

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 2275

JOSEPH STARNES, THE CITY OF TICKFAW AND THE
FIRST NATIONAL INSURANCE COMPANY OF AMERICA

VERSUS

TWALA VICK-HARDY, THE ROTH FIRM, L.L.C., KOPELMAN LAW
GROUP, PC, AND HERMAN, HERMAN, KATZ & COTLAR, L.L.P.

Judgment Rendered: SEP 21 2012

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2011-12338, DIVISION "F"

THE HONORABLE MARTIN E. COADY, JUDGE

Handwritten signature or initials in the left margin, possibly reading 'M. M.' or similar, with a large flourish at the bottom.

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BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDONALD, J.

Appellant in this matter challenges a judgment granting a Motion to Enforce Settlement and ordering the funds deposited with the St. Tammany Parish Clerk of Court to be disbursed. For the following reasons the appeal is dismissed.

A Motion to Enforce Settlement was filed, granted, and judgment signed on June 21, 2011. The notice of judgment and certified copy of the judgment was mailed to Mrs. Vick-Hardy's attorney of record on June 24, 2011. A Motion for New Trial was filed by facsimile June 29, 2011.

Louisiana Revised Statutes 13:850 provides in pertinent part:

- A. Any paper in a civil action may be filed with the court by facsimile transmission. All clerks of court shall make available for their use equipment to accommodate facsimile filing in civil actions. Filing shall be deemed complete at the time that the facsimile transmission is received and a receipt of transmission has been transmitted to the sender by the clerk of court. The facsimile when filed has the same force and effect as the original.
- B. Within five days, exclusive of legal holidays, after the clerk of court has received the transmission, the party filing the document shall forward the following to the clerk:
 - (1) The original signed document.
 - (2) The applicable filing fee, if any.
 - (3) A transmission fee of five dollars.
- C. If the party fails to comply with the requirements of Subsection B, the facsimile filing shall have no force or effect. The various district courts may provide by court rule for other matters related to filings by facsimile transmission.

Mrs. Vick-Hardy's filings were timely made by facsimile on June 29, 2011. The original document, certified as a true copy by the clerk, was stamped as received and filed into the record on July 21, 2011. Plaintiffs argue and we agree that the above referenced law requires that the original signed document be forwarded to the clerk within five days, exclusive of holidays. There was no evidence that the original of the document filed by facsimile was forwarded to the clerk within five days.

In fact, the record establishes that Mrs. Vick-Hardy's attorney also submitted as evidence on July 21, 2011, a notarized document addressed "To Whom it May Concern" that was faxed, presumably to Mrs. Vick-Hardy or to her attorney, on July 11, 2011. Because that filing was sent on July 11, 2011, at 5:41 P.M. and filed along with the original document on July 21, 2011, the documents could not possibly have been forwarded to the clerk of court within five days of the June 29, 2011 facsimile filing date as the law requires. Therefore, in accordance with La. R.S.13:850 (C), the facsimile filing shall have no force or effect.

The delay for filing for a devolutive appeal, as provided in La. Code Civ. P. art 2087(A)(1), is sixty days of "The expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely."

Louisiana Code of Civil Procedure Article 1974 provides: "The delay for applying for a new trial shall be seven days, exclusive of legal holidays. The delay for applying for a new trial commences to run on the day after the clerk has mailed, or the sheriff has served, the notice of judgment as required by Article 1913."

Since the Motion for a New Trial was of no force and effect, delays for filing an appeal began to run seven days from June 24, 2012. The Petition for Appeal and Designation of Record was not filed until September 9, 2011, significantly beyond the time allowed by law. Therefore, the appeal is dismissed as untimely.

APPEAL DISMISSED.