

NOT DESIGNATED FOR PUBLICATION

RICHARD LEWIS * **NO. 2015-CA-0032**
VERSUS *
ROBERT COSTIGAN * **COURT OF APPEAL**
FLOWERS AND * **FOURTH CIRCUIT**
NATIONWIDE MUTUAL *
INSURANCE COMPANY **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-03922, DIVISION "L-6"
Honorable Kern A. Reese, Judge
* * * * *

Judge Terri F. Love
* * * * *

(Court composed of Judge Terri F. Love, Judge Paul A. Bonin, Judge Madeleine M. Landrieu)

LANDRIEU, J., CONCURS WITH REASONS

Tim L. Fields
Attorney at Law
1750 St. Charles Avenue, Unit CU1
New Orleans, LA 70130

COUNSEL FOR PLAINTIFF/APPELLEE, RICHARD LEWIS

Maria Barrios deGracia
LAW OFFICE OF MARIA B. DEGRACIA
3850 N. Causeway Blvd., Suite 1230
Metairie, LA 70002

COUNSEL FOR DEFENDANT/APPELLANT, NATIONWIDE MUTUAL
INSURANCE COMPANY

APPEAL CONVERTED TO A WRIT; WRIT DENIED
May 27, 2015

On April 19, 2013, Richard Lewis was involved in a vehicular accident with Robert Costigan Flowers, who was insured by Nationwide Mutual Insurance Company (“Nationwide”). Mr. Lewis filed suit against Mr. Flowers and Nationwide. Nationwide filed an Exception of Prescription asserting that Mr. Lewis’ suit was prescribed. The trial court denied Nationwide’s exception, and Nationwide filed a motion for a suspensive appeal.

The denial of an exception of prescription is an interlocutory judgment not subject to appeal. La. C.C.P. art. 2083. As such, we converted the appeal to an application for supervisory review in an order dated April 28, 2015. *See State v. Williams*, 12-1092, p. 1 (La. App. 4 Cir. 4/24/13), 115 So. 3d 702, 703; *Delahoussaye v. Tulane Univ. Hosp. & Clinic*, 12-0906, pp. 4-5 (La. App. 4 Cir. 2/20/13), 155 So. 3d 560, 562.

The factual conclusions made by the trial court when deciding an exception of prescription are reviewed under the manifest error/clearly wrong standard of review. *Scott v. Zaheri*, 14-0726, p. 8 (La. App. 4 Cir. 12/3/14), 157 So. 3d 779, 785. “The standard controlling our review of a peremptory exception of prescription also requires that we strictly construe the statutes against prescription and in favor of the claim that is said to be extinguished.” *Id.*

Nationwide contends that Mr. Lewis' suit was prescribed because he fax-filed the Petition for Damages on April 21, 2014, but the documents were not stamped as filed until May 1, 2014, when the Clerk of Court processed the filing fees.

La. R.S. 13:850 provides, in pertinent part:

A. Any paper in a civil action may be filed with the court by facsimile transmission. All clerks of court shall make available for their use equipment to accommodate facsimile filing in civil actions. Filing shall be deemed complete at the time that the facsimile transmission is received and a receipt of transmission has been transmitted to the sender by the clerk of court. The facsimile when filed has the same force and effect as the original.

B. Within seven days, exclusive of legal holidays, after the clerk of court has received the transmission, the party filing the document **shall forward** the following to the clerk:

- (1) The original signed document.
- (2) The applicable filing fee, if any.
- (3) A transmission fee of five dollars.

C. If the party fails to comply with the requirements of Subsection B, the facsimile filing shall have no force or effect. The various district courts may provide by court rule for other matters related to filings by facsimile transmission.

(Emphasis added). The Louisiana Supreme Court held that “forward” means that the litigant must send, using the U.S. mail for example, the documents and fees to the Clerk of Court. *Hunter v. Morton’s Seafood Rest. & Catering*, 08-1667, pp. 5-6 (La. 3/17/09), 6 So. 3d 152, 156.

The trial court stated: “[c]ounsel, I’m going to deny the Exception. I take counsel at his word that it was mailed on the 25th. I’m not going to dismiss his case based on that.”

It is undisputed that the fax filing of the Petition for Damages on April 21,

2014, was timely. In opposition to the exception of prescription, Mr. Lewis contended that the original petition and applicable filing fees were forwarded to the Clerk of Court on April 25, 2014, via the U.S. mail. The Clerk of Court stamped the Original Petition for Damages as filed and issued a receipt for the applicable filing fees on May 1, 2014.

When counsel for Mr. Lewis mailed the original Petition for Damages and filing fees on April 25, 2014, he complied with La. R.S. 13:850 and *Hunter*. The trial court made the factual finding that he would accept Mr. Lewis' counsel's representation that the documents were mailed. Accordingly, we find that the trial court did not commit manifest error in denying Nationwide's Exception of Prescription.

APPEAL CONVERTED TO WRIT; WRIT DENIED