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**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

Starcher, J., concurring:

I write separately to emphasize facts which my dissenting colleagues have conveniently and derisively ignored in their separate opinion. The “simplistic facts of the case *sub judice*” are that the plaintiff *may* have timely filed her complaint with the circuit clerk, and *may* have included a civil case information sheet. The evidence of record suggests that a deputy circuit clerk received these materials within the required time limit, but she *admits* she carelessly did not stamp the receipt date on the cover until after the expiration of the statutory time limit. The circuit court ignored this evidence of record, and concluded that because of the absence of a timely “thwack” of a rubber date stamp, as a matter of procedural law the plaintiff’s complaint was not timely filed.

My dissenting colleagues assert that this Court has a “blatant disregard for the statute of limitations” and that the Court has “chiseled out an exception” to those “temporal limits as they are written.” On the contrary, the facts in this case might easily be read – by either an average citizen or a legal scholar – to show that the case *was* filed within the statute of limitations. The majority opinion simply holds that the circuit court, on remand, should consider *all* of the facts when ruling on whether the complaint was timely filed.

If the plaintiff’s complaint was timely and properly filed, but due to a *clerical error* was rubber stamped several days later so as to leave the impression that it was not timely

filed, then the circuit court could fairly allow the case to proceed on its merits. Conversely, if the circuit court finds that the case was not timely filed due to an *attorney error*, then the circuit court could fairly dismiss the case as barred by the statute of limitation. The point is that the circuit court should apply our procedural rules to *all* of the relevant evidence – and not, as my dissenting colleagues seem to imply, engage in some sterile, robotic application of procedural rules in a vacuum with a total lack of regard for the evidence. It is difficult to understand why the dissenters are so callously against the rights of ordinary people having their day in court.

My dissenting colleagues also make much ado about the “lack” of a civil case information sheet. Sidestepping the evidence of record that both the plaintiff and the deputy circuit clerk contend that this sheet of paper was properly included with the complaint, my dissenting colleagues go on to assert that the alleged, after-the-fact absence of that sheet of paper is fatal to the plaintiff’s case as a matter of law. Again, the circuit court is the proper adjudicator of the evidence, not this Court, and on remand should assess whether that sheet of paper was properly included with the plaintiff’s complaint.

However, even assuming that the civil case information sheet was not included with the complaint, and the circuit clerk accepted the complaint for filing, the absence of the sheet is at best harmless error. The *Rules of Civil Procedure* are to be read so as “to secure the just, speedy, and inexpensive determination of every action.” *W.Va.R.C.P.* Rule 1. As I indicated in my dissent to *Cable v. Hatfield*, 202 W.Va. 638, 647-48, 505 S.E.2d 701, 710-11 (1998), holding “that a picayune oversight by an attorney is adequate grounds to deny . . .

people their right to adjudication of their legal claims” is a harsh, even absurd, reading of Rule 3 of the *Rules of Civil Procedure* that denies justice to innocent litigants. For this Court to have affirmed the decision below would have been to hold that form triumphs over substance, and that justice is to be the prisoner of legal technicalities.

I therefore concur with the majority’s decision to remand this case back to the circuit court to examine the evidence, and to determine whether the plaintiff timely filed her complaint so that she will be permitted to have her claim adjudicated on the merits, or whether the defendants are entitled to repose because of the late filing of the plaintiff’s complaint.

I am authorized to state that Justice Albright joins in this concurring opinion.