Catherine Fernandez
Pro~se Litigant

No. 23-6670

IN THE SUPREME COURT of the UNITED STATES

Catherine Fernandez

Petitioner,

v.

Board of Education, Pemberton Township High School

Respondents.

PETITION FOR REHEARING

Catherine Fernandez

PRO SE

PETITIONER

Catherine Fernandez
Pro~se Litigant

TABLE OF CONTENTS

Catherine Fernandez
Pro~se Litigant

TABLE OF AUTHORITIES

Petition For Rehearing

Petitioner Catherine Fernandez respectfully petitions for rehearing of this Courts April 1, 2023, order denying her petition for writ of certiorari.

Reasons For Granting the Hearing

Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of substantial and controlling effects."

The ground for intervening in a controlling effect is the Covid 19 Executive Orders for tolling the statute of limitations in multiple states. The Fourteenth and Fifth Amendments and 42 USCS ~1981 Equal Rights are the Constitutional basis of the controlling effect. The grounds for intervening in a substantial effect is the arbitrary disregards to the petitioner's new evidence; the fact that the petitioner did file her complaint within the statute of limitations. The fourteenth and Filth Amendments are the basis of the substantial effect.

NJ Courts failed to issue public announcements through multimedia communications to inform the public of the changes in Court Proceeding due to the Covid 19 shutdown. This failure by the NJ courts created an unequal protection of the law for filing a timely complaint. Governor Murphy's executive order closed the clerk's office from approximately March 18, 2020, until July 11, 2020. Under Rule 26 Computing and Extending Time; (3) "where the clerk's office was inaccessible." The rule allows for extending time when the clerk's office is inaccessible. "The NJ Supreme Court issued a Third Omnibus regarding the status of court functions and operations as the public health crisis continues." (NDG) Courts operations were resuming through electronic means and virtual platforms. General tolling was closed on May 15, 2020. The Covid 19 shutdown gave NJ residents "59 Legal Holidays." The NJ Supreme Court did not issue the Third Omnibus changes through multimedia communications creating an unequal protection of the for filing a timely claim.

There is a disparity between NJ and New York tolling extensions for the Covid 19. NJ residents were given 58 days of "Legal Holidays." In comparison New York residents were given 288 days of tolling the statute of limitations. There is another disparity of "Legal Holidays" and "Tolling" for Covid 19 between NJ and Texas. Texas The District Court of Houston confirmed "extensions for filing deadlines falling between March 13, 2020 and August 1, 2020 to September 15, 2020." In the case of Curry v. Valentin 4:21-cv-02800, the extended deadlines gave Texas residents over 150 days of tolling. The disparities of lengths of "Legal holidays" compared to "Tolling" the statute of limitation in other states are unfair to NJ residents who were not informed of the changes to operations in court proceedings and failed to make timely filings.

Governor Cuomo's executive orders for tolling were recognized by the courts. The courts affirmed Cuomo had the authority to toll the statues during an emergency. On June 2, 2021, the Appellate Division and Second Department Court issued its decision tolling the statute of limitation in the case of Barash v. Richards, 195 A.D. 3d 582.

The Fourteenth and Fifth Amendments of equal protection and due process of the law and 42 USCS ~1981 Equal Rights states all persons within the Jurisdiction of the *United States shall have the same right in every state and territory* to make and enforce contracts, *to sue*, be parties, *give evidence,* and to the full and equal benefit of all laws and proceedings for security of persons and property as is enjoyed by white citizens and shall be the subject to like punishment, penalties, pains, taxes, licenses, and extractions of every kind. If the petitioner was given the same rights as states in the Fourteenth and Fifth Amendments of equal protection and due process of the law and 42 USCS ~1981 Equal Rights states all persons within the d in states like NY and Texas then the petitioner would have filed her complaint within the statute of limitation. NJ Courts did not inform the public of changes to operations by multimedia communications. It puts the petitioner at a disadvantage of the equal protection of the laws to file a timely complaint.

The grounds for intervening a substantial effect are violations to the petitioner's Constitutional Rights under the Fifth and Fourteenth Amendments. The petitioner's Constitutional Rights were violated by the

lower courts. The petitioner was deprived of due process under the Fifth and Fourteenth amendments by the lower court. The Lower court was arbitrary in their decision to deny a rehearing petition by disregarding evidence. "The Fifth and Fourteenth Amendments reference "due process" as only one of many promises of protection of the Bill of Rights. The Bill of Rights gives citizens protection against the federal government." (LLI Legal Information Institute; Cornell Law School) "Although, the law sometimes gives judges discretionary powers, it requires the judges to act within boundaries when applying general principles of the law to the facts of a particular case." (LLI Legal Information Institute; Corn." (LLI Legal Information Institute; Cornell Law School) "As a result a judge cannot act in disregard of evidence or ignore established precedent." (LLI Legal Information Institute; Cornell Law School) In the petitioner's case the lower court acted in disregard for new evidence that was presented in a rehearing petition. The new evidence establishes the petitioner's contact with the defendants until August 23, 2018. Therefore, the petitioner did file claims within a 2-year statute of limitation. (See Exhibit A) The decision of the lower courts to dismiss on grounds that "Fernandez continues to argue the same positions that we previously rejected..." was not adequate in consideration of the circumstances. As a result, the lower courts acted in disregard and ignored an established precedent. Brady v. Maryland, 373 U.S. 83 (1963) The U.S. Supreme Court's primary holding in this case was "the government's withholding of evidence that is material to determination of guilt or punishment of a criminal defendant violates the defendant's constitutional right of due process." (Justia U.S. Supreme Court)

My community is morally deteriorating as former students at the Pemberton Township School District return as employees in the Pemberton Township High School to sexually abuse students. Chris Perry graduated in 2007 from Pemberton Township High School. Chris was charged with attempted sexual assault (second degree), enticing a minor (second degree), endangering the welfare of a minor (third degree), and attempted criminal sexual assault (fourth degree) in August of 2023. Casey Bartholomew graduated in 2014 from Pemberton Township High School in 2014. Casey was charged with endangering the welfare of a minor (second degree), aggravated criminal sexual contact (third degree), and showing obscenity to a minor (third degree)

in 2018. To make matters worse, other staff were not held accountable for deliberate indifferences of reports of sexual harassment, disability harassment, and physical assault. They were given new positions within the Pemberton Township school districts, "positions like middle school principal and chief academic officer." They were not legally obligated to answer for their violations since the petitioner was not given equal protection and procedural due process of the laws under the Fourteenth and Fifth Amendments. The petitioner is aggrieved that the Pemberton Township School District has continued to employ staff members who have violated school policy, and basic liberties of equal protection of the law.

Conclusion

For the foregoing reasons, the Court should grant the petitioners petition for rehearing.

With respect,

Catherine Fernandez

Pro~se Litigant

April 26, 2024

24 Carpenter Lane

Browns Mills, NJ 08015

609-248-5748

CERTIFICATE OF PRO SE PETIONER

As the PRO SE PETIONER, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2

_____

Catherine Fernandez

Pro~se Litigant

April 26, 2024

Catherine Fernandez
Pro~se Litigant

I certify that I sent a copy of the petition for rehearing to the defendant's counsel on April 26, 2024 via email to: dianea@maddenmadden.com

Madden and Madden

108 Kings Hwy E

Haddonfield, NJ 08033

(856)428-9520

Catherine Fernandez

April 26, 2024

Catherine Fernandez
Pro~se Litigant

To the Clerk at the Washington DC U.S. Supreme Court.

I did not have the means to make 40 copies of my petition for rehearing.

Thank you.

Catherine Fernandez

April 26, 2024

Exhibit A

Middle States Accredited

PTS

You can get there from here!

PEMBERTON TOWNSHIP SCHOOLS

RITA JENKINS
Assistant Director of School Counseling/Health Services

TONY TRONGONE
Superintendent
ADELINA GIANNETTI
Director of Special Services

To the Parents/Guardians of:
Catherine Martino

Dear Parent/Guardian:

Recently you were contacted by school personnel to advise that your child was party to an investigation of an alleged incident of harassment, intimidation, and/or bullying (HIB). Per *The Anti-Bullying Bill of Rights Act* (N.J.S.A. 18A:37-13) we are required to provide you with the nature of the investigation, whether the district found evidence of HIB, or discipline imposed or services provided.

Board of Education Policy #5512 – *Harassment, Intimidation, and Bullying,* and 18A:37-13, *The Anti-Bullying Bill of Rights Act,* require that the results of each bullying investigation be reported to the Superintendent of Schools and the Board of Education for review. Once the Superintendent and Board of Education have reviewed the matter and accepted the report, formal notification of such must be provided to all parties to the investigation.

By direction of Tony Trongone, Superintendent of Schools, this letter is to confirm that the Superintendent and Board of Education met on Thursday, August 23, 2018 and reviewed, and accepted the findings of the above-stated HIB report. A parent or guardian may request a hearing before the Board of Education to appeal such results by contacting the Superintendent of Schools.

The nature of the investigation was harassment. The HIB investigation was UNFOUNDED.

Information on Board of Education Policy #5512 can be found on our district website at www.pemberton.k12.nj.us. Please contact me to discuss any specific concerns or questions you have regarding the above information.

We are committed to providing a safe environment for our students and thank you for your cooperation in the matter.

Sincerely,

Tony Trongone
Superintendent

Curry v. Valentin

United States District Court for the Southern District of Texas, Houston Division

July 11, 2022, Decided; July 11, 2022, Filed, Entered

Case No. 4:21-cv-02800

Reporter
2022 U.S. Dist. LEXIS 158337 *

Marqueta S. Curry and Shaheedah Ellis, Plaintiffs, v. Anthony Valentin and VIP Freight, Inc., Defendants.

Subsequent History: Adopted by, Partial summary judgment denied by, Summary judgment granted by, Dismissed by *Marqueta Curry v. Valentin, 2022 U.S. Dist. LEXIS 158646 (S.D. Tex., Aug. 2, 2022)*

Core Terms

emergency order, deadlines, Plaintiffs', statute of ***limitations***, tolled, ***limitations*** period, ***limitations***, suspend, summary judgment, falling, filing deadline, extending, disaster, modify, RECOMMENDED, window, matter of law, stated period, civil case, prescribed, canons, courts, ending

Counsel: **[*1]** For VIP Freight Inc., Anthony Valentin, Defendants: Mark R Lapidus, Lapidus Knudsen PC, Houston, TX.

For Marqueta Curry, Plaintiff: Chance Allen McMillan, LEAD ATTORNEY, McMillan Law Firm PLLC, Houston, TX; Jaqualine Paige McMillan, McMillan Law Firm PLLC, Houston, TX.

For Shaheedah Ellis, Plaintiff: Chance Allen McMillan, LEAD ATTORNEY, Jaqualine Paige McMillan, McMillan Law Firm PLLC, Houston, TX.

Judges: Yvonne Y. Ho, United States Magistrate Judge.

Opinion by: Yvonne Y. Ho

Opinion

MEMORANDUM AND RECOMMENDATION

In this personal injury action, the parties have filed cross-motions for summary judgment that dispute whether the claims asserted by Plaintiffs Marqueta S. Curry and Shaheedah Ellis ("Plaintiffs") are time-barred as a matter of law. Dkts. 4 & 8. After carefully considering the parties' motions, *id.*, response, Dkt. 8, supplement, Dkt. 15, reply, Dkt. 20, and the applicable law, the Court concludes that Plaintiffs' suit is barred by the statute of ***limitations***. It is therefore recommended that the Court deny Plaintiffs' motion for partial summary judgment, grant the motion for summary judgment filed by Defendants Anthony Valentin and VIP Freight, Inc. ("Defendants"), and enter a take nothing judgment on Plaintiffs' **[*2]** claims.

Background

On July 10, 2019, Plaintiffs were involved in a car accident while driving on I-10 in Harris County. Dkt. 1-1 at 4. According to their allegations, Defendant Anthony Valentin, a driver for Defendant VIP Freight, improperly merged into Plaintiffs' lane, collided with their car, and injured Plaintiffs. *Id.*

In March of 2020, the United States was struck by the ***COVID***-19 Pandemic. On March 13, 2020, the same day that Governor Greg Abbot issued a disaster declaration, the Texas Supreme Court issued its first emergency order. *See Misc. Docket No. 20-9042, 596 S.W.3d 265 (Tex. 2020)* (hereinafter "Emergency Order One").[1] In that order, the Court declared that "[a]ll courts in Texas may extend the statute of ***limitations*** in any civil case for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted." *Id.* Since then, the Court has issued more than fifty Emergency Orders modifying procedures and extending deadlines, most recently on June 20, 2022.

[1] Each subsequent emergency order will be referenced as "Emergency Order [the number of the order]." Collectively, they will be called the "Emergency Orders."

See, e.g., Emergency Order Fifty-Three, Misc. Docket No. 22-9049 (Tex. June 20, 2022).

In the interim, Plaintiffs filed this suit on July 30, 2021, two years and twenty days after their alleged injury occurred. Dkt. 1-1 at 1. Before removing the **[*3]** suit to this Court, Defendants raised the affirmative defense of ***limitations***. *See* Dkt. 4-6 at 3; Dkt. 1 at 1.

Plaintiffs have moved for partial summary judgment on Defendants' ***limitations*** defense, asserting that their petition was timely as a matter of law. *See* Dkt. 4 at 1. Defendants have responded and cross-moved for summary judgment, or in the alternative, requested dismissal pursuant to *Fed. R. Civ. P. 12(b)(6)*. *See* Dkt. 8.

Standard of Review

Summary judgment is warranted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. "A dispute is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Westfall v. Luna, 903 F.3d 534, 546 (5th Cir. 2018)* (quoting *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*). A fact is material if the issue that it tends to resolve "could affect the outcome of the action." *Dyer v. Houston, 964 F.3d 374, 379-80 (5th Cir. 2020)* (citing *Sierra Club, Inc. v. Sandy Creek Energy Assocs., L.P., 627 F.3d 134, 138 (5th Cir. 2010)*).

When resolving a motion for summary judgment, the court must view the facts and any reasonable inferences "in the light most favorable to the nonmoving party." *See Amerisure Ins. Co. v. Navigators Ins. Co., 611 F.3d 299, 304 (5th Cir. 2010)* (internal quotation marks omitted). Cross-motions must be considered separately, as each movant bears the burden of establishing that no genuine issue of material fact exists and that it is entitled **[*4]** to judgment as a matter of law. *Shaw Constructors v. ICF Kaiser Eng'rs, Inc., 395 F.3d 533, 538-39 (5th Cir. 2004)* (citing 10a Charles A. Wright, Arthur R. Miller & Mary K. Kane, Fed. Prac. and Proc. § 2720 (3d ed. 1998)).

Analysis

I. Texas's *COVID*-19 Emergency Orders Did Not Categorically Suspend the Running of *Limitations* for Plaintiffs' Claims.

Plaintiffs agree that their claim accrued on the date of the accident—July 10, 2019. Dkt. 4 ¶ 2. The relevant statute of ***limitations*** thus expired two years later, on July 10, 2021. *Tex. Civ. Prac. & Rem. Code § 16.003*. But Plaintiffs waited twenty days beyond that date to file this suit. Dkt. 1-1 at 1.

Instead, Plaintiffs maintain that the Texas Supreme Court's intervening Emergency Orders—particularly Emergency Order Eight—halted the running of all statutes of ***limitations*** for an interim, eighty-day period from March 13, 2020 to June 1, 2020. Dkt. 4 ¶¶ 32-37. Defendants, however, respond that the Emergency Orders merely extended filing deadlines that fall within a specified window, rather than tolling all ***limitations*** periods no matter when those periods expire. Dkt. 8 ¶¶ 2-7. After analyzing the Emergency Orders, including by applying canons of statutory interpretation, the Court concludes that Plaintiffs' suit is time-barred, as a matter of law.

A. The Emergency [*5] Orders, by their terms, did not suspend the *limitations* period for Plaintiffs' claims.

The analysis turns on the Emergency Orders themselves, beginning with Emergency Order One, issued on March 13, 2020. *596 S.W.3d at 265*. That initial Emergency Order did not extend the statute of ***limitations*** for any civil action. Instead, it stated that "[a]ll courts in Texas may extend the statute of ***limitations*** in any civil case for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted." *Id.* This pronouncement reflects the Court's view that its authority under *Texas Government Code § 22.0035(b)* permitted it to modify substantive time periods—like statutes of ***limitations***—established by the Texas Legislature. Because Defendants do not question the Texas Supreme Court's interpretation of Section 22.035(b), the Court does not do so either.[2]

---

[2] It is not altogether clear whether *Section 22.0035(b)* permits the Texas Supreme Court to modify statutes of ***limitations***. That provision allows the Court to "suspend or modify *procedures* for the conduct of any court proceeding" during a declared disaster. *Tex. Govt. Code Ann. § 22.0035(b)* (emphasis added). But statutory ***limitations*** periods are characterized as substantive. *See Guar. Trust v. York, 326 U.S. 99, 110, 65 S. Ct. 1464, 89 L. Ed. 2079 (1945)*. And the

Not until April 1, 2020 did the Texas Supreme Court undertake to alter filing deadlines—by issuing Emergency Order Eight. Misc. Docket No. 20-9051, 597 S.W.3d 844, 844 (Tex. 2020). Emergency Order Eight expressly amended paragraph 3 of Emergency Order One to state that "[a]ny deadline for the filing or service of any civil case is tolled from March 13, 2020, until June 1, 2020, unless extended by the Chief Justice of the Supreme Court." *Id.* ***[*6]***

Plaintiffs fixate on the word "tolled" to assert that Emergency Order Eight categorically stopped the running of all ***limitations*** periods from March 13 to June 1, 2020. Dkt. 4 ¶¶ 35-37. In their view, the word "tolled" is a term of art that applies almost exclusively to statutes of ***limitations***. *See* Black's Law Dictionary, *Toll* (11th ed. 2019) ("(Of a time period, esp. a statutory one) to stop the running of; to abate <toll the ***limitations*** period>").

But as Defendants note, Dkt. 8 ¶¶ 30-32, the Texas Supreme Court chose not to use the term "statute of ***limitations***" in Emergency Order Eight—despite explicitly referencing statutes of ***limitations*** in Emergency Order One. *Compare* Emergency Order Eight, 597 S.W.3d at 844 (para. 3), *with* Emergency Order One, 596 S.W.3d at 265 (para. 3). Moreover, paragraph 3 of Emergency Order Eight addresses deadlines for "*service* of any civil case"—not just the deadlines for *filing* such a case. 597 S.W.3d at 844 (emphasis added). Thus, the use of the word "tolled" in Emergency Order Eight does not explicitly and unambiguously reflect an intent to stop all ***limitations*** periods from running between March 13 and June 1, 2020.

Regardless, Plaintiffs' position that all ***limitations*** periods were suspended for the prescribed 80-day period cannot be squared with **[*7]** subsequent Emergency Orders issued before this suit was filed. Less than a month after issuing Emergency Order Eight, the Texas Supreme Court "clarified and amended" it on April 26, 2020, by issuing Emergency Order Twelve. *See* Misc. Docket No. 20-9059, 629 S.W.3d 144, 144 (Tex. 2020). Emergency Order Twelve included new language authorizing—but not requiring—courts to "[m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order ... for a stated period ending no later than 30 days after the Governor's state of disaster has been lifted ...." *Id.* (paragraph 3(a)).

Most pertinent here, Emergency Order Twelve also modified the third paragraph of Emergency Order Eight, replacing it to state, in key part:

> Any deadline for filing or service of any civil case that falls on a day between March 13, 2020 and June 1, 2020, is extended until July 15, 2020.

Id. (para. 5). On its face, Emergency Order Twelve makes clear which deadlines are mandatorily extended, and how. Only those deadlines falling *within* the specified dates—March 13 to June 1, 2020—are affected. And those specific deadlines, alone, are extended until July 15, 2020. The Court conspicuously omitted any reference to "toll[ing]" any deadline. *Compare* ***[*8]*** *id., with* Emergency Order Eight, 597 S.W.3d at 844 (para. 3).

Indeed, the remaining Emergency Orders renewed this clarification from Emergency Order Twelve. Emergency Order Seventeen extended filing deadlines falling between March 13, 2020 and July 1, 2020 to August 15, 2020. *Misc. Dkt. No. 20-9071, 609 S.W.3d 119, 120-22 (Tex. 2020)* (paras. 2 & 11). Emergency Order Eighteen added a month to that window, specifying that deadlines between March 13, 2020 and August 1, 2020 are pushed until September 15, 2020. Misc. Dkt. No. 20-9080, 609 S.W.3d 122, 124 (Tex. June 29, 2020) (para. 11). That window was further expanded in Emergency Order Twenty-One, which extended deadlines falling between March 13, 2020 and September 1, 2020, to September 15, 2020. *Misc. Dkt. No. 20-9091, 609 S.W.3d 128, 129 (Tex. 2020).*

Like Emergency Order Eight, none of these subsequent Emergency Orders automatically suspends *all* ***limitations*** periods, regardless of where the deadlines fall. Instead, those (and other ensuing) Emergency Orders give courts *discretion* to "modify or suspend any and all deadlines and procedures," including statutory ***limitations*** periods. *See* Emergency Order Seventeen,

---

Texas Court of Criminal Appeals recently concluded that Section 22.0035(b) does not allow courts to alter substantive rights. *See* In re State ex rel. Ogg, 618 S.W.3d 361, 364-65 (Tex. Crim. App. 2021) ("On their faces, neither Section 22.035(b) nor the Emergency Order [Seventeen] purport to authorize courts to modify substantive rights. Both the statute and the order address procedural matters ...."); id. at 366 (conditionally granting mandamus relief; holding that "the Emergency Order did not confer upon the trial court the authority to conduct a bench trial without the State's consent"); *see also Ex Parte K.W.*, 2022 WL 1492883, at *8 (Tex. App.—Corpus Christi May 12, 2022, no pet.) (holding that Emergency Order Twelve did not suspend detainment and release deadlines in Tex. Crim. Proc. Code Ann. art. 17.151).

609 S.W.3d at 120 (authorizing such modification or extension "for a stated period ending no later than September 30, 2020"); Emergency Order Eighteen, 609 S.W.3d at 122-23 (same); Emergency Order Twenty-Two, Misc. Docket No. 20-9095, 609 S.W.3d 129, 129 (Tex. 2020) (Aug. 6, 2020) (same); Emergency Order Twenty-Nine, Misc. Docket No. 20-9135, 629 S.W.3d 863, 863 (Tex. 2020) (Nov. 11, 2020) (extending period to Feb. 1, 2021); Emergency Order Thirty-Three, Misc. Docket No. 21-9004, 629 S.W.3d 179, 179-80 (Tex. 2021) (Jan. 14, 2021) (extending period to Apr. 1, 2021); Emergency Order Thirty-Six, Misc. Docket No. 21-9026, 629 S.W.3d 897, 897 (Tex. 2021) (Mar. 5, 2021) (extending **[*9]** period until June 1, 2021); Emergency Order Thirty-Eight, Misc. Docket No. 21-9060, 629 S.W.3d 900, 900 (Tex. 2021) (May 26, 2021) (extending period to Aug. 1, 2021); Emergency Order Forty, Misc. Docket No. 21-9079, 629 S.W.3d 911, 912 (Tex. 2021) (July 18, 2021) (extending period to Oct. 1, 2021).

In short, a review of the Emergency Orders indicates that Emergency Order Eight did not categorically suspend all statutes of ***limitations*** for an eighty-day period, either by its plain terms or as clarified in subsequent Emergency Orders. Instead, they merely pushed the filing deadline of cases falling *between* March 13, 2020 to July 1, 2020 (or, as later modified, August 1, 2020) to a later, specified date.

B. The parties' case law is inapposite.

The parties cite three cases that construe certain Emergency Orders. Dkt. 4 ¶¶ 22-31 (citing Argueta v. City of Galveston, 2021 U.S. Dist. LEXIS 7657, 2021 WL 137664 (S.D. Tex. Jan. 14, 2021); Allen v. Sherman Operating Co., LLC, 520 F. Supp. 3d 854 (E.D. Tex. 2021)); Dkt. 8 ¶¶ 56, 57 (discussing Simon v. Roche Diagnostics Corp., 2020 U.S. Dist. LEXIS 253988, 2020 WL 9457065, at *2 (S.D. Tex. Dec. 7, 2020), *aff'd*, 851 F. App'x 553, 534 (5th Cir. 2021) (per curiam)). Those cases neither support nor negate the parties' contentions concerning the timeliness of this suit.

Both in Allen and Argueta, the plaintiffs' filing deadlines fell within the time period specified by certain Emergency Orders discussed above. *See* Allen, 520 F. Supp. 3d at 865 (noting that "Mr. Allen attempted to assert his claim in federal court on August 27, 2020, before Emergency Order 18's deadline"); Argueta, 2021 U.S. Dist. LEXIS 7657, 2021 WL 137664, at *2 (noting that "plaintiffs' filing deadline fell on a day between [Emergency Order Twenty-One's] March **[*10]** 13th and September 1st range"). Pursuant to those Emergency Orders, the courts held that the deadlines were deferred to the date prescribed in those orders. Allen, 520 F. Supp. 3d at 859, 861, 872 (holding that the Emergency Orders' modification of deadlines is substantive under *Erie* and granting plaintiff leave to assert a cause of action for loss of household services); Argueta, 2021 U.S. Dist. LEXIS 7657, 2021 WL 137664, at *1-2 (denying motion to dismiss plaintiffs' suit under 42 U.S.C. § 1983, which borrowed Texas's two-year ***limitations*** period, based on the September 15, 2020 deadline in Emergency Order Twenty-One). Neither case presents a situation analogous to this case, where Plaintiffs have invoked the Emergency Orders to extend a ***limitations*** deadline that falls outside the periods for which those Orders prescribe a specific filing date.[3]

For similar reasons, Defendants' reliance on Simon is misplaced. Like Allen and Argueta, the *Simons* court addressed a suit with a ***limitations*** deadline that fell within a window prescribed in a particular Emergency Order—specifically, Emergency Order Twenty-One. Simon, 2020 U.S. Dist. LEXIS 253988, 2020 WL 9457065, at *2 (citing Emergency Order Twenty-One, 609 S.W.3d at 129, which "extended the deadline on any ***statues*** of ***limitations*** that were to expire between March 13, 2020 and September 1, 2020 to September 15, 2020" and specified **[*11]** a filing deadline of September 15, 2020). The dispute was whether plaintiffs' claim had accrued less than two years before suit was filed, based on the discovery rule. Id. at *2-3 (rejecting discovery rule). The Simon plaintiffs had not contended that any Emergency Order *tolled* ***limitations***. *See* Plaintiffs' Response to Defendant Roche Diagnostics Corporations' Motion to Dismiss at 1-3, Simon v. Roche Diagnostics Corp., No. 4:20-cv-3625, 2020 U.S. Dist. LEXIS 253988, 2020 WL 9457065 (S.D. Tex. Dec. 7, 2020), Dkt. 60. Nothing in Simon sheds

[3] Plaintiffs' insinuation that the Emergency Orders, as addressed in *Allen and Argueta*, categorically "extend the statute of ***limitations*** through October 1, 2021" is flatly wrong. Dkt. 4 ¶ 31. As noted *supra*, Part I.A, Emergency Orders Twenty-Two, Twenty-Six, Twenty-Nine, Thirty-Three, Thirty-Eight, and Forty merely *authorize* courts to extend deadlines to a specific date, the latest of those dates being October 1, 2021. *See* Emergency Order Forty, 629 S.W.3d at 912. That language contrasts starkly with Emergency Orders Twelve, Seventeen, and Twenty-One, which expressly and automatically extend deadlines falling within a prescribed timeframe. *See, e.g.*, Emergency Order Twelve, 629 S.W.3d at 144.

light on how Emergency Order Eight affects the timeliness of this case.

C. Principles of statutory construction negate Plaintiffs' interpretation of the Emergency Orders.

Although the *Allen* decision does not control, its reference to certain canons of statutory interpretation nonetheless provides useful guidance for construing the Emergency Orders. *See* *Allen, 520 F. Supp. 3d at 864-65* (applying various canons to determine that Emergency Orders Eighteen and Twenty-One extended substantive deadlines). Those canons further undercut Plaintiffs' position that Emergency Order Eight—or any ensuing Emergency Order—categorically tolled ***limitations***.

One fundamental principle presumes that every word in a statute has meaning, "and withholding of terms within a statute is taken to be intentional ...." *Id. at 864* (quoting *U.S. Chamber of Com. v. U.S. Dep't of Labor, 885 F.3d 360, 381 (5th Cir. 2018)*). Applied to this context, **[*12]** the Texas Supreme Court omitted reference to "statutes of ***limitations***" from Emergency Order Eight, despite explicitly using that phrase in Emergency Order One. The absence of that reference is presumptively intentional.

A second principle is the doctrine *in pari materia*. That canon requires construing all acts on the same subject together; "if it can be gathered from a subsequent statute, *in pari materia*, what meaning the Legislature attached to the words of the former statute, this will amount to a legislative declaration of its meaning." *Allen, 520 F. Supp. 3d at 854* (quoting *Cannon's Adm'r v. Vaughan, 12 Tex. 399, 402 (1854)*). The Texas Supreme Court declared just that through Emergency Orders that clarified and amended Emergency Order Eight. Starting with Emergency Order Twelve, the Court made clear its limited intent to extend only those deadlines falling within a bounded, specified timeframe. And as the later enactments on the same subject, Emergency Order Twelve and its progeny control. *See, e.g., Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 143, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000)* ("[A] specific policy embodied in a later federal statute should control our construction of the earlier statute ....") (internal quotation marks and alteration omitted).

Plaintiffs' position that Emergency Order Eight's reference to tolling somehow survives the **[*13]** contrary language in Emergency Order Twelve is untenable. If Emergency Order Eight truly suspended ***limitations*** periods between March 13 and June 1, 2020, then a suit with a statutory filing deadline of March 13, 2020 must be filed by June 1, 2020 (eighty days after March 13). Moreover, a suit with a ***limitations*** deadline of May 30, 2020 could be filed as late as August 18, 2020 (eighty days after May 30). But Emergency Order Twelve explicitly alters the deadlines for both of these examples, specifying that both are timely if filed no later than July 15, 2020. *629 S.W.3d at 144*. This conflict underscores that Emergency Order Twelve supersedes any claimed, blanket tolling of ***limitations*** in Emergency Order Eight.

Plaintiffs' interpretation of Emergency Order Eight also carries troubling consequences. The enabling statute permits courts to modify or suspend procedures for "any court proceeding affected by a disaster," but *only* "*during the pendency of a disaster* declared by the governor." *Tex. Govt. Code Ann. § 22.0035(b)* (emphasis added). Although the Governor's disaster declaration remains in effect as of the date of this opinion, that could change tomorrow. Under Plaintiffs' view, however, even causes of action with longer, four-year **[*14]** statutes of ***limitations*** (like fraud, *Tex. Civ. Prac. & Rem. Code § 16.004(a)(4)*) would be tolled under Emergency Order Eight. Those plaintiffs could then invoke prior (yet defunct) Emergency Orders to circumvent statutory ***limitations*** periods years down the road, perhaps long after the disaster declaration has terminated and the ***COVID***-19 pandemic has ended. This is not a plausible reading of the Emergency Orders, particularly in light of the narrow language in Emergency Order Twelve and its progeny.

Finally, if the Texas Supreme Court truly intended to suspend all ***limitations*** periods, as Plaintiffs insist, it could have used more explicit language—as other state courts did. *See, e.g., Ceriani v. Dionysus, Inc., 2022 U.S. Dist. LEXIS 73499, 2022 WL 1185896, at *2 (E.D. Va. Apr. 20, 2022)* (quoting Supreme Court of Virginia's ***COVID***-19 emergency order,[4] which explicitly "'tolled and extended'" "'all applicable deadlines, time schedules and filing requirements, *including any applicable statute of* ***limitations*** which would otherwise run during the

---

[4] *In re: Order Extending Decl. of Jud. Emergency in Response to* ***COVID****-19 Emergency Declaring a Judicial Emergency in Response to* ***COVID****-19 Emergency* (Va. Mar. 27, 2020), *available at* https://www.vacourts.gov/news/items/2020_0327_scv_order_extending_declaration_of_judicial_emergency.pdf.

period this order is in effect'") (emphasis added); *In the Matter of Admin. R.17 Emergency Relief For Ind. Trial Courts Relating to the 2019 Novel Coronavirus (**COVID**-19), 141 N.E. 3d 389 (Ind. 2020)* ("tolls all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings, public health, mental health, and appellate matters; all judgments, support, and other orders; statutes of ***limitations***"); ***[*15]*** *Order Imposing Statewide Judiciary Restricted Operations Due to **COVID**-19 Emergency*,[5] Mar. 18, 2020 (Kan. Mar. 18, 2020) ("all statutes of ***limitations*** and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings is suspended until further order"). The Texas Supreme Court declined to use such language—opting instead to clarify that filing deadlines are extended only for certain cases falling within a specific window. The Court thus concludes that the Emergency Orders did not toll the ***limitations*** period for Plaintiffs' suit.

II. The Court Should Decline to Exercise its Discretion to Extend the *Limitations* Period.

Emergency Order Forty does grant the Court discretion to "modify or suspend" statutory deadlines "for a stated period ending no later than October 1, 2021." *629 S.W.3d at 912* (issued July 19, 2021). Despite acknowledging this language, *see* Dkt. 4 ¶ 20, Plaintiffs have articulated no reason why such an extension would be appropriate here. They have not asserted, much less shown, that any specific ***COVID***-19-related **[*16]** challenges caused them to file suit twenty days beyond the July 10, 2021 ***limitations*** deadline. That omission means that Plaintiffs have failed to raise a genuine issue of material fact sufficient to overcome Defendants' ***limitations*** defense.

Moreover, Emergency Order Twelve was issued long ago, on April 27, 2020. Dkt. 1-1 at 1; *see Emergency Order Twelve, 629 S.W.3d at 144*. The plain text of Emergency Order Twelve, as well as subsequent Emergency Orders Seventeen, Eighteen, Twenty-One, gave Plaintiffs ample notice that only those deadlines within the specified window were automatically extended—and even then, only until September 15, 2020, at the latest. *See id.* (extending deadlines falling between Mar. 13, 2020 and June 1, 2020 to July 15, 2020); *Emergency Order Seventeen, 609 S.W.3d at 120-22* (extending filing deadlines falling between March 13, 2020 and July 1, 2020 to August 15, 2020); *Emergency Order Eighteen, 609 S.W.3d at 124* (pushing deadlines falling between March 13, 2020 and August 1, 2020 to September 15, 2020); *Emergency Order Twenty-One, 609 S.W.3d at 129* (renewing those deadlines). That period expired more than ten months before Plaintiffs filed this suit on July 30, 2021. *See* Dkt. 1-1 at 1.

Nothing in the record warrants exercising this Court's discretion to forgive Plaintiffs' tardy filing. Accordingly, this Court should conclude that Plaintiffs' **[*17]** suit is untimely, grant Defendants' motion for summary judgment, deny Plaintiffs' cross-motion on the ***limitations*** defense, and enter a take-nothing judgment on Plaintiffs' claims.

Recommendation

For the foregoing reasons, it is **RECOMMENDED** that the Court **DENY** Plaintiffs' motion for partial summary judgment (Dkt. 4) and **GRANT** Defendants' motion for summary judgment (Dkt. 8) on Defendants' statute-of-***limitations*** defense.

It is further **RECOMMENDED** that the Court enter a separate, take-nothing **JUDGMENT** on Plaintiffs' claims, pursuant to *Fed. R. Civ. P. 58(a)*.

The parties have fourteen days from service of this Report and Recommendation to file written objections. *28 U.S.C. § 636(b)(1)*; *Fed. R. Civ. P. 72(b)*. Failure to file timely objections will preclude appellate review of factual findings and legal conclusions, except for plain error. *Ortiz v. City of San Antonio Fire Dep't, 806 F.3d 822, 825 (5th Cir. 2015)*.

Signed on July 11, 2022, at Houston, n, Texas.

/s/ Yvonne Y. Ho

Yvonne Y. Ho

United States Magistrate Judge

End of Document

[5] Available at https://www.kscourts.org/KSCourts/media/KsCourts/Orders/2020-PR-016.pdf.

NOTICE TO THE BAR

COVID-19 – THIRD OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE

The Supreme Court today issued its Third Omnibus Order on Court Operations and Legal Practice in response to the ongoing COVID-19 pandemic. A copy of the Order is attached.

This May 28, 2020 Third Omnibus Order addresses all provisions of the April 24, 2020 Second Omnibus Order (and the May 15, 2020 clarification order). It continues some of those provisions through June 14, 2020, affirms that other provisions remain in full force and effect, and lists those provisions that have concluded.

Among other key provisions, the Third Omnibus Order provides that new jury trials and in-person jury selections continue to be suspended, as are trials in landlord/tenant matters. The suspension of most depositions and appearances of healthcare professionals involved in responding to COVID-19 also is extended through June 14, 2020, and discovery involving experts and medical professionals likewise is extended. Interim operational adjustments required by the social distancing measures attendant to COVID-19 – including the modified process for search warrants and communication data warrants, the option of electronic service of process on the State of New Jersey, and the relaxation of electronic signature requirements – remain in full force and effect. Most other adjustments, including most discovery and tolling provisions, either concluded on May 10, 2020 or will conclude after May 31, 2020. While blanket suspensions, extensions, and tolling provisions have concluded or will conclude shortly, the May 28, 2020 Third Omnibus Order permits extensions based on the individual facts of a case and allows requests for such relief by letter rather than motion.

The New Jersey courts are continuing to expand the use of remote court operations through video and other means, thereby sustaining access to justice throughout this unprecedented extended emergency. As the COVID-19 pandemic continues, the Court will revisit the provisions of the Third Omnibus Order and make adjustments as appropriate.

Questions about this notice or the Court's Third Omnibus Order may be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

Glenn A Grant by SDB

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 28, 2020

SUPREME COURT OF NEW JERSEY

In response to the ongoing COVID-19 public health emergency, the Supreme Court has authorized various interim adjustments to court operations, including as set forth in the March 27, 2020 First Omnibus Order and April 24, 2020 Second Omnibus Order.

Court operations are continuing in a virtual format to the greatest extent practicable, subject to constitutional considerations and resource limitations. To date, the New Jersey courts have conducted more than 30,000 court events involving more than 250,000 participants.

A public health emergency has been continued in New Jersey at least through June 5, 2020, and current health guidance suggests that in-person court operations will not resume in full for some time.

The April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) provided for certain limited extensions of deadlines and tolling of timeframes. This Third Omnibus Order continues some of those extensions and tolling provisions through June 14, 2020, affirms that other provisions remain in full force and effect, and lists those provisions that have concluded.

Accordingly, it is ORDERED that effective immediately:

1. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) are extended for the additional period from June 1 through June 14, 2020:

   - 1(a) – no new jury trials
   - 2(a) – excludable time
   - 3(b) – discovery involving physical or mental examinations
   - 3(c) – time period for filing affidavits of merit
   - 3(k) – no lockouts of residential tenants (evictions); no landlord/tenant (LT) trials; ongoing efforts to settle LT matters
   - 3(l) – no Special Civil Part (DC) or small claims (SC) trial calendars; ongoing efforts to settle DC and SC matters; judges may conduct DC and SC trials in a virtual format with the consent of all parties
   - 3(m) – no courtesy copies in civil matters, and as provided in the May 15, 2020 order in matrimonial (FM) matters, if the total submission does not exceed 35 pages
   - 4(a) – expert reports in family
   - 7(c) – healthcare providers excused from depositions and appearances

2. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) remain in full force and effect:

   - 2(b) – process for search warrants and communication data warrants

- 3(h) – Office of Foreclosure
- 3(o) – guardianships of incapacitated adults
- 5 – Tax Court
- 6 – Municipal Courts
- 7(a) – remote depositions
- 7(b) – remote proceedings in general
- 7(e) – electronic service on the State of New Jersey
- 8(a)(ii) and (b) – discipline and fee arbitration
- 9 – Board of Bar Examiners
- 10 – electronic signatures
- 11 – Appellate Division
- 12 – letter requests for extensions
- 13 – extensions based on individual facts of a case

3. The following provisions of the April 24, 2020 Second Omnibus Order (as clarified by the May 15, 2020 Order) have concluded:

- 3(a) – civil discovery deadlines
- 3(d) – tolling for lack of prosecution dismissals in civil matters
- 3(e) – Track Assignment Notices
- 3(f) – Notices of Tort Claims
- 3(g) – pretrial discovery in civil matters

- 3(i) – involuntary civil commitment hearings
- 3(j) – discovery end dates
- 3(n) – civil arbitration
- 4(a) – family discovery deadlines except for experts
- 4(b) – tolling for lack of prosecution dismissals in family matters
- 4(c) – matrimonial early settlement panels
- 7(d) – tolling in general
- 8(a)(i) – tolling for disciplinary matters and fee arbitration

4. Suspension of grand jury empanelment dates and sessions is extended as follows:

    a. In-person grand jury selections and sessions shall not be scheduled through at least June 14, 2020; and

    b. Grand juries may convene remotely consistent with the Pilot Program for Virtual Grand Juries as authorized by the Court's May 14, 2020 Order, which currently is operating in Bergen and Mercer Counties.

5. This order is intended to be implemented in tandem with the Court's April 20, 2020 Order on the continuation of remote proceedings.

6. Depending on the duration of the COVID-19 pandemic, the Court may reconsider and revise the provisions of this order.

For the Court,

Chief Justice

Dated: May 28, 2020

It's Official: The Statute of Limitations Was Tolled, Not Suspended, During the COVID-19 Pandemic

Recent Posts

Corporate Transparency Act

Named to 2024 Mentor NY Corporate Mentoring

By Jarrett M. Behar

Now that the Spring of 2023 is almost upon us, no one wants to think back to the time during the height of the COVID-19 Pandemic. That includes the various Executive Orders issued by then-Governor Cuomo extending the expiration of statutes of limitations between the 228-day period of March 20, 2020 and November 3, 2020 (9 N.Y.C.R.R. 8.202.8, 8. 202.67). Those Executive Orders led to the question of whether the statute of limitations was simply suspended during that period or tolled. The difference being that a suspension does not exclude its effective duration from the calculation of the relevant time period and a toll does.

On June 2, 2021, the Appellate Division, Second Department issued its decision in *Brash v. Richards*, 195 A.D.3d 582 [2d Dep't 2021], which held that Governor Cuomo had the authority to issue a toll and that the thirty day period from which to take an appeal that would have expired during the pendency of the Executive Orders was tolled such that the appellant had 30 days from November 3, 2020, the end of the Executive Order period, to file its notice of appeal. *Id.* at 583. In the wake of *Brash*, however, there was an open question as to whether its holding was limited to time periods that would have expired during the Executive Order period. *See, e.g., Baker v. 40 Wall Street Holdings Corp.*, 74 Misc.3d 381, 383 [Sup Ct. Kings County 2022]; *Cruz v. Guaba*, 74 Misc.3d 1207(A), 2022 N.Y. Slip. Op. 50077(U) [Sup. Ct. Queens County Feb. 7, 2022]; *Barry v. Royal Air Maroc*, 2022 WL 3215050, at *4 [S.D.N.Y. July 8, 2022], *adopted*, 2022 WL 3214928 [S.D.N.Y. Aug. 9, 2022].

Earlier this month, the Second Department put that argument to bed when it issued its decision in *McLaughlin v. Snowlift, Inc.*, 2021-05769, ___ A.D.3d ___ [2d Dep't Mar. 8, 2023]. In *McLaughlin*, in affirming the denial of a motion to dismiss on renewal after the initial motion was granted pre-*Brash*, the Second Department unequivocally stated that its decision in *Brash v. Richards* conclusively "held that the executive orders 'constitute a toll' of the filing deadlines applicable to litigation in New York Courts." In addition, the Second Department cited to analogous decisions in the Appellate Division, First Department (*Murphy v. Harris*, 210 A.D.3d 410 [1st Dep't 2022]) and Third Department (*Roach v. Cornell*

Honor Roll

Herold Named President of Board of Directors of Long Island Cares

Governor Hochul Vetoes Proposed New York Law Banning Use of Non-Compete Agreements

Six Attorneys Elevated to Partnership

Categories

Awards
Charities
Corporate
Elder Law
Employment Law
Estate Planning
Events
Legal
Litigation
Welcome

Archives

University, 207 A.D.3d 931 [3d Dep't 2022]). Thus, with the unanimity among the various Departments, it appears unlikely that this issue will reach the Court of Appeals or that, if it did, a contrary result would be reached.

As a result, any statute of limitations that began to run and did not expire prior to March 20, 2020 will have 228 days added on to it. Any statute of limitations that began to run during that tolling period will have the amount of days between the date of accrual and November 3, 2020 added on to it. So, for example, the six-year statute of limitations for a breach of contract action that accrued on March 19, 2020, will now not expire until after November 2, 2026. In addition to generally extending the statute of limitations, the tolling also significantly affects document and electronically stored information retention polices, which should now be extended to compensate for the extended time period under which liability can now be sought. For potential litigants, the finding that the Executive Orders definitively constitute a toll is just another way that the COVID-19 Pandemic will continue to linger.

Jarrett M. Behar is Co-Chair of the Litigation Group at Certilman Balin Adler & Hyman, LLP.

PREVIOUS
Islam joins Real Proper...

NEXT
David Lieser Talks Abo...

January 2024
November 2023
September 2023
August 2023
June 2023
May 2023
March 2023
February 2023
January 2023
December 2022
November 2022
September 2022
August 2022
July 2022
June 2022
May 2022
April 2022
March 2022
February 2022
January 2022
October 2021
August 2021
June 2021
May 2021
March 2021
February 2021
January 2021
November 2020
October 2020
September 2020
August 2020
July 2020
June 2020

May 2020

April 2020

March 2020

June 2019

May 2019

April 2019

Nassau

90 Merrick Avenue
East Meadow, NY 11554
Phone: 516.296.7000
Fax: 516.296.7111

Suffolk

100 Motor Parkway, Suite 560
Hauppauge, NY 11788
Phone: 631.979.3000
Fax: 631.979.7070

New Jersey

Park 80 West, Plaza II
250 Pehle Avenue, Suite 200
Saddle Brook, NJ 07663
Phone: 201.778.3424

Quick Links

Home

About the Firm

Practice Areas

Attorneys

Diversity Statement

Website Accessibility Statement

Client Payments

Nonprofit Resource Hub

New Opinion Issued by Court of Appeals Clarifies Tolling Period Established by Supreme Court's COVID Emergency Orders

by KPMLAW | Dec 19, 2022 | Court, Covid, KPMBlog, News, Profiles, Uncategorized, Updates | 0 comments

KPM LAW
KALBAUGH PFUND & MESSERSMITH, P.C.

CALL TODAY
800.606.3350

CONTACT US

Written by Stephanie G. Cook, Esq.

Edited by Bill Pfund, Esq.

Between March 16, 2020 and July 8, 2020, the Supreme Court issued several "emergency orders" in response to the COVID-19 pandemic, which tolled all statute of limitations.

Since then, there has been considerable debate as to when the tolling period created by these emergency orders runs. In fact, the courts in Virginia have essentially been split on the issue. See Tinsley v. Clarke, 2022 U.S. Dist. Lexis 56625 (W.D. Va. March 28, 2022) and Proctor v. AECOM, Inc., 2021 U.S. Dist. Lexis 162142 (E.D. Va. August 26, 2021); see also English v. Quinn, 2022 Va. Cir. Lexis 7 (Roanoke City Cir. Court Feb. 7, 2022); but then see Ceriani v. Dionsysus, Inc., 2022 U.S. Dist. Lexis 73499 (E.D. Va. April 20, 2022); Heck v. Guion, 108 Va. Cir. 179 (City of Chesapeake Cir. Court June 4, 2021) and Brown v. State Farm, 107 Va. Cir. 343 (Culpeper County Cir. Court March 11, 2021).

In general, plaintiffs have taken the position that the emergency orders tolled and extended all statutes of limitations. Thus, plaintiffs argued they had an additional 126 days (the time between March 16, 2020 and July 8, 2020) to file their Complaint in a personal injury action. For example, in Virginia, the statute of limitations for a personal injury suit is 2 years. Assume the date of an automobile accident was November 19, 2019. Generally, the time for plaintiff to file his or her suit in such a case would have run by November 19, 2021. However, due to these emergency orders, a plaintiff would likely argue that the limitations period did not run until March 25, 2023 (126

days after November 19, 2021); and thus, he or she had until March 25, 2023 to file a complaint. The defendant, on the other hand, may have filed a plea in bar to any complaint filed after November 19, 2021, arguing that the statute of limitations has run. This is because the defense side of the bar has generally argued that the tolling period created by the emergency orders only operated to extend the statute of limitations for plaintiffs whose 2 year statute of limitations ran during the emergency period (or between March 16, 2020 and July 8, 2020).

This is precisely what happened in English v. Quinn, a circuit court case decided in Roanoke City Circuit Court. Quinn, 2022 Va. Cir. Lexis 7 (Roanoke City Cir. Court Feb. 7, 2022). In Quinn, the subject of the suit was an automobile accident which occurred on July 28, 2018 and resulted in personal injuries. The plaintiff, English, did not file a complaint until November 30, 2020. The defendant, Quinn, filed a plea in bar asserting that English had not filed his complaint within the two year statute of limitations or July 28, 2020. Quinn argued that "only a Statute of Limitations that ran during the 126 day period was tolled by the Orders." In other words, the judicial emergency orders did not extend the limitations period for English's claim because the limitations period for English's claim expired outside of the emergency period.

The circuit court agreed with the defendant, Quinn, and found that the tolling provisions applied only to the "Statute of Limitations and deadlines that would expire during the tolling period." Therefore, the circuit court found English's claim was time barred and dismissed the case.

English appealed, and the Court of Appeals reversed the circuit court's decision. After analyzing the language of the emergency orders, the Court of Appeals reasoned that these orders "temporarily stopped the running of all statutes of limitations between March 16, 2020 and July 19, 2020." English v. Quinn, 2022 Va. App. Lexis 603 (Nov. 29, 2022). The Court of Appeals further found that the "orders instructed that the time remaining when the tolling period commenced was to be added after the judicial emergency ended." Quinn, 2022 Va. App. at 9.

Applying these rulings to the facts in Quinn, the Court of Appeals explained that English had 135 days remaining in the statute of limitations period when the clock stopped on March 16, 2020. (There are 135 days between March 16, 2020 and July 28, 2020, the date the statute of limitations would have run for his case.) Therefore, English was allowed to add 135 days after July 20, 2020 when the clock re-started; and he had until December 1, 2020 to file his complaint.

It will be interesting to see if this decision is appealed to the Supreme Court of Virginia. We, at KPM, will keep you posted.

Submit a Comment

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Website

Submit Comment

42 USCS § 1981, Part 1 of 4

Current through Public Law 118-46, approved March 22, 2024, with a gap of Public Law 118-42.

United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 164) > CHAPTER 21. CIVIL RIGHTS (§§ 1981 — 2000h-6) > GENERALLY (§§ 1981 — 1996b)

§ 1981. Equal rights under the law

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined. For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

History

HISTORY:

R.S. § 1977; Nov. 21, 1991, *P. L. 102-166*, Title I, § 101, *105 Stat. 1071*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Short titles:

Amendment Notes

1991.

Other provisions:

Explanatory notes:

This section was based upon Act May 31, 1870, ch 114, § 16, *16 Stat. 144*.

This section formerly appeared as *8 USCS § 41*.

Similar provisions were contained in Act April 9, 1866, ch 31, § 1, *14 Stat. 27*.

Short titles:

Act Oct. 19, 1976, *P. L. 94-559*, § 1, *90 Stat. 2641*, provided: "This Act [amending *42 USCS § 1988*] may be cited as 'The Civil Rights Attorney's Fees Awards Act of 1976'.".

Act Nov. 21, 1991, *P. L. 102-166*, § 1, *105 Stat. 1071*, provides: "This Act may be cited as the 'Civil Rights Act of 1991'.". For full classification of such Act, consult USCS Tables volumes.

Amendment Notes

1991.

Act Nov. 21, 1991 (effective and applicable as provided by § 402 of such Act, which appears as a note to this section) designated the existing text of this section as subsec. (a); and added subsecs. (b) and (c).

Other provisions:

Civil Rights Act of 1991; Congressional findings. Act Nov. 21, 1991, *P. L. 102-166*, § 2, *105 Stat. 1071*, provides:

"The Congress finds that—

> "(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;
>
> "(2) the decision of the *Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)* has weakened the scope and effectiveness of Federal civil rights protections; and
>
> "(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.".

Civil Rights Act of 1991; purposes. Act Nov. 21, 1991, *P. L. 102-166*, § 3, *105 Stat. 1071*, provides:

"The purposes of this Act are—

> "(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;
>
> "(2) to codify the concepts of 'business necessity' and 'job related' enunciated by the *Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971)*, and in the other Supreme Court decisions prior to *Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)*;
>
> "(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (*42 U.S.C. 2000e* et seq.); and
>
> "(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.".

Construction of Act Nov. 21, 1991 in relation to Wards Cove—Business necessity/cumulation/alternative business practice. Act Nov. 21, 1991, *P. L. 102-166*, Title I, § 105(b), *105 Stat. 1075*, provides: "No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15275 (daily ed. Oct. 25, 1991) shall be considered legislative history of, or relied upon in any way as legislative history in construing or

applying, any provision of this Act [for full classification, consult USCS Tables volumes] that relates to Wards Cove—Business necessity/cumulation/alternative business practice.".

Lawful court-ordered remedies, affirmative action, and conciliation agreements not affected. Act Nov. 21, 1991, *P. L. 102-166*, Title I, § 116, *105 Stat. 1079*, provides: "Nothing in the amendments made by this title [for full classification, consult USCS Tables volumes] shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.".

Alternative means of dispute resolution. Act Nov. 21, 1991, *P. L. 102-166*, Title I, § 118, *105 Stat. 1081*, provides: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title [for full classification, consult USCS Tables volumes].".

Act Nov. 21, 1991; severability. Act Nov. 21, 1991, *P. L. 102-166*, Title IV, § 401, *105 Stat. 1099*, provides: "If any provision of this Act or an amendment made by this Act [for full classification, consult USCS Tables volumes], or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act [for full classification, consult USCS Tables volumes], and the application of such provision to other persons and circumstances, shall not be affected.".

Effective date and applicability of the Civil Rights Act of 1991. Act Nov. 21, 1991, *P. L. 102-166*, Title IV, § 402, *105 Stat. 1099*, provides:

"(a) In general. Except as otherwise specifically provided, this Act and the amendments made by this Act [for full classification, consult USCS Tables volumes] shall take effect upon enactment.

"(b) Certain disparate impact cases. Notwithstanding any other provision of this Act, nothing in this Act [for full classification, consult USCS Tables volumes] shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983.".

Ex. Or. No. 13050 revoked. Ex. Or. No. 13050 of *June 13, 1997, 62 Fed. Reg. 32987*, which formerly appeared as a note to this section, was revoked by Ex. Or. No. 13138 of *Sept. 30, 1999, 64 Fed. Reg. 53879*, which appears as 5 USCS Appx § 14 note. The revoked Order provided for a President's Advisory Board on Race.

NOTES TO DECISIONS

Section 1981

Section 1981 is a shorthand reference to 42 U.S.C. § 1981, which derives from Section 1 of the 1866 Civil Rights Act. The statute establishes that certain rights are to be guaranteed to all citizens of the United States, and these rights are to be protected against impairment by nongovernment and state discrimination. More specifically, Section 1981(a) guarantees the following rights: "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

While similar in protecting against unjust discrimination, Section 1981 differs from Title VII of the 1964 Civil Rights Act. Section 1981 applies only to intentional racial discrimination, while Title VII applies to intentional discrimination and disparate impact discrimination on race, color, national origin, sex, or religion. Title VII also requires an EEOC charge to be filed before bringing their claims in court and has a cap on damages. Plaintiffs alleging racial discrimination will often allege Section 1981 and Title VII claims together (provided the plaintiff filed an EEOC charge and has received a right to sue letter from the EEOC).

Section 1981 protection against discrimination in actions taken by the federal government, but also by the state governments and private individuals. For example, in *Jones v. Alfred H. Mayer Co.*, the U.S. Supreme Court confirmed that Section 1981 bars all racial discrimination, private as well as public, in sale or rental or property. Also, the U.S. Supreme Court, in *CBOCS West, Inc. v. Humphries* ruled that Section 1981 extends to retaliation claims.

[Last updated in April of 2021 by the Wex Definitions Team]

- wex
  - CIVICS

arbitrary

1. When used in reference to a judge's ruling in a court case, arbitrary means based on individual discretion rather than a fair application of the law. For example, finding someone guilty of a crime simply because they have a beard would be an arbitrary decision. However, a discretionary decision is not always arbitrary. Although, the law sometimes gives judges discretionary powers, it also requires them to act within boundaries when applying general principles of law to the facts of a particular case. As a result, a judge cannot act in disregard of the evidence or ignore established precedent. Such disregard would be arbitrary.

2. Historically, arbitrary has also been used to describe the actions of the executive and legislative branches. The concern of arbitrariness arose in part because chancellors' broad discretionary powers were often accused of being arbitrary. In a democracy, arbitrariness cannot be allowed; but discretion is sometimes allowed by law.

[Last updated in May of 2020 by the Wex Definitions Team]

- wex
  - CIVICS
  - civil rights
  - the Constitution
  - THE LEGAL PROCESS
  - courts
  - wex definitions

precedent

Precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues. Precedent is incorporated into the doctrine of stare decisis and requires courts to apply the law in the same manner to cases with the same facts. Some judges have stated that precedent ensures that individuals in similar situations are treated alike instead of based on a particular judge's personal views.

If the facts or issues of a case differ from those in a previous case, the previous case cannot be precedent. The Supreme Court in Cooper Industries, Inc. v. Aviall Services, Inc. reiterated that "[q]uestions which merely lurk on the record, neither brought to the attention of the court nor ruled upon, are not to be considered as . . . precedent[]." Therefore, a prior decision serves as precedent only for issues, given the particular facts, that the court explicitly considered in reaching its decision.

Precedent is generally established by a series of decisions. Sometimes, a single decision can create precedent. For example, a single statutory interpretation by the highest court of a state is generally considered originally part of the statute.

[Last updated in May of 2020 by the Wex Definitions Team]

- wex
  - THE LEGAL PROCESS
  - civil procedure
  - wex definitions

civil liberties

Civil liberties are freedoms guaranteed by the U.S. Constitution (primarily from the First Amendment). They are natural rights which are inherent to each person. While they are commonly referred to as "rights," civil liberties actually operate as restraints on how the government can treat its citizens. As such, the First Amendment's language ("congress shall make no law") explicitly prohibits the government from infringing on liberties, such as the freedom of speech.

While certain rights can be considered both a civil right and a civil liberty, the distinction between the two lies within the source and target of the authority.

- Civil liberties are constitutionally protected freedoms.
- Civil rights are claims built upon legislation.

A violation of civil rights affords the injured party a right to legal action against the violator. For example, the freedom of religion is recognized as both a civil right and civil liberty; it is protected under the Constitution from government infringement (liberty) as well as under the Civil Rights Act of 1964 from being the basis of discriminatory practices.

[Last updated in July of 2022 by the Wex Definitions Team]

- wex
  - CIVICS
  - civil rights
  - human rights
  - the Constitution
  - government
  - constitutional law
  - group rights
  - individual rights
  - wex definitions