

No. 24126 -Charles E. Plum and Linda Plum v. Camden-Clark Foundation, Inc.,
d/b/a Camden-Clark Memorial Hospital, Michael Santer, Jr., and
M. David Avington

Maynard, Justice, dissenting:

The majority buys the appellants' argument that process was served one day out of time because the circuit clerk's office refused to accept a facsimile copy of a previously submitted incomplete Civil Information Sheet when, in fact, the West Virginia Rules of Civil Procedure did not address the issue of facsimile copies at that time. The majority takes note of this fact, but nonetheless, goes on to state the refusal of the circuit clerk's office to accept the facsimile copy amounts to an amendment of the Rules.

I fail to understand how acceptance of the facsimile copy by the circuit clerk's office would have been any less an amendment to the Rules.

As no guidance had as yet been provided, the clerk's office did exactly what it should have done. The Rules did not provide for accepting facsimile

copies, therefore, the office acted appropriately and the circuit judge correctly dismissed the complaint. Accordingly, I respectfully dissent.