

Winning Lawyer Says Pa. Supreme Court Ruling Clears Up Deadlines for Both Sides, Opponent Says Not So Much

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By Katheryn Tucker | April 02, 2021

The first word in deadline is dead. Period.

That's the bottom line of an opinion from the Pennsylvania Supreme Court throwing out a lawsuit over missing the deadline for notifying the other side.

"We hold that a trial court has the discretion to dismiss a complaint when a plaintiff fails to offer proof that she diligently attempted to serve process on a defendant in a timely manner and there is no evidence to indicate that the defendant had actual notice of the commencement of the action in the relevant time frame, regardless of whether the plaintiff acted or failed to act intentionally," Justice Max Baer wrote in a March 25 ruling (<http://www.pacourts.us/assets/opinions/Supreme/out/J-74-2020mo%20-%20104727496130809348.pdf?cb=1>). He was joined by Justices Thomas Saylor, Debra Todd and Kevin Dougherty.

They upheld the trial court and the Pennsylvania Superior Court in tossing a lawsuit Rhasheena Gussom filed against Maurice Teagle in 2018 over injuries from a 2016 car wreck.

The lower courts dismissed her complaint saying she had failed to serve notice by the deadline imposed by the two-year statute of limitations. The record shows she tried to serve him in Pennsylvania, but heard he'd moved to Virginia and doesn't say what happened after that.

Justice David Wecht wrote a dissent (<http://www.pacourts.us/assets/opinions/Supreme/out/J-74-2020do%20-%20104727496130809347.pdf?cb=1>), joined by Justices Christine Donohue and Sallie Mundy, arguing that the lower courts should be overturned because the standard should be based on intent and should also require the defendant to show prejudice, or harm done by the lack of service. That was the position argued by the defense attorneys, Kenneth Saffren and Robert Maizel of Saffren & Weinberg in Jenkintown, Pennsylvania.

"I was hoping that the court would secure a bright-line test on the important issue of proper service of process and better solidify the law," Maizel said Thursday. "But with the 4-3 split, and the dissent so strongly sided with our argument, it appears that the law on service of process will be 'grey' for many years to come."

But Baer ruled a deadline is a deadline-regardless of whether missing it was intentional or whether it caused harm.

The winning lawyer, Joseph Mayers of The Mayers Firm in Plymouth Meeting, noted Baer "reviewed the long line of precedent on the issue of whether a lawsuit should be dismissed due to a plaintiffs failure to engage in a good faith effort to complete service and thereby demonstrating an intent to stall the judicial machinery he or she had initiated."

The ruling "confirmed that the standard of review in this context did not require a finding of intent on the part of the plaintiff or prejudice to the defendant under the analysis developed through *Lamp v. Heyman* and its progeny," Mayers said.

Mayers said the decision provides clarity for all tort cases. "You have to establish a good-faith effort. It doesn't matter whether it was intentional or unintentional," he said.

Mayers said he has tried cases for plaintiffs and defendants over more than three decades. "In arguing this before the Supreme Court, all you can hope for is a rule that's fair for both plaintiffs and defendants," he said. "I think Justice Baer outlined such a rule."