

NO. A-09-1044

State of Minnesota
In Court of Appeals

LONNIE SINGELMAN,

Appellant,

v.

ST. FRANCIS MEDICAL CENTER,

Respondent.

BRIEF AND APPENDIX OF APPELLANT
LONNIE SINGELMAN

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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I. STATEMENT OF LEGAL ISSUES

- A. Did the trial court err by deciding disputed questions of material fact in granting summary judgment for Defendant?
- B. Is “delivery” to a Sheriff, undefined by M.R.C.P. Rule 3.01(c), accomplished on the date of mailing by USPS first class mail?
- C. Is estoppel of Defendant available to Plaintiff to avoid the Statute of Limitations?

II. STATEMENT OF THE CASE AND FACTS

Lonnie Singelman was injured in the course of a medical procedure performed by St. Francis Medical Center personnel on July 12, 2004.

After many months of contacts between, first, Singelman and St. Francis and, ultimately, Singelman's counsel and St. Francis' claims representative during which the nature, extent and cause of her injuries were thoroughly explored, on July 7, 2009, Singelman's counsel sent a Summons and Complaint to the Wilkin County, Minnesota Sheriff for service via U.S.P.S. First Class mail.

The Wilkin County Sheriff claimed that the Summons and Complaint were not received until July 17, 2009.

Service was made that same day.

St. Francis filed a Motion for Summary Judgment, claiming that the four year statute of limitations had run.

Singelman responded, arguing that a genuine issue of material fact existed as to whether Minn. R.Civ.P.R. 3.01(c) "delivery" had been made to the Wilkin County Sheriff prior to July 12, 2009.

Singelman alternatively argued that Rule 3.01(c) delivery is undefined and that, therefore, it ought to be effective upon mailing.

Lastly, Singelman urged that St. Francis ought to be estopped from asserting the Statute of Limitations by its actions and assertions over the many months it engaged in dialogue prior to July 12, 2009.

The trial court held a hearing on the motion on March 3, 2009.

On April 15, 2009, the court entered an Order, Order for Summary Judgment and Memorandum

granting St. Francis' motion that addressed neither the Rule 3.01(c) construction issue nor the estoppel issue raised by Singelman.

Singelman now appeals that trial court decision.

III. ARGUMENT

A. THE TRIAL COURT IMPERMISSIBLY RESOLVED MATERIAL DISPUTED FACTS TO JUSTIFY SUMMARY JUDGMENT

Lonnie Singelman's claim against St. Francis Medical Center is subject to the Minn. Stat §541.076(b) four year Statute of Limitations.

Singelman was injured on July 12, 2004.

On July 7, 2008, Singelman's counsel sent a Summons and Complaint to the Wilkin County Sheriff for service via U.S.P.S first class mail. (App. p. 5.)

Service was made on July 17, 2008—five days after the four year anniversary of Singelman's injury.

In support of its summary judgment motion, St. Francis, initially relied on correspondence from Wilkin County Sheriff Thomas Majtejka, notes made by "PMK" of the Wilkin County Sheriff's Department on the cover letter accompanying the Complaint (App. p. 10). and a document entitled "Wilkin County Sheriff's Office Civil Process" purporting to show that the Summons and Complaint had been received on July 17, 2008—some ten days after mailing from Moorhead, a mere 45 miles away. (App. pp: 9-12).

On March 25, 2009, St. Francis' counsel obtained an Affidavit from Wilkin County Sheriff's Department employee Patricia M. Kloster asserting that the complaint had been "received" on or about July 27, 2008.

Singelman countered the unsworn exhibits to attorney McAlpine's January 30, 2009, Affidavit with

affidavits of Deborah K. Gifford attesting to the mailing on June 7, 2008, (App. p. 34) and Robert Singelman, (Lonnie's husband and thirty year postal service employee) regarding the receipt of a courtesy copy of the Complaint on July 8 or 9, 2008, and his experience with delivery of mail from 45 miles away. (App. p. 40).

Later, Singelman submitted the Affidavit of Moorhead postmaster Renae Ingersoll, further elaborating on mail delivery times within the 565 (Moorhead) to 580 (Wahpeton, Breckenridge) zip codes.

In pertinent part, trial court Judge Seibel's April 15, 2009, Memorandum in support of his Order for Summary Judgment states:

"The affidavits submitted by the parties clearly show that the summons and complaint were not delivered to the Wilkin County Sheriff's Department until July 17, 2008; five days after the statute of limitations had run. Plaintiff contends that normal U.S. Postal Service mail delivery operations should have resulted in the summons and complaint being delivered to the sheriff in plenty of time for the summons and complaint to be received by the sheriff's office before the expiration of the statute of limitations. However, *defendant's affidavits conclusively demonstrate* that the letter and summons and complaint were not received or delivered to the sheriff's office until after the statute of limitations had run. The issue is not when the summons and complaint should have been delivered but rather *when were they actually received by or delivered to the sheriff's office.*" (emphasis added).

(App. pp. 52-54)

Judge Seibel appears to have decided that no genuine question of when the Sheriff received the Complaint exists.

If Singelman was relying solely on what *should* happen in the deliver of first class mail from Moorhead to Breckenridge, Judge Seibel's conclusion *may* be somewhat defensible.

That is not the case.

Postmaster Ingersoll's Affidavit established that first class mail to Wahpeton and Breckenridge is

handled identically. (App. p. 043). Robert Singleman's Affidavit established receipt of their copy of the Complaint on July 8 or 9. (App. p. 40).

Thus, when the Wilkin County Sheriff *actually* received the complaint is a legitimate question of fact.

Factual inferences, credibility and the weight of evidence are factual questions for a jury to decide.

Couillard v. Charles T. Miller Hospital, Inc., 253 Minn. 418, 92 N.W.2d 96 (1958).

In holding as he did, Judge Seibel decided:

- A. That Sheriff's employee Patricia M. Kloster is conclusively believable;
- B. That Robert Singelman cannot be believed;
- C. That failure of a mail system with 99.5% one-day delivery reliability is more likely than a small town Sheriff's department misplacing a piece of mail for a few (but crucial) days.

"A court on summary judgment may not resolve a factual issue but must only determine whether or not a fact issue exists. *Albright v. Henry*, 285 Minn. 452, 174 N.W.2d 106 (1970). In so doing a court must be cautious and must resolve any doubt regarding whether a fact issue exists or not in favor of finding that a fact issue exists. This preference will provide litigants with their day in court and will prevent the improper granting of a summary judgment." David F. Herr & Roger S. Haydock, *Minnesota Practice, Civil Rules Annotated* §56.23 (3d. Ed. 1998).

B. M.R.C.P. RULE 301(c) "DELIVERY" TO THE WILKIN COUNTY SHERIFF WAS EFFECTIVE UPON MAILING. NEITHER MRCP RULE 3.01(c) NOR ANY CASE DEFINES "DELIVERED."

The Supreme Court has, however, given us an indication of its likely answer in *Eischen Cabinet Company v. Hildebrandt*, 683 N.W.2d 813 (2004).

Justice Russell Anderson resolves conflicting Court of Appeals decisions in holding that a Minn. Stat. §514.08(1)(2) mechanics' lien notice is effectively served upon mailing, as opposed to receipt.

Justice Russell acknowledges that the mechanics lien statutes are specifically excepted from the Rule of Civil Procedure, citing MRCP Rule 81.01. He, nevertheless, cites MRCP Rule 5.02's "service by mail [being] complete upon mailing" as one of the rationales for his holding.

Such a construction eliminated the "risk of failure of the mail" *Eischen, supra*, footnote 4,) for a Plaintiff.

It does nothing to the 60 days from delivery provision of Rule 3.01.

It in no way prejudices a defendant.

It avoids the mischief, whether by misfeasance or malfeasance, we have here.

Inexplicably, the Trial Court neither decided nor even addressed this issue.

C. SINGELMAN SHOULD BE ALLOWED TO PRESENT ST. FRANCIS' ESTOPPEL TO ASSERT ITS STATUTE OF LIMITATIONS DEFENSE TO A JURY.

As the court will see in Lonnie Singelman's Affidavit (App. p.p. 40-042) and chronologically following the correspondence attached to the Affidavit of Keith L. Miller,(App. pp. 020 and 025)defendant's claims representative, Mr. Ford, repeatedly implied that he was amenable to arbitrating Singelman's claim, going so far as to intending to "discuss potential arbitrators for this matter" with counsel. See (App. p. 025.) He repeatedly urged Singelman not to seek counsel. Similarly, he repeatedly "look[ed] forward to working with [Singelman's counsel] on this matter." (App. pp. 020, 025 and 028.)

Was Mr. Ford's repeated arbitration discussion with Singelman's counsel genuine or merely a ploy to lull him into a false sense suit would not be necessary?

Mrs. Singelman's records of post-injury treatment were obtained and forwarded to St. Francis' counsel on assurances of reciprocation. (App. p. 029.)

Each time Singelman's counsel expressed frustration and questioned whether litigation would be necessary, progress ensued. (App. pp. 026, 030 and 031.)

Ultimately, the conclusion that litigation needed to be begun was inescapable.

Upon securing the review required Minn. Stat. §145.682(3), the proper Affidavit was prepared and sent, along with the Summons, Complaint and discovery pleadings to the Wilkin County Sheriff.

Defendant first strung Singelman along. Then it strung her counsel along. Now, it would have the Court hold that the weeks and months and years it protracted discussions and negotiations, all the while accumulating information and reluctantly parting with the same mean nothing.

“Statutes of limitations find their justification in necessity and convenience rather than logic, and constitute practical devices to spare courts from litigation of stale claims and the citizen from being put to his defense, after memories have faded, witnesses have died or disappeared, and evidence has been lost. *Chase Securities Corp. v. Donaldson*, U.S. Minn. 1945, 65 S.Ct. 1137, 325 U.S. 304, 89 L.Ed. 1628, rehearing denied 65 S. Ct. 1561, 325 U.S. 896, 89 L.Ed. 2006.”

Singelman's claim is not “stale.” No witnesses have died or disappeared. Instead of being lost—evidence was exchanged.

“Estoppel is an equitable doctrine addressed to the discretion of the court and is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights. To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed...Estoppel depends on facts of each case and is ordinarily a fact question for a jury to decide.”

Northern Petrochemical Co. v. U.S. Fire Ins. Co., 277 N.W.2d 408 (Minn. 1979), 410, citing cases.

A jury ought to decide whether St. Francis has forfeited its Statute of limitations protection.

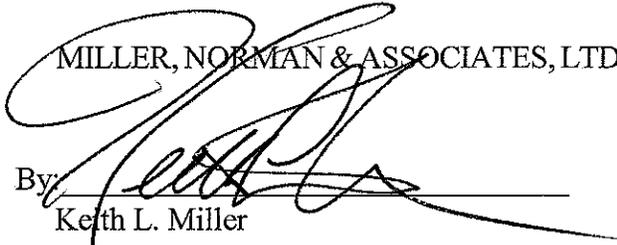
CONCLUSION

The trial court erroneously decided questions of material fact in granting summary judgment. It similarly erred in failing to construe M.R.C.P. Rule 3.01(c) and failing to consider and rule upon the issue of estoppel.

This court accordingly should reverse the trial court and remand for trial, with instructions to, further, consider and rule upon the latter two issues raised herein.

Dated: July 10, 2009.

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