

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 3rd day of April, 2020 are as follows:

BY Johnson, C.J.:

2019-C-00637

JACOB STEVENSON, JESSE STEVENSON, INDIVIDUALLY AND
ON BEHALF OF HIS MINOR SON, LOGAN STEVENSON VS.
PROGRESSIVE SECURITY INSURANCE COMPANY AND
ANTHONY J. LEBLANC (Parish of Terrebonne)

We granted this writ to determine whether plaintiffs' unsuccessful attempts to fax file a petition on the last day of the prescriptive period after the clerk of court's business hours, but before midnight, interrupted prescription where the clerk of court's policy was to turn off the fax machines when the office closed. The district court sustained defendants' exception of prescription and the court of appeal affirmed. For the following reasons, we reverse the rulings of the lower courts.

REVERSED.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

Weimer, J., concurs in the result and assigns reasons.
Crain, J., dissents and assigns reasons.

04/03/20

SUPREME COURT OF LOUISIANA

No. 2019-C-00637

**JACOB STEVENSON, JESSE STEVENSON, INDIVIDUALLY AND ON
BEHALF OF HIS MINOR SON, LOGAN STEVENSON**

VS.

**PROGRESSIVE SECURITY INSURANCE COMPANY AND ANTHONY J.
LEBLANC**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST
CIRCUIT, PARISH OF TERREBONNE**

JOHNSON, Chief Justice*

We granted this writ to determine whether plaintiffs’ unsuccessful attempts to fax file a petition on the last day of the prescriptive period after the clerk of court’s business hours, but before midnight, interrupted prescription where the clerk of court’s policy was to turn off the fax machines when the office closed. The district court sustained defendants’ exception of prescription and the court of appeal affirmed. For the following reasons, we reverse the rulings of the lower courts.

FACTS AND PROCEDURAL HISTORY

Plaintiffs assert they were injured in an automobile accident on December 13, 2016. On December 13, 2017, plaintiffs’ counsel prepared a petition for damages and attempted to fax file the petition with the Terrebonne Parish Clerk of Court at approximately 4:47 p.m.¹ Fax machine receipts from counsel’s office indicate a

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¹ According to plaintiffs, counsel was newly hired and did not obtain plaintiffs’ file from previous counsel until approximately 2:00 p.m. on December 13, 2017. Additionally, although the fax machine receipt reflects 17:47 (5:47 p.m.), plaintiffs explain that counsel had not adjusted the machine for daylight savings time. In any event, it is undisputed that plaintiffs did not attempt to fax file the petition before the clerk’s office closed at 4:30 p.m.

“BUSY/NO SIGNAL” message and demonstrate that several attempts to fax file the petition on December 13, 2017, failed. The Terrebonne Parish Clerk of Court’s policy at the time was to turn off the fax machines at the close of business hours—4:30 p.m. Plaintiffs’ suit was filed the following day—December 14, 2017.

Defendants filed an exception of prescription which was sustained by the district court. The court of appeal affirmed. *Stevenson v. Progressive Security Insurance Company*, 18-1105 (La. App. 1 Cir. 3/25/19), 275 So. 3d 297. Plaintiffs filed a writ application in this court, which we granted. *Stevenson v. Progressive Sec. Ins. Co.*, 19-0637 (La. 9/24/19), --- So. 3d ---.

DISCUSSION

Plaintiffs’ tort suit is subject to the one-year liberative prescription for delictual actions, commencing the day the injury or damage is sustained. La. C.C. art. 3492. The accident giving rise to plaintiffs’ suit occurred on December 13, 2016. Therefore, the petition, filed on December 14, 2017, was prescribed on its face. Accordingly, plaintiffs bore the burden of proof to show that the action was not prescribed. *Carter v. Haygood*, 04-0646 (La. 1/19/05), 892 So. 2d 1261, 1267. Evidence can be introduced at the trial of the peremptory exception to support or controvert any of the objections pleaded. La. C.C.P. art. 931. If evidence is introduced at the hearing on the peremptory exception, the district court’s findings of fact are reviewed under the manifest error-clearly wrong standard of review. If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Carter*, 892 So. 2d at 1267. However, in this case, the relevant factual issues are not disputed. Instead, our decision involves purely legal issues regarding interpretation and application of relevant statutes as they relate to the

Terrebonne Parish Clerk of Court's fax filing policy. Thus, we review this matter *de novo*. See *In re Tillman*, 15-1114 (La. 3/15/16), 187 So. 3d 445, 449.

Prescription is interrupted when the obligee commences an action against the obligor in a court of competent jurisdiction and venue. La. C.C. art. 3462. A civil action is commenced by the filing of a pleading presenting the demand to a court of competent jurisdiction. La. C.C.P. art. 421. Fax filing of pleadings is governed by statute. La. R.S. 13:850 provides, in part:

A. Any document in a civil action may be filed with the clerk of 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 the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Subsection B of this Section. The facsimile filing shall have the same force and effect as filing the original document, if the filing party complies with Subsection B of this Section. (Emphasis added).

At the trial of the exception, plaintiffs offered, filed, and introduced into evidence fax machine transmission sheets from counsel's office demonstrating attempts to fax the petition to the clerk's office on December 13, 2017. Additionally, plaintiffs offered, filed, and introduced into evidence an affidavit from the Deputy Clerk with the Terrebonne Parish Clerk of Court's office setting forth the clerk's policy regarding fax filing. According to the affidavit of the Deputy Clerk:

Terrebonne Parish clerk's office turns off the fax machines around 4:30 p.m. each day because the fax machines encounter problems, such as paper jams, with high volume filings being filed after hours.

To assist attorneys in situations where they may need to file something after 4:30 p.m., upon their request, we may leave the fax machines on or someone from the office may stay late to file their pleading.

During the hearing, defendants objected to these documents as irrelevant and hearsay.

Defendants suggest these documents were not made part of the record and thus plaintiffs failed to meet their burden of proving the prescriptive period had not lapsed. Although neither the transcript of the hearing nor the court minutes reflect a definitive ruling by the district court regarding admissibility of these documents, the exhibits are stamped by the Clerk as “Filed in Evidence.” We therefore assume they were accepted into evidence by the district court over defendants’ objections. Furthermore, when a court is silent as to a matter placed at issue, we presume relief was denied. *See, e.g., M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 07-2371 (La. 7/1/08), 998 So. 2d 16, 26, *amended on reh’g* (La. 9/19/08); *Loria v. Petunia’s Rest.*, 02-1712 (La. App. 4 Cir. 7/9/03), 852 So. 2d 510, 512. We find no abuse of the district court’s discretion in admitting these documents into evidence. *See* La. C.E. art. 803(6); La. C.E. art. 803(8); La. C.E. art. 902(8). Moreover, although defendants objected to the introduction of these documents, defendants acknowledge the clerk’s policy was to turn off the fax machines at 4:30 p.m. And defendants do not dispute that plaintiffs’ counsel attempted to fax file the petition on December 13, 2017, albeit after 4:30 p.m.

Plaintiffs assert La. R.S. 13:850(A) permits litigants to file civil delictual actions via facsimile transmission, and the statute makes clear that each clerk of court’s accommodation of facsimile filing is mandatory by use of the word “shall.” According to plaintiffs, in order to comply with the plain language of the statute, the clerks of court “shall make available” equipment for fax filing until the expiration of the prescriptive period. Thus, because the prescriptive period ends at midnight of the last day of the period, the clerk of court in this case failed to make equipment available because the fax machines were turned off “around 4:30 p.m.” Plaintiffs also argue the clerk of court failed to adhere to the requirements of La. C.C.P. art. 253,²

² La. C.C.P. art. 253 provides in relevant part: “[Pleadings] may be transmitted electronically in accordance with a system established by a clerk of court. **When a clerk of court establishes such**

which requires the clerk to adopt and implement procedures for electronic filing, because the deputy clerk's affidavit demonstrates inconsistent practices regarding the exact time the fax machines were turned off.

By contrast, defendants argue no statute requires that fax filing be allowed beyond the 8:30 a.m. to 4:30 p.m. statutorily mandated hours of operation for the clerk of court. *See* La. R.S. 13:756. Neither La. C.C.P. art. 253 nor La. R.S. 13:850 require the clerk of court to accept fax filings after normal business hours. Rather, the statutes give the clerk of court the ability to establish his or her own system for electronic transmission filing and to adopt and implement his or her own procedures for this system. Defendants point out that plaintiffs did not attempt to fax file their petition until after normal business hours when the fax machines were turned off pursuant to the clerk's established procedures. Thus, defendants argue plaintiffs' petition—filed the following day—is prescribed.

In affirming the district court's ruling on the exception, the court of appeal agreed with defendant and found the plaintiffs' failed attempts to fax file the petition were insufficient to interrupt prescription:

As the defendants point out, neither LSA-C.C.P. art. 253 nor LSA-R.S. 13:850 require Louisiana clerks of court to accept electronic filings after the close of business. Instead, the legislature has given clerks of court broad discretion to develop and implement electronic filing procedures appropriate for the needs of their parish and the court's capabilities. For instance, the Deputy Clerk for the Terrebonne Parish Clerk of Court explained, via affidavit submitted by the plaintiffs, that the clerk's fax machines are turned off at 4:30 p.m. because the machines "encounter problems, such as paper jams, with high volume filings being filed after hours." The Deputy Clerk further advised that the fax machines may be left on or an employee of the clerk's office may remain at the office after the close of business if an attorney advises the clerk's office that she intends to file a pleading after 4:30 p.m. Plaintiffs' counsel apparently did not contact the clerk's office prior to the close of business on December 13, 2017 to inquire about the clerk's procedure. Counsel

a system, he shall adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit."(Emphasis added).

admits that “a simple telephone call to the Terrebonne Parish Clerk of Court’s Office would have been able to cure the dilemma.”

Louisiana Revised Statute 13:850(A) unambiguously provides that the filing will not be deemed complete until the clerk of court receives the facsimile transmission. When a law is clear and unambiguous, and its application does not lead to absurd consequences, it shall be applied as written, with no further interpretation made in search of the legislative intent. *** Here, it is undisputed that the plaintiffs did not attempt to fax file the petition prior to 4:30 p.m. when the clerk’s office closed. It is further undisputed that the clerk’s office never received the fax transmission. In fact, the clerk’s office did not receive the petition until it was hand-delivered the day after prescription expired. Under these facts, we cannot find that the plaintiffs’ failed attempt to fax file the petition was sufficient to interrupt prescription.

Stevenson, 275 So. 3d at 301-02. After review of the record, and considering the law and arguments of the parties, we find the lower courts erred in sustaining defendants’ exception of prescription.

In this case, the relevant prescriptive period ended at midnight on December 13, 2017. *See* La. C.C. art. 3456; *Tillman*, 187 So. 2d at 450. La. R.S. 13:850 provides that a filing is not deemed complete until the clerk of court receives the facsimile transmission. However, that statute also mandates that clerks of court make fax equipment “available.” Thus, the issue is whether plaintiffs’ attempts to fax file the petition on December 13, 2017, before midnight, interrupted prescription when the clerk turned off the fax machines at 4:30 p.m., thus making the fax machine unavailable and preventing the fax transmission from being received by the clerk’s office on December 13, 2017. The starting point in the interpretation of any statute is the language of the statute itself. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep’t of Econ. Dev.*, 10-0193 (La. 1/19/11), 56 So. 3d 181, 187-88.

Although La. R.S. 13:756 mandates that clerks of court keep their offices open from 8:30 a.m. until 4:30 p.m. every day except Saturdays, Sundays, legal holidays, and in cases of public emergency, the statutory language “shall make available” in La. R.S. 13:850 relative to fax filing is not qualified and does not impose any hourly restrictions. Making equipment “available” is not the same as keeping the clerk’s office open. Thus, while clerks of court are prescribed certain hours when the office must be open, based on the clear language of La. R.S. 13:850, the same limitation does not apply to hours of availability for the clerk’s fax machines. Our interpretation and application of the statute is consistent with the principle that “prescriptive statutes are strictly construed against prescription and in favor of the obligation sought to be extinguished; thus, of two possible constructions, that which favors maintaining, as opposed to barring, an action should be adopted.” *Carter*, 892 So. 2d at 1268. In this case, the reason plaintiffs’ petition was not received by the clerk’s office on December 13, 2017, was the clerk’s policy of turning off the fax machines at 4:30 p.m. The fax filing would have been successful but for the unavailability of the clerk’s fax machine. Based on these facts, we find the clerk of court failed to make its fax equipment “available” as required by the statute.

Moreover, the clerk’s policy of turning off the fax machines at 4:30 p.m. effectively shortens a tort victim’s one-year prescriptive period and we find it invalid. *See Tillman*, 187 So. 3d at 455. Allowing every clerk of court to establish a different rule regarding the hours their fax machines are “available” can result in inconsistent determinations of whether a petition is deemed timely filed. Based on the rulings of the lower courts, a plaintiff could not timely fax file a petition at 10:00 p.m. on the last day of the prescriptive period in Terrebonne Parish because that clerk turns off the fax machines at 4:30 p.m., but the same petition faxed at 10:00 p.m. in a parish

that does not turn off its fax machines would be deemed timely filed. We cannot allow a unilateral policy or rule set by an individual clerk of court to affect prescription. The same prescriptive period must be available in every judicial district of the state.

We also reject the contention of the court of appeal that plaintiffs' counsel could have easily "cured the dilemma" by calling the clerk's office prior to the close of business to take advantage of the clerk's policy to accommodate attorneys who need to file a pleading after 4:30 p.m. This "policy," described by the deputy clerk in her affidavit, is concerning. The exception to the 4:30 p.m. rule is an unpublished policy which effectively extends a courtesy to attorneys who happen to be aware of its existence. The unpublished policy unquestionably favors only those attorneys who are aware of it, and demonstrates inconsistency and unfairness in the application of the clerk's fax filing policy. In effect, certain parties are prejudiced simply by being unaware of the unpublished policy. We decline to find plaintiffs should have known to take advantage of an unpublished discretionary policy, or that plaintiffs were obligated to seek out a different method of filing their petition, when they were unable to file it in a manner provided by law solely due to the clerk's action of making the fax machines unavailable. *See Saxon v. Fireman's Ins. Co. v. Newark, N.J.*, 224 So. 2d 560, 562 (La. 1969).

Based on the facts of this case, we find plaintiffs' attempts to fax file their petition with the clerk of court prior to midnight on the last day of the prescriptive period were sufficient to interrupt prescription. In so ruling, we agree with the reasoning of the court in *Lloyd v. Monroe Transit Auth. ex rel. City of Monroe*, 50,292 (La. App. 2 Cir. 1/13/16), 185 So. 3d 866, *writ denied*, 16-0277 (La. 4/8/16), 191 So. 3d 585. In *Lloyd*, plaintiff attempted to fax file a petition on the last date of

the prescriptive period, but the transmission was not confirmed as received by the clerk of court's fax machine until the next morning. Specifically, plaintiff's counsel attempted a fax filing beginning at 4:24 p.m., before the end of the business day. Other attempts continued into the evening. As in this case, it was the clerk of court's policy to turn off the fax machine at the close of regular business hours at 4:30 p.m. In finding the suit timely, the court explained that a fax transmission need not be received during regular working hours so long as a transmission occurred before midnight on the final date for the running of the prescriptive period. Thus, the court considered the issue of whether plaintiff's fax filing attempts before and after the legal closing time on the final date of the prescriptive period should serve to interrupt prescription. The court reasoned:

Once the clerk has implemented electronic filing capabilities and procedures for its office, "the official record shall be the electronic record." La. C.C.P. art. 253(B). The electronic record in this case does clearly establish that Lloyd attempted to use the clerk's fax facility. Exactly why the "busy" response occurred is unclear. The machine, at 4:24 p.m., may have been receiving another fax transmission. Later, the machine was apparently turned off, but that would not have been made clear to Lloyd's counsel by the continuous "busy" notifications.

The argument can be made that Lloyd should have been more diligent and persistent with the filing efforts on May 1 and been prepared for an alternate plan to complete the filing within the clerk's regular hours or possibly thereafter through some direct contact with the clerk. Nevertheless, Lloyd elected to use the fully authorized electronic filing within a timely manner. Since we agree that such electronic filing should be deemed proper even when receipt of the fax transmission occurs after business hours, the clerk's actual registry of the filing as a new suit record would not be necessary on the date of the electronic filing. That registering of the new suit record did in fact occur in that manner in this case, one day after the electronic record recorded Lloyd's actions, and the suit proceeded with service and notice to defendants in the usual manner.

From this assessment of Lloyd's efforts on May 1, we find that the electronic record supports the conclusion that the actions for interruption of prescription occurred timely.

Lloyd, 185 So. 3d at 870-71. We recognize the plaintiff in *Lloyd* first attempted to fax

his petition at 4:24 p.m., prior to the 4:30 p.m. close of business. However, we do not find that fact dispositive, nor does that fact mandate a different result in this case. It is a plaintiff's attempt to fax file with the clerk prior to the midnight prescription deadline that is relevant. As in *Lloyd*, we decline to put the onus on plaintiffs to find another method of filing the petition when fax filing is a fully authorized method and counsel attempted to use that method before the prescriptive period ended.

CONCLUSION

For these reasons, we reverse the rulings of the lower courts. Based on the facts of this case, plaintiffs' attempts to fax file their petition prior to midnight on the last day of the prescriptive period served to interrupt prescription.

DECREE

REVERSED.

04/03/20

SUPREME COURT OF LOUISIANA

NO. 2019-C-00637

**JACOB STEVENSON, JESSE STEVENSON, INDIVIDUALLY AND ON
BEHALF OF HIS MINOR SON, LOGAN STEVENSON**

VS.

**PROGRESSIVE SECURITY INSURANCE COMPANY
AND ANTHONY J. LEBLANC**

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT,
PARISH OF TERREBONNE*

WEIMER, J., concurring in the result.

I agree with the majority’s conclusion that, under the unique facts and circumstances of this case, the lower courts erred in concluding the plaintiffs’ claims are prescribed.

Louisiana R.S. 13:850(A) directs that “[a]ll clerks of court shall make available ... equipment to accommodate facsimile filing in civil actions.” In connection with this requirement, La. C.C.P. art. 253(B) instructs that when a clerk of court establishes an electronic filing system, “he shall adopt and implement procedures for the electronic filing.” The clerk is afforded broad discretion to establish a system for electronic transmissions and to adopt and implement procedures for this system appropriate to the needs of the parish and the court’s capabilities.

In the present case, it is undisputed that, while the clerk adopted a policy and procedures with respect to facsimile filings, the entirety of that policy was not published or disseminated. That lack of full disclosure operated to the detriment of the plaintiffs in this case, who were not made aware of the unpublished policy of the

clerk's office to accommodate attorneys who need to file pleadings after office hours upon receiving a request from the attorneys to leave the fax machine on.

The basic goal or aim of any procedural rule is “to implement the substantive law, and to implement that law in a manner which will provide maximum fairness to all parties with a minimum expenditure of judicial effort.” **Stevens v. Bd. of Trustees of Police Pension Fund of City of Shreveport**, 309 So.2d 144, 151 (La. 1975). Certainly, that is the aim of La. C.C.P. art. 253 insofar as it seeks to implement the statutory requirement that facsimile equipment be made available for filings in civil actions.

For this reason, I respectfully concur in the majority's decision to reverse the rulings of the lower courts.

SUPREME COURT OF LOUISIANA

NO. 2019-C-00637

**JACOB STEVENSON, JESSE STEVENSON, INDIVIDUALLY AND ON
BEHALF OF HIS MINOR SON, LOGAN STEVENSON**

VERSUS

**PROGRESSIVE SECURITY INSURANCE COMPANY
AND ANTHONY J. LEBLANC**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST
CIRCUIT, PARISH OF TERREBONNE**

CRAIN, J., dissenting.

The plaintiffs maintain they were prevented from timely filing suit because the Terrebonne Parish Clerk of Court, pursuant to her policy, turned off her fax machine at 4:30 p.m. when business hours legally ended. *See* La. R.S. 13:756. According to the plaintiffs, that action violated the clerk’s statutory obligation to “make available . . . equipment to accommodate facsimile filing in civil actions.” *See* La. R.S. 13:850. In effect, the majority finds the quoted language mandates every clerk of court “make available” a fax machine twenty-four hours a day, 365 days a year. I disagree.

While Section 850 plainly and unambiguously requires a clerk of court to “make available” a fax machine to accept civil filings, it does not say *when* the fax machine must be available. Other statutes provide guidance. Louisiana Revised Statute 13:756 requires clerks to “keep their offices open from 8:30 A.M. to 4:30 P.M. every day except Saturdays, Sundays, legal holidays, and in cases of public emergency.” Section 756 also grants clerks the discretion to extend their mandated hours, stating a clerk “may open their offices at an earlier time or close their offices at a later time.” For fax filings, Louisiana Code of Civil Procedure article 253 requires a clerk to establish a “system” for such filings and to “adopt and implement procedures for the electronic filing and storage of any pleading.” Construing these

provisions *in pari materia*, I believe a clerk of court *must* make a fax machine available during mandated working hours and, at the clerk's discretion, *may* make it available before or after those hours.

Here, the clerk's policy made the fax machine available during normal working hours and, when requested, after hours. I find nothing improper or unauthorized about that system. I do not agree that the clerk's accommodation allowing after-hours use of the fax machine, upon request, "is an unpublished policy which effectively extends a courtesy to attorneys who happen to be aware of its existence." Neither Article 253 nor Section 850 requires publication of a clerk's fax machine policy, particularly after-hours use. Nor is that needed when an interested party can easily learn the after-hours policy by calling the clerk's office during normal working hours and asking. No form of publication, however widespread, is a substitute for minimal effort to make oneself aware of the policy.

The plaintiffs' claims are prescribed on the face of the petition, having been filed more than one year after the injury-causing event. Consequently, the court must determine, and the plaintiffs must prove, whether prescription was suspended or interrupted. I believe the doctrine of *contra non valentem* is the appropriate analytical framework for that determination. Under that doctrine, prescription does not run against a party who is prevented from enforcing his cause of action by some reason external to his own will, such as a condition that prevented his access to the courts. *Corsey v. State, Through Department of Corrections*, 375 So. 2d 1319, 1322 (La. 1979). The doctrine only applies in exceptional circumstances and will not exempt a claim from prescription if the plaintiff's ignorance is attributable to his own wilfulness or neglect; that is, a plaintiff will be deemed to know what he could by reasonable diligence have learned. *See Marin v. Exxon Mobil Corp.*, 09-2368 (La. 10/19/10), 48 So. 3d 234, 246.

The plaintiffs presented no evidence indicating that some condition prevented them from filing suit before 4:30 p.m. on the last day of prescription or, through reasonable diligence, from learning the clerk's policy for after-hours fax filings. Prescription was not suspended by the clerk turning off her fax machine at the close of business on the last day of prescription, any more so than locking her office doors at 4:30 p.m. "shorten[ed]" the prescriptive period. Turning off the fax machine at 4:30 p.m. is completely consistent with the clerk's statutory obligation to accept filings during mandated business hours. The plaintiffs' suit is untimely. I would affirm the lower courts' judgments granting the exception of prescription.