

No. SC-CV-13-15

NAVAJO NATION SUPREME COURT

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Franklin J. Morris, As Personal Representative of the  
Wrongful Death Estate of Marcellino Morris Jr., Deceased,  
Plaintiff/Appellant,

v.

Giant Four Corners, Inc. d/b/a Giant #7251,  
Appellee.

OPINION

Before JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and TSINIGINE, T.,  
Associate Justice.

Appeal from a decision of the Crownpoint District Court concerning Case No. CP-CV-000036-  
2014, the Honorable Irene Toledo, presiding.

Zackeree S. Kelin, Albuquerque, New Mexico, for Appellant; Brian K. Nichols, Albuquerque,  
New Mexico, for Appellee.

This appeal concerns the requirements for filing a civil action in the district courts of the  
Navajo Nation.

I

The relevant facts are as follows. The Decedent Marcello Morris, Jr. died in a two  
vehicle accident on December 30, 2011. Appellant Franklin J. Morris (“Appellant”), personal  
representative of the Estate, sued Appellant Giant Four Corners, Inc. (“GFC”) and Andy Ray  
Denny (“Denny”). Appellant alleged Denny was driving while intoxicated and struck the vehicle  
of Morris, killing him. The claim against GFC was “negligent entrustment of chattel” for the  
alleged sale of gasoline and water to stranded motorists. Appellant settled with Denny and this  
appeal involves only GFC.

On December 27, 2013, Appellant faxed a copy of his Complaint for Wrongful Death and Jury Demand (“Complaint”) along with a cover letter stating the original complaint, filing fee and summons were mailed on December 23, 2013. Appellant spoke with a court clerk to confirm receipt of the faxed Complaint. GFC filed its Motion for Summary Judgment Based on Statute of Limitations (“Motion”) on July 31, 2014. Appellant filed a Response in Opposition and GFC filed a Reply. A hearing was held on October 29, 2014. The District Court ruled on GFC’s Motion for Summary Judgment on March 10, 2015.

The District Court granted GFC’s Motion for Summary Judgment concluding Appellant’s action was barred by the statute of limitations. In support of its decision, the District Court relied on the following: the decedent died on December 30, 2011; the Parties agreed the statute of limitation would expire on December 30, 2013; on December 27, 2013 Appellant faxed a copy of the Complaint to the District Court; the original Complaint and filing fee were received by mail on January 13, 2014; and the original Complaint was filed with the Court on January 21, 2014, docketed and the filing fee posted.

Relying on Rule 4(a) of the Navajo Rules of Civil Procedure, the Court concluded the faxed copy of the Complaint was date stamped but not docketed because there was no filing fee, or summons upon which the Clerk could act. The District Court also concluded that Appellant’s counsel was aware that more than a copy of a complaint was required to file an action because counsel mailed the summons and the court fee with the original complaint that was filed on January 21, 2014. Additionally, the District Court concluded that Appellant’s reliance on discussion the Clerk of Court as to the filing of the faxed complaint was improper, and that it was upon the Appellant’s counsel to properly file the Complaint and he failed to do so.

Appellant filed an appeal on March 23, 2015 asserting the District Court erred in granting summary judgment.

## II

The issues on appeal are whether the District Court properly granted summary judgment. We review whether the District Court erred by concluding the Complaint was deemed filed only after receipt of the filing fee; and after concluding there was no genuine issue of any material fact as to the filing date of the Complaint.

## III

Whether summary judgment was properly granted is a question of law. *Navajo Transport Services, Inc. v. Schroeder*, 9 Nav. R. 103, 104 (Nav. Sup. Ct. 2007)(citing *Benally v. Mobil Oil Corp.* 8 Nav. R. 387 (Nav. Sup. Ct. 2003)). The Court reviews such legal questions de novo, with no deference to the District Court's legal conclusion. *Id.*

## IV

Appellant asserts the District Court erred in concluding the Complaint was barred by the statute of limitations when the Complaint was faxed and date-stamped on December 27, 2013, pursuant to Rule 3 of the Navajo Rules of Civil Procedure. Appellant further asserts that by imposing Rule 4(a) instead of Rule 3, the district court erred in requiring court fees to be paid as a condition precedent to commence an action. Appellant claims a civil action begins by filing a complaint, which requires simple delivery per his reading of *In re Adoption of Baby Boy Doe*, 5 Nav. R. 141 (Nav. Sup. Ct. 1987). Appellant claims there are no rules that require court fees to be paid at the time the complaint is filed to commence an action. Appellant is incorrect and we reject Appellant's argument.

As discussed by the District Court, statutory law provides “There shall be *commenced* and prosecuted within two years after the cause of action accrues, and not afterward, the following civil actions: 1. For personal injuries. When death ensues from such injuries, such action for wrongful death shall be considered as accruing at the death of the party injured except as otherwise provided...” 7 N.N.C. § 602(A)(1) (emphasis added). The word “commenced” rather than “filed” is used. Court rules must be read with the statutory requirement. Since 1978, Rule 2 of the Navajo Rules of Court requires court fees to be paid for “All pleadings *initiating* an action which shall include complaints, petitions, applications, complaints in intervention, and post-decree motions to modify.” (Emphasis added.) Read together, we hold this means court fees must be paid for all pleadings initiating an action as a condition precedent to commencement of a civil action. The determination of whether a civil action has commenced is for the trial court to decide.

Rule 3 of the Navajo Rules of Civil Procedure when read alone, as argued by Appellant, is not controlling in this case. Rule 3 simply clarifies that a civil action begins, or initiates (for purposes of consistency), by filing a complaint. However, as mentioned above, court fees must be paid for all pleadings initiating an action. Rule 4(a) of the Navajo Rules of Civil Procedures provides “At the time the complaint is filed, the clerk shall place thereon the date and hour on which it was filed and the number of the action.”. This rule expounds upon the ministerial acts performed by the clerk to date stamp and assign a docket number for the action; it does not confer jurisdiction. Clerks are ministerial officers and do not have the authority to reject a civil action. *In the Matter of Filing Complaints and Petitions*, Administrative Order 18-99, September 13, 1999 (clarifying the court’s administrative procedure and implementing the case

management policy).<sup>1</sup> The judge has the authority to reject an action by issuing a written decision. *Id.* A party's failure to pay the filing fee at the time of filing the complaint may result in the rejection of the complaint. *Id.*

The purpose of summary judgment is to determine if there is a sufficient dispute as to the facts for a case to go to trial. *Jenson v. Giant Industries, Arizona, Inc.*, 8 Nav. R. 203 (Nav. Sup. Ct. 2002). The judgment sought shall be rendered if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Nav. R. Civ. P. 56. Here, the material facts before the District Court included: Appellant faxed his Complaint to the District Court on December 27, 2013. The faxed Complaint was the only document that was provided that day. The filing fee was not received that same day. Presented with these facts, the District Court concluded that with the absence of the filing fee, the faxed Complaint did not commence on December 27, 2013. The Court did not err in its legal conclusion that the civil action did not commence on December 27, 2013.

Appellant also asserts he relied on discussions with the clerk who received and conveyed the faxed complaint was "filed" as opposed to just "received" and met the statute of limitations deadline. The District Court looking to *Billie v. Abbott*, 5 Nav. R. 201, 202 (Nav. Sup. Ct. 1987), rejected that argument stating attorneys must not rely on oral communications solicited from court staff. The District Court further placed the legal responsibility on Appellant's counsel to make certain pleadings are properly filed. The District Court's ruling is supported by Navajo law.

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<sup>1</sup> <http://www.navajocourts.org/Rules/AdminOrder18-99.pdf>

Appellant raises the issue of whether the District Court erred in granting summary judgment when the requirements for summary judgment were not met because there was genuine issue of material fact concerning the filing date of the original Complaint. Appellant asserts the District Court made two different findings. Appellant also raises the argument that the discovery rule under 7 N.N.C. § 602(A)(4) extended the two-year period of limitation.

First, we address the discovery rule argument. The District Court concluded there is no dispute that the date of the statute of limitations would conclude on December 30, 2013. The record supports this material fact. In a letter filed as an exhibit to the motion opposing summary judgment, Appellant asserted in writing the statute of limitations would run on December 30, 2013. Record 21, Ex. D. This date corresponds with the death of the decedent as to the statute of limitation under 7 N.N.C. § 602(A)(1). Instead, Appellant raises a new argument that the statute of limitations was extended under the discovery rule as to GFC. Appellant claims GFC's identity and negligence was not discovered until January 18, 2012, extending the statute of limitation to January 18, 2014. Appellant had the opportunity to raise this argument in response to the Motion for Summary Judgment and at the hearing on October 29, 2014 but failed to do so. No new issues should be considered on appeal if it was not brought up in the lower tribunal. *Yazzie v. Tooh Dineh Industries, Inc.*, 9 Nav. R. 318 (Nav. Sup. Ct. 2010). The Court will not entertain this argument any further and will hold Appellant to his word.

As to the filing date of the original Complaint, Appellant points to the District Court's findings that the original Complaint was filed on January 21, 2014, docketed and the fee posted, *see Order*, at 1, and that the Complaint was filed on January 13, 2014 when the Clerk of Court received the complaint and fee for filing, *Order*, at 2. Appellant also argues the cover letter

accompanying the January 13, 2014 pleadings was stamped on January 6, 2014. Nevertheless, all these dates are beyond the agreed statute of limitations, or beyond the agreed date of December 30, 2013. Whether the mailed Complaint and the filing fee were filed on January 13th or 21st, or even the 6th, will not overcome the District Court's legal conclusion that the civil action did not commence on December 27, 2013. Here, the District Court found the original Complaint and filing fee were filed on January 13 2020. There being a legal presumption of regularity and legality that the clerk of court stamped the complaint on the date shown, *see Young v. Begay*, 3 Nav. R. 134 (Nav. Ct. App. 1982), Appellant failed to present clear evidence to overcome the presumption. The Court did not err in granting summary judgment concluding the Complaint was barred by the statute of limitations.

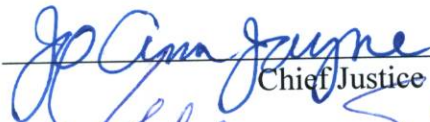
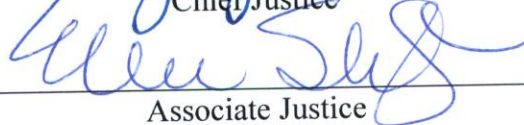
VI

As additional guidance to the District Courts, we clarify in addition to the above that all complaints, petitions, applications and other documents seeking relief must be filed no less than one hour upon receipt by the court. *Administrative Order 18-99*, at 3. This includes assigning a docket number and entering the action in the appropriate docket book or program. *Id.* Thereafter, the judge determines when a civil action commences.

VII

Based on the foregoing, the Court AFFIRMS the March 10, 2015 Order.

Dated this 10 day of August, 2020.

  
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Chief Justice  
  
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Associate Justice

/s/ Honorable Tina Tsinigine  
Associate Justice