

NO. 24 - 2232 – Third Circuit

**IN THE
SUPREME COURT OF THE UNITED STATES**

**NO. 24-2232
UNITED STATES COURT OF- APPEALS FOR THE THIRD CIRCUIT**

**NO. 2:23-CV-03993
DISTRICT COURT EASTERN PENNSYLVANIA: IFP; 07 - 09 – 2024**

**NO.1:23-CV-01303-AT-OTW
SOUTHERN DISTRICT COURT NEW YORK**

**NO. 10215777
NEW YORK STATE DIVISION OF HUMAN RIGHTS**

Judy Christian Percival,

Petitioner,

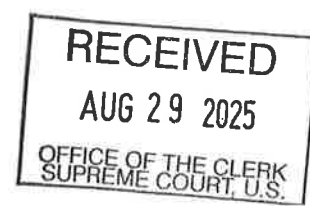
v.

United States Court of Appeals for The Third Circuit,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit**

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**



JUDY C. PERCIVAL
Appellant/Petitioner
P O Box 100528
Palm Bay, Florida
Krupek_1999@yahoo.com
407-272-7607

To the **Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Third Circuit.** I am the Petitioner Judy Christian Percival, whose prayer request is for a 60 - day extension of time, to and including September 4, 2025, in which to file a petition for a writ of certiorari. In support of this request, I respectfully submit the following:

1. On June 6, 2025, the United States Court of Appeals for the Third Circuit issued a 'NOT PRECEDENTIAL' Judgment in my case. It does not comport with the United States Supreme Court fair hearings for due process (Attached 1). The bases of respective decisions from the New York State Division of Human Rights to the Third Circuit have been based on " ... faulty historical analysis ...", as cited in your Honor's Opinion; *Dobbs v. Jackson Women's Health Organization*, 597 US - (2022). Petitioner seeks an opportunity to address the falsehoods in Judgment, right the wrongs; and represent those who are denied justice because they 'self- represent', out of necessity.

Incontrovertible evidence will show concerted efforts were made to impugn the veracity of Petitioner's Briefs. Due process was ignored to skew the outcome of this case at each level. Obvious falsehoods by three different Defense Counsels were overlooked in order to arrive at the conclusion favorable to the Respondents.

Moreover, the issue of wrong address does not make sense; it is not the case of a wrong physical address. The digital footprint shows that my complaint was at the Southern District of New York on 1/25/23. It is not beyond the scope of the Courts' collective intellect to analyze and make proper application of the evidence provided

by the digital footprint. This was inherent from the beginning of the case. This should not be qualified by the Third Circuit of Appeals Court' as: (Attached 1) - Footnote 6 page 4;

While Percival attached relevant documents to her original complaint, she did not attach those documents to the amended complaint, and thus they are not part properly part of the motion-to dismiss analysis.

This also contradicts The Presiding Judge's opinion that he made the (wrong) assumption that I was submitting the same information on June 11, 2024 Judgment, and rushed to dismiss the case. He rushed to dismiss the case with the knowledge that I was submitting clear and concise technical information, the next day.

It is not the issue of 'wrong Court; wrong time'; the issue was that the file was too large to be uploaded. However, the acceptable file dimension was not indicated by the Clerk's office until, the second submission. The presiding Judge made the case for equitable tolling, if the file/complaint was at the wrong 'address', but also timely filed. Incontrovertible evidence will show that the Southern District of New York erred in not providing the size dimension in instruction packet; that the underscore symbol in the e-mail address was obscured by the line that ran concurrently with the address; that it can benefit all users by minor change to distinguish clearly between the two; and that the complaint file was actually at the right place at the right time. This is

evidenced by Clerk at the SDNY's admission that the file was too large to be uploaded.

I did not make a duplicitous argument for equitable tolling. Since the presiding Judge deemed equitable tolling to be applicable at right time, wrong address; my parallel argument is that, since the SDNY's digital address is not physical, but technical and the complaint file was actually present at the SDNY; my complaint file was at the right 'address', at the right time. The use of technology is provided by the Court; and thus, should be acceptable in all circumstances.

There is much more evidence to be submitted; for example, the date of filing was changed from 1:23 – 1303 SDNY to 2:23 – 03993 EDPA by the Defense Counsel and the EDPA; and Attorney Donnelly Bush attempted to correct, what was clearly a mistake, the date that she entered in Amended Complaint: February 10, 2023. She was not allowed to do so. Comprehensive and veritable arguments are provided in my briefs.

The Third Circuit Court has contravened the reason for Judgment of the Presiding Judge of the EDPA in reaching its conclusion; the Court at the EDPA and the Defense Counsel have both attempted to make me miss deadlines set by the Court, by mailing documents later than they documented that they have or should have mailed them; and the New York State Division of Human Rights issued a finding of No Probable Cause; after its official claim of "VERIFIED COMPLAINT Pursuant to

Executive Law' Article 15; and issued the case number 10215777. This was supported by Federal Charge No. 16GC2201520 (Attached 2). This case was simultaneously rendered one of a **Federal Question** by the New York Division of Human Rights.

2. Petitioner has ninety days from the date cited above, June 6, 2025, to file a petition for a writ of certiorari; Sup. Ct. R. 13.3. The petition is therefore due on September 4, 2025. This application is being filed at least ten days before that date.

3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

4. It is beneficial for the Court to know that it is extremely painful to complete this 'writ'. The request for 60 days is because I have been ill for more than 60 days. I was admitted to the emergency room on June 8, 2025. I did not know that the judgment had been rendered on June 6, 2025. I have been sick and hospitalized multiple times since June 8th, 2025. The latest admission was August 17, 2025; my hands were swollen and extremely painful- painful beyond comprehension, and with many tears. This resulted from a fall which I sustained on August 2, 2025. Instinctively, I tried to break the fall; and caused the severe damage to my hands.

Besides, I was given 15 days to request a rehearing; and received a Bill of Cost - taxed against Appellant for \$538.30 (Attached 3).

It is for these reasons that I make this prayer to the Court to grant 60 days of extension time to complete the Writ of Certiorari; with an order from this honorable Court.

Respectfully submitted


/s/ Judy Percival

JUDY C. PERCIVAL
Appellant/Petitioner
P O Box 100528
Palm Bay, Florida
Krupek_1999@yahoo.com
407-272-7607

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2232

JUDY CHRISTIAN PERCIVAL,
Appellant

v.

KELLEY ZIMMERMAN; JOANNE MULLIN; POLICE CHIEF ROBERT ADAMS;
SYLVIA SULLIVAN; TERRI GROVER; AXION HEALTHCARE LLC; AXION
CONTACT CENTER LLC, DBA Axion Healthcare Solutions LLC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:23-cv-03993)
District Judge: Honorable Chad F. Kenney

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 5, 2025
Before: KRAUSE, PHIPPS, and ROTH, Circuit Judges

(Opinion filed: June 6, 2025)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Judy Percival appeals the District Court's orders dismissing her complaint as time-barred and denying her motion for reconsideration. Because the District Court did not err in deeming the claim time barred, we will affirm the judgment.

I.

Percival, a Florida resident, was employed by Axion Contact Center from April 2016 to January 2018, and then again from August 2020 to January 2022. Percival was terminated from her position, and she filed complaints alleging employment discrimination with the New York State Division of Human Rights ("NYSDHR") and the Equal Employment Opportunity Commission ("EEOC"). After the investigations closed, the EEOC issued Percival a right-to-sue letter that she received on October 28, 2022.

Percival filed a pro se federal complaint in the Southern District of New York via email to its temporary pro se filing email address.¹ To the complaint, Percival attached several Microsoft Outlook generated delivery notifications from her attempts at filing that included handwritten notes of Percival's communications with the pro se office. The District Court docketed the complaint on February 10, 2023. Percival hired an attorney who filed the operative amended complaint on June 30, 2023. The case was transferred to the District Court for the Eastern District of Pennsylvania on stipulation by the parties.

¹ Under Fed. R. Civ. P. 5(d)(3)(b), a pro se litigant may file electronically if allowed by court order or local rule. When Percival filed, the Southern District allowed pro se litigants to file via email to: temporary_pro_se_filing@nysd.uscourts.gov. See <https://nysd.uscourts.gov/sites/default/files/2021-04/2021-04-21-Email-Instructions-pro-se-filings-final.pdf>.

Appellee² filed a motion to dismiss under Federal Rule of Civil Rule 12(b)(6) asserting that Percival had failed to file her original complaint within 90 days of receiving a right-to-sue letter from the EEOC as required by 42 U.S.C. § 2000e-5(f)(1). Appellee further asserted that Percival had failed to exhaust her administrative remedies, and that she otherwise failed to state a plausible claim under the ADA. The District Court determined the complaint was untimely on its face and granted Appellee's motion to dismiss.³ Percival filed several letter motions for reconsideration, which the District Court denied. Percival timely appealed.⁴

II.

In her briefs,⁵ Percival argues that the District Court ignored evidence demonstrating that she had timely filed her complaint. In the alternative, Percival argues that the District Court erred in not applying equitable tolling because Appellee had

² Appellee refers only to Axion Contact Center as the parties' prior stipulation dismissed with prejudice Percival's claims against the individual defendants.

³ Because the District Court dismissed the complaint solely as being time barred and declined to reach Appellee's other arguments as to why Percival had failed to state a claim, we do not address her arguments on appeal regarding the merits of the case. See Singleton v. Wulff, 428 U.S. 106, 120 (1976) (noting the "general rule . . . that a federal appellate court does not consider an issue not passed upon below").

⁴ We have jurisdiction under 28 U.S.C. § 1291. We may affirm the District Court's judgment on any basis supported by the record. See Hildebrand v. Allegheny County, 757 F.3d 99, 104 (3d Cir. 2014).

⁵ Percival filed an informal brief and a supplemental brief. She also filed a motion for leave to file a second supplemental brief, which we grant. We will consider the issues she raised in the three briefs.

interfered with her ability to file in an “extraordinary way,” namely by hijacking her email and rerouting documents she had been sending to her then-lawyer in support of her complaint.

Statutes of limitations are affirmative defenses that may only be addressed on a Rule 12(b)(6) motion if untimeliness is apparent on the face of the complaint. Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014). Where, as here, the District Court considered documents beyond the face of the pleadings to determine the date of filing and considered whether equitable tolling applied,⁶ the issue should have been treated “in a manner consistent with Rule 56 for summary judgment.” Robinson v. Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997). “However, we will not reverse the district court’s dismissal if, applying the same test the district court should have utilized initially, plaintiff is not entitled as a matter of law to equitable tolling.” Id. (cleaned up). The summary judgment standard requires that “we view the evidence in the light most favorable to [Percival] and take all of [her] allegations as true.” Id.

A.

To bring an ADA discrimination claim in federal court, the plaintiff must file a claim with the EEOC, receive a right-to-sue letter, and then file her federal complaint

⁶ While Percival attached relevant documents to her original complaint, she did not attach those documents to the amended complaint, and thus they are not properly part of the motion-to-dismiss analysis. See Royal Canin U. S. A., Inc., v. Wullschleger, 604 U.S. 22, 35 (2025); Evergreen Partnering Grp., Inc. v. Pactiv Corp., 720 F.3d 33, 40 n.2 (1st Cir. 2013).

within 90 days of receipt of the letter. Ebbert v. DaimlerChrysler Corp., 319 F.3d 103, 108, 108 n.4 (3d Cir. 2003); 42 U.S.C. § 2000e-5(f)(1). Percival received her right-to-sue letter on October 28, 2022, giving her until January 26, 2023, to file her federal complaint.

The District Court determined the complaint was untimely based on the evidence Percival claims was ignored. As the District Court noted, Percival twice attempted to file via email on January 25, 2023. Her first attempt returned a Microsoft Office notification that delivery had failed. Her second attempt returned a notification that delivery was complete. On January 26, 2023, Percival sent another email and received the same notification. Both of those emails were sent to temporaryprosefiling@nysd.uscourts.gov, rather than the address that the Southern District provided, temporary_pro_se_filing@nysd.uscourts.gov. The documents then show Percival called the pro se office on February 10, 2023, when she was informed that there were “no records located” and she should “send again” to temporary_pro_se_filing@nysd.uscourts.gov.

A complaint is considered filed when it is received by the Clerk. See, e.g., McDowell v. Delaware State Police, 88 F.3d 188, 191 (3d Cir. 1996). The record evidence shows that the Clerk’s Office received only Percival’s properly addressed February 10, 2023 complaint. Thus, the District Court correctly determined that the complaint was filed on that date—more than 90 days after Percival received the right-to-sue letter.

B.

We have construed the 90-day period as a strict statute of limitations and have held that “in the absence of some equitable basis for tolling, a civil suit filed even one day late is time-barred and may be dismissed.” Burgh v. Borough Council of Montrose, 251 F.3d 465, 470 (3d Cir. 2001) (citation omitted). Equitable tolling has been found appropriate in “sufficiently inequitable circumstances [such as] (1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.” Hedges v. United States, 404 F.3d 744, 751 (3d Cir. 2005) (cleaned up). However, equitable tolling is applied “sparingly” and is not available where there is only a “garden variety claim of excusable neglect.” Irwin v. Dep’t of Veterans Affs., 498 U.S. 89, 96 (1990).

Percival claims that Appellee hijacked her email, which “in some extraordinary way” prevented her from asserting her rights. But there is no evidence in the lengthy record supporting Percival’s allegation that Appellee had hijacked her email or that Appellee had rerouted her emails and prevented her from sending documents to her then-lawyer. Further, Percival alleged that this hijacking occurred on January 23, 2023, and she does not allege that Appellee interfered with her emails to the District Court on January 25 and 26, 2023. Percival was thus not prevented “in some extraordinary way” from asserting her rights.

Further, courts have held that mailing a complaint or appeal to the wrong address despite proper instructions, without more, is one of those “garden variety claim[s] of excusable neglect” to which equitable tolling does not apply. See, e.g., Thompson v. Comm’r of Soc. Sec. Admin., 919 F.3d 1033, 1036–37 (8th Cir. 2019) (holding no equitable tolling applied because by mailing the appeal to the wrong address after being provided proper instructions, the plaintiff was “responsible for his own delay” and there had been “no external obstacle that prevented a timely filing”); see also Holland v. Florida, 560 U.S. 631, 657 (2010) (Alito, J., concurring) (characterizing “mail[ing] the petition to the wrong address” as an example of an error that would not warrant tolling). Percival similarly failed to fully follow the instructions provided her, see supra n.1, and thus sent her complaint to the wrong email address. Because her failed filing was due to her own error, Percival is not entitled to equitable tolling on that basis, either.

Because Percival is as a matter of law not entitled to equitable tolling, we will affirm the District Court’s judgment.⁷

⁷ We review the District Court’s denial of a motion for reconsideration for abuse of discretion, Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999), which we do not discern here. Percival did not present any evidence that had not been available to her prior to the April 2, 2024 order and judgment.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

JUDY CHRISTIAN PERCIVAL,

Complainant,

v.

AXION HEALTHCARE, LLC,

Respondent.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.

10215777

Federal Charge No. 16GC201520

I, Judy Christian Percival, residing at PO Box 100528, Palm Bay, FL, 32907, charge the above-named respondent, whose address is 1430 Broadway, 7th Floor, New York, NY, 10018 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of disability, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 1/3/2022.

The allegations are:

Please See Attached Complaint Form

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of disability, opposed discrimination/retaliation, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating the Americans with Disabilities Act (ADA) (covers disability relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

RT

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

June 30, 2025

Mr. George V. Wylesol
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA 19106

RE: Judy Percival v. Kelley Zimmerman, et al
Case Number: 24-2232
District Court Case Number: 2:23-cv-03993

Dear District Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order shows costs taxed, if any.

s/ Patricia S. Dodszuweit
Clerk

pdb for kr Case Manager

cc: Marjorie M. Obod, Esq.
Judy Christian Percival

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-2232

JUDY CHRISTIAN PERCIVAL,
Appellant

v.

KELLEY ZIMMERMAN; JOANNE MULLIN; POLICE CHIEF ROBERT ADAMS;
SYLVIA SULLIVAN; TERRI GROVER; AXION HEALTHCARE LLC; AXION
CONTACT CENTER LLC, DBA Axion Healthcare Solutions LLC

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:23-cv-03993)
District Judge: Honorable Chad F. Kenney

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 5, 2025
Before: KRAUSE, PHIPPS, and ROTH, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on March 5, 2025. On consideration whereof,

It is now hereby ORDERED and ADJUDGED by this Court that the judgments of the District Court entered April 3, 2024 and June 11, 2024, be and the same are hereby affirmed. Costs taxed against the appellant.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: June 6, 2025

Cost taxed in favor of Appellee as follows:

Brief.....\$538.30.

Total.....\$538.30.



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit