

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2004 Term

No. 31550

FILED

February 20, 2004
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**LORETTA WRIGHT,
Plaintiff Below, Appellant,**

V.

**HOWARD E. MYERS, III,
AND LAWRENCE HOKE,
Defendants Below, Appellees.**

**Appeal from the Circuit Court of Monroe County
Honorable Robert A. Irons, Judge
Civil Action No. 02-C-68**

REVERSED AND REMANDED

Submitted: January 27, 2004

Filed: February 20, 2004

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE STARCHER concurs and reserves the right to file a concurring opinion.

CHIEF JUSTICE MAYNARD and JUSTICE DAVIS dissent and reserve the right to file dissenting opinions.

SYLLABUS BY THE COURT

1. “Appellate review of a circuit court’s order granting a motion to dismiss a complaint is *de novo*.” Syllabus point 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995).

2. “Rule 60(a) of the West Virginia Rules of Civil Procedure applies to clerical errors made through oversight or omission which are part of the record and is not intended to adversely affect the rights of the parties or alter the substance of the order, judgment or record beyond what was intended.” Syllabus point 3, *Johnson v. Nedeff*, 192 W. Va. 260, 452 S.E.2d 63 (1994).

3. “The presumption that public officers discharge their duties in a regular and proper manner is a strong presumption compelled first by experience and second by society’s interest in avoiding frivolous litigation over technicalities.” Syllabus point 2, *Roe v. M & R Pipeliners, Inc.*, 157 W. Va. 611, 202 S.E.2d 816 (1973).

Per Curiam:

The appellant herein and plaintiff below, Loretta Wright [hereinafter referred to as “Ms. Wright”], appeals from an order entered January 15, 2003, by the Circuit Court of Monroe County. By that order, the court dismissed as untimely filed Ms. Wright’s complaint seeking damages from the appellees herein and defendants below, Howard E. Myers, III [hereinafter referred to as “Mr. Myers”], and Lawrence Hoke [hereinafter referred to as “Mr. Hoke”], for injuries she sustained in an automobile accident. Upon a review of the parties’ arguments, the record submitted for appellate consideration, and the pertinent authorities, we reverse the decision of the Circuit Court of Monroe County and remand this case for further proceedings consistent with this Opinion.

I.

FACTUAL AND PROCEDURAL HISTORY

On August 13, 2000, Ms. Wright sustained injuries when the vehicle in which she was riding as a passenger, which was driven by Mr. Myers, collided with a vehicle operated by Mr. Hoke. Counsel for Ms. Wright thereafter attempted to file her complaint stating a cause of action against Mr. Myers and Mr. Hoke for said injuries by mailing a copy thereof to the Circuit Clerk of Monroe County on August 7, 2002. Said complaint was ultimately received by the clerk’s office and was date-stamped as filed on

August 15, 2002, one day after the two-year statute of limitations had run.¹ Thereafter, on August 16, 2002, the circuit clerk date-stamped as filed a civil case information statement for Ms. Wright's lawsuit against Mr. Myers and Mr. Hoke.²

In response to this late filing, Mr. Hoke moved, on October 18, 2002, to dismiss Ms. Wright's complaint as untimely filed; Mr. Myers made a similar motion to dismiss on October 22, 2002. During a hearing on the matter, Ms. Wright presented the

¹The statute of limitations applicable to this case is set forth in W. Va. Code § 55-2-12 (1959) (Repl. Vol. 2000) and provides, in pertinent part, that "[e]very personal action for which no limitation is otherwise prescribed shall be brought . . . (b) within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries[.]" According to Rule 6(a) of the West Virginia Rules of Civil Procedure, "[i]n computing any period of time prescribed or allowed . . . by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included[.]" In this case, the accident underlying Ms. Wright's lawsuit occurred on August 13, 2000. Excluding the date of the accident as directed by Rule 6(a), the applicable two-year statute of limitations began to run on August 14, 2000. Thus, Ms. Wright was required to file her cause of action against Mr. Myers and Mr. Hoke no later than August 14, 2002.

²Pursuant to W. Va. R. Civ. P. 3(b), "[e]very complaint shall be accompanied by a completed civil case information statement[.]" We previously interpreted this filing requirement as follows:

Rule 3 of the West Virginia Rules of Civil Procedure requires, in mandatory language, that a completed civil case information statement accompany a complaint submitted to the circuit clerk for filing. In the absence of a completed civil case information statement, the clerk is without authority to file the complaint.

Syl. pt. 5, *Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).

affidavit of the circuit clerk who averred that “I feel that I honestly received this complaint in a timely manner, however the date-stamp was inadvertently omitted on the day of arrival.” In further support of her position, Ms. Wright urged the court to grant her relief from the clerk’s clerical error pursuant to Rule 60(a) of the West Virginia Rules of Civil Procedure.³ Ultimately, however, the circuit court denied Ms. Wright’s request for relief and granted the defendants’ motions to dismiss, finding that Ms. Wright had failed to timely file her complaint or demonstrate the applicability of an exception to the governing statute of limitations. From this adverse ruling, Ms. Wright appeals to this Court.

II.

STANDARD OF REVIEW

The sole issue presented for consideration by this appeal is whether the circuit court properly dismissed Ms. Wright’s complaint as untimely filed. We previously have held that “[a]ppellate review of a circuit court’s order granting a motion to dismiss a complaint is *de novo*.” Syl. pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). Mindful of this standard, we proceed to consider the parties’ arguments.

³Rule 60(a) of the West Virginia Rules of Civil Procedure provides, in relevant part, that “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.”

III.

DISCUSSION

On appeal to this Court, Ms. Wright assigns error to the circuit court's decision to dismiss her complaint as untimely filed. She argues that there is a strong presumption that "public officers discharge their duties in a regular and proper manner," Syl. pt. 2, in part, *Winston v. Wood*, 190 W. Va. 194, 437 S.E.2d 767 (1993) (per curiam) (internal quotations and citation omitted), and that she presented evidence to support that the circuit clerk admitted having neglected to date stamp Ms. Wright's complaint immediately upon its receipt. Accordingly, Ms. Wright claims that she is entitled to relief pursuant to Rule 60(a) of the West Virginia Rules of Civil Procedure which provides, in relevant part, that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders."

Both Mr. Myers and Mr. Hoke respond that the circuit court properly dismissed Ms. Wright's complaint as untimely filed. In support of their argument, they urge that Ms. Wright has failed to prove that the circuit clerk did, in fact, properly discharge her official duties and contend that Ms. Wright has failed to demonstrate that the circuit court abused its discretion in denying her request for relief pursuant to W. Va. R. Civ. P. 60(a).

Typically, we have held that statutes of limitations impose very strict temporal requirements within which a cause of action must be initiated. *See, e.g.*, Syl. pt. 2, *Perdue v. Hess*, 199 W. Va. 299, 484 S.E.2d 182 (1997) (“The ultimate purpose of statutes of limitations is to require the institution of a cause of action within a reasonable time.”); Syl. pt. 1, in part, *Stevens v. Saunders*, 159 W. Va. 179, 220 S.E.2d 887 (1975) (“Statutes of limitation are statutes of repose and the legislative purpose is to compel the exercise of a right of action within a reasonable time[.]”), *superseded by statute on other grounds as stated in Frantz v. Palmer*, 211 W. Va. 188, 564 S.E.2d 398 (2001). Failure to file a lawsuit within such time periods usually results in the dismissal of the action as having been untimely filed.

When, however, clerical errors have potentially occurred which would prevent an otherwise timely filed complaint from being designated as such, courts are permitted to look beyond the rigid time limits and to ascertain whether, in fact, the plaintiff’s failure to timely file his/her cause of action is attributable to such alleged clerical error. To this end, Rule 60(a) of the West Virginia Rule of Civil Procedure directs that

[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Thus,

Rule 60(a) of the West Virginia Rules of Civil Procedure applies to clerical errors made through oversight or omission which are part of the record and is not intended to adversely affect the rights of the parties or alter the substance of the order, judgment or record beyond what was intended.

Syl. pt. 3, *Johnson v. Nedeff*, 192 W. Va. 260, 452 S.E.2d 63 (1994). Accord Syl. pt. 4, *Barber v. Barber*, 195 W. Va. 38, 464 S.E.2d 358 (1995). This authority to correct clerical errors is also an inherent part of the judicial power accorded to circuit courts. See, e.g., Syl. pt. 1, in part, *Highland v. Strosnider*, 118 W. Va. 647, 191 S.E. 531 (1937) (“A court has inherent power at any time, except as restrained by statute, to correct an error of record which prevents it from expressing the judgment rendered[.]”); *id.*, 118 W. Va. at 648, 191 S.E. at 531 (“The errors which a judge or court has inherent power to correct . . . are limited to clerical and such other errors of record[.]” (citations omitted)).

In light of the evidence presented to the circuit court, we are of the opinion that the lower court abused its discretion by not thoroughly considering Ms. Wright’s request for relief pursuant to Rule 60(a). To support her contention that she had timely filed her complaint, Ms. Wright presented a memorandum memorializing the filing of the complaint which her counsel had dated on August 7, 2002, when he allegedly mailed the complaint to the Monroe County Circuit Clerk’s Office.

Furthermore, it is widely accepted that, in general, public officers fulfill their official duties according to the requirements of their office. This is so because “[t]he

presumption that public officers discharge their duties in a regular and proper manner is a strong presumption compelled first by experience and second by society's interest in avoiding frivolous litigation over technicalities." Syl. pt. 2, *Roe v. M & R Pipeliners, Inc.*, 157 W. Va. 611, 202 S.E.2d 816 (1973). Accord Syl. pt. 2, *Winston v. Wood*, 190 W. Va. 194, 437 S.E.2d 767 (1993) (per curiam). In this regard, Ms. Wright tendered an affidavit of the circuit court clerk wherein the clerk averred that she "received for filing in this office a Complaint & Memorandum in the above-styled case. I feel that I honestly received this complaint in a timely manner, however the date-stamp was inadvertently omitted on the day of arrival."

Based upon the persuasive evidence presented by Ms. Wright in defense of the defendants' motions to dismiss, we conclude that the proper remedy in this case is to direct the circuit court to reconsider whether the Circuit Clerk of Monroe County timely received Ms. Wright's complaint for filing before the statute of limitations had expired and whether the clerk's failure to earlier date-stamp Ms. Wright's complaint was a simple clerical error. Accordingly, we reverse the circuit court's order dismissing Ms. Wright's complaint as untimely filed and remand this case for the circuit court to reconsider the evidence presented by the parties. In addition to that evidence which is already a matter of record in this case, we also urge the circuit court to consider the actual testimony of the circuit court clerk as well as the date of Ms. Wright's check to the circuit clerk that was tendered as payment for the filing fees associated with her complaint and the date of the

circuit clerk's bank slip depositing the same.

IV.

CONCLUSION

For the foregoing reasons, we reverse the January 15, 2003, order of the Circuit Court of Monroe County, and remand this case for further proceedings consistent with this Opinion.

Reversed and Remanded.