law Office of Brian Keri, Tallahassee, for Appellee.