SUMMARY
April 22, 2021

2021COA55

No. 20CA216, *Elizabeth Morin v. ISS Facility Services INC and City and County of Denver* — Courts and Court Procedure — Limitation of Actions — General Limitation of Actions Two Years; Civil Procedure — Time — Computation; Government — Holidays — Effect of Closing Public Offices

A division of the court of appeals considers whether C.R.C.P. 6(a) or section 24-11-110, C.R.S. 2020, extend the two-year statute of limitations under section 13-80-102(1)(a), C.R.S. 2020, when the expiration day falls on a Saturday, Sunday, or legal holiday and concludes that they do not. The division follows the reasoning in *Williams v. Crop Production Services, Inc.*, 2015 COA 64, and holds that the two-year statute of limitations under section 13-80-102(1)(a) expires on its anniversary date. Our decision aligns with the fact that the district court not just allowed but required electronic filing on Saturdays. *See* C.R.C.P. 77(a) (Courts "shall be deemed always open for purpose of filing any pleading.").

The division affirms the dismissal and award of fees.

COLORADO COURT OF APPEALS **2021COA55**

Court of Appeals No. 20CA0216
City and County of Denver District Court No. 19CV32714
Honorable Robert L. McGahey, Jr. Judge

Elizabeth Morin,

Plaintiff-Appellant,

v.

ISS Facility Services, Inc.; and City and County of Denver, Colorado,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division A
Opinion by JUDGE FOX
Bernard, C.J., and Román, J., concur

Announced April 22, 2021

Bovo Law, LLC, Todd F. Bovo, Denver, Colorado, for Plaintiff-Appellant

Hall & Evans, L.L.C., Malcolm S. Mead, Cash K. Parker, Denver, Colorado, for Defendants-Appellees

¶ 1 Elizabeth Morin appeals the district court's dismissal of her complaint against ISS Facility Services INC (ISS) and the City and County of Denver. She contends that the district court erred in dismissing her complaint as untimely and awarding attorney fees to ISS and Denver. We conclude that the district court's dismissal was proper and therefore affirm.

I. Background

¶ 2 Morin's July 15, 2019, complaint asserted that she slipped and injured herself on an "unmarked water hazard" at Denver International Airport (DIA). Denver owns DIA and contracted with ISS for janitorial services, including floor cleaning. Morin sustained the claimed injuries on July 13, 2017.

¶ 3 Denver and ISS moved (1) to dismiss Morin's complaint because it was filed beyond the applicable two-year statute of limitations, § 13-80-102(1)(a), C.R.S. 2020; and (2) for an award of attorney fees, invoking section 13-17-201, C.R.S. 2020, and costs.

¶ 4 Because the July 13, 2019, limitations deadline fell on a Saturday, when courts are closed, Morin maintained that the court should accept her July 15, 2019, filing because that day was the next business day when the court was open.

¶ 5 The court disagreed with Morin — concluding that the limitations period ended on July 13, 2019 — and dismissed her complaint. Invoking section 13-17-201, the court later awarded Denver and ISS $3,801.00 in attorney fees and $219.00 in costs. Morin now appeals.

II. Timeliness of Morin's Appeal

¶ 6 Before addressing Morin's arguments, we first address Denver and ISS's suggestion that her appeal is untimely because the district court dismissed her complaint on October 29, 2019, and Morin filed her notice of appeal on February 3, 2020, outside the forty-nine-day timeline to appeal. *See* C.A.R. 4(a). That timeframe normally applies in civil cases, but here the district court's October order specifically provided that "[t]he time for filing [a] post-judgment motion and/or [a] notice of appeal shall not run until I enter a final order including fees." Because, in so providing, the district court effectively mislead the parties about finality, we are compelled to apply the unique circumstances doctrine here. *See P.H. v. People in Interest of S.H.*, 814 P.2d 909, 911-12 (Colo. 1991) (applying the unique circumstances doctrine and concluding that the appeals court had jurisdiction to accept a late filing that

resulted from reliance on a trial court ruling purporting to extend the filing deadline); *see also Osterneck v. Ernst & Whinney*, 489 U.S. 169, 179 (1989) (a party is entitled to rely on specific assurance by a judicial officer concerning a deadline); 4B Adam N. Steinman, *Federal Practice and Procedure* § 1168, Westlaw (4th ed. database updated Oct. 2020) (discussing the "unique circumstances" doctrine).

¶ 7 Applying the unique circumstance doctrine, we conclude finality was not reached until December 20, 2019, when the court entered the attorney fees and costs award. The court reiterated its intent regarding finality: "This Order is hereby the **FINAL ORDER** in this matter. The time for filing any notice of appeal shall run from the issuance of this Order." Morin's February 3, 2020, notice of appeal, relying on the district court's statements, was timely filed before the February 7, 2020, appeal deadline. *P.H.*, 814 P.2d at 911-12.

III. Statute of Limitations

¶ 8 Turing to the merits of Morin's appeal, she argues that her complaint was timely filed. We disagree.

A. Standard of Review

¶ 9 We review de novo a district court's dismissal of an action based on a statute of limitations defense. *Williams v. Crop Prod. Servs., Inc.*, 2015 COA 64, ¶ 3. Likewise, questions of law and statutory interpretation are reviewed de novo. *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 11; *Jefferson Cnty. Bd. of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010).

B. Legal Framework

¶ 10 In determining the meaning of a statute, our primary goal is to ascertain and give effect to the intent of the General Assembly. *Lewis v. Taylor*, 2016 CO 48, ¶ 20. If possible, we must determine that intent from the plain meaning of the statute, construing it as a whole and giving effect to all its parts. *Id.* Moreover, a statute should be interpreted to harmonize with and, if possible, give meaning to other potentially conflicting statutes, *Bd. of Cnty. Comm'rs v. Dep't of Pub. Health & Env't*, 2020 COA 50, ¶ 15 (*cert. granted* Sept. 28, 2020), aiming to avoid inconsistent or absurd results, *In re Parental Responsibilities Concerning C.C.R.S.*, 892 P.2d 246, 251 (Colo. 1995). If giving effect to both statutes is not possible, the more specific provision prevails over a more general

provision. *Bd. of Cnty. Comm'rs v. Bainbridge, Inc.*, 929 P.2d 691, 698 (Colo. 1996).

¶ 11 In Colorado, negligence claims are subject to the two-year statutory limitations period in section 13-80-102(1)(a), which provides that such actions "must be commenced within two years after the cause of action accrues, and not thereafter." Once the interpretation of the statute is settled, the issue of accrual may be decided as a matter of law if the undisputed facts clearly establish the date in question. *Williams*, ¶ 4.

¶ 12 Morin asked the district court to apply C.R.C.P. 6(a) to extend the limitations period. Rule 6(a) states that

> [i]n computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. . . . [And, t]he last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

C. Analysis

¶ 13 The parties agree that the limitations period started on July 13, 2017, when Morin fell. But Morin maintains that her complaint

was timely because Monday, July 15, 2019, was the next nonweekend day after July 13, 2019, that the court was open. She asked the district court to apply Rule 6(a) to extend her time to file. Relying on *Williams*, the district court declined to do so.

¶ 14 A division of this court considered, and rejected, an argument that mirrors Morin's argument regarding Rule 6(a). *Williams*, ¶¶ 7-24. The division concluded that the anniversary date time computation applies in calculating a period of years under section 13-80-102(1)(a). *Id.* at ¶ 2. Thus, an action must be filed no later than the second anniversary of the accrual date. *Id.*; *see also United States v. Hurst*, 322 F.3d 1256, 1260 (10th Cir. 2003) (providing that when "a statute of limitations is measured in years, the last day for instituting the action is the anniversary date of the relevant act").

¶ 15 In so holding, the *Williams* court concluded that Rule 6(a) does not control. First, Rule 6(a) only applies to a "period of time prescribed or allowed *by these rules*," C.R.C.P. 6(a) (emphasis added), meaning the Colorado Rules of Civil Procedure. The timeline here was statutorily prescribed, and Rule 6(a) cannot override a statutory provision. We are persuaded by the analysis in

Williams, and Morin offers no reasoned basis for us to depart from it.

¶ 16 Morin now suggests that *Williams* did not consider or rule on whether section 24-11-110, C.R.S. 2020, expands the limitations period. Section 24-11-110 provides that

> [i]f, on any day when the public office concerned is closed, or on a Saturday, any document is required to be filed with any public office of the state of Colorado, its departments, agencies, or institutions, or with any public office of any political subdivision of the state . . . then any such filing . . . so required . . . shall neither be abated nor defaulted, but the same shall stand continued to the next succeeding full business day at such public office.

Even if this provision applies to the judicial branch, we cannot read it in isolation, *Bd. of Cnty. Comm'rs*, ¶ 15; *C.C.R.S.*, 892 P.2d at 251, and we must give effect to the more specific provisions in section 13-80-102(1)(a), *Bainbridge, Inc.*, 929 P.2d at 698, as construed in *Williams*.

¶ 17 Furthermore, Colorado courts have allowed for electronic filing for many years, and C.R.C.P. 77(a) directs that courts "shall be deemed always open for purpose of filing any pleading." *See also Talley v. Diesslin*, 908 P.2d 1173, 1175 (Colo. App. 1995) (courts

must construe rules as written), *superseded by rule as stated in Wallin v. Cosner*, 210 P.3d 479 (Colo. App. 2009); *see also* C.R.C.P. 121, § 1-26 (procedures for electronic filing). Since January 2, 2010, the Second Judicial District, where this case was filed, has not just allowed but *required* electronic filing in all civil cases. *See* Colo. Jud. Branch, *Mandatory E-Filing Courts* (Jan. 2010), https://perma.cc/E9PS-GFJG. That a court official was not at the courthouse on a Saturday to date-stamp Morin's complaint was no obstacle to her counsel's ability to timely file that pleading electronically.[1]

¶ 18 Morin's reliance on *Matthews v. City & County of Denver*, 20 P.3d 1227 (Colo. App. 2000), is misplaced. Not only does *Matthews* pre-date *Williams*, that case did not concern a period of years.

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[1] Where and when e-filing is made available to self-represented litigants, they must register for an E-filing User identification and may e-file and e-serve. *See* Colorado Judicial Branch, *Efiling for Non-Attorneys,* Court: https://perma.cc/6YDY-GTPM. If e-filing is not available to the self-represented party, when the party's deadline falls on a Saturday or a Sunday, that party must file in person before that court's closure on or before the Friday before the deadline (unless the court provides otherwise), checking with the particular judicial district for the most current information. *See e.g.*, https://perma.cc/69A5-UFUQ (although the courthouse is open Monday through Friday 8:00 am to 5:00 pm, except for holidays, filings are only accepted until 4:00 pm).

Matthews' discussion of section 24-11-110 in relation to the 180-day deadline to notify a governmental entity of a claim does not inform our analysis.

¶ 19 The district court here properly concluded that Morin failed to file her complaint on or before the two-year anniversary of her injuries and that her claims are time barred. We affirm the dismissal.

IV. Fees and Costs Award

¶ 20 Morin's opening brief challenges the district court's award of fees in favor of Denver and ISS to the extent her timeliness argument prevails. But, in her reply brief she argues, for the first, time, that she acted in good faith in advancing an issue of first impression. The reply brief argument against fees is not only too late, it is also underdeveloped. *Holley v. Huang*, 284 P.3d 81, 87 (Colo. App. 2011); *see also* C.A.R. 28(a)(4). Accordingly, we need not address it.[2]

V. Conclusion

¶ 21 For all of the foregoing reasons, the judgment is affirmed.

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[2] An award of fees is mandatory under section 13-17-201. *See Crandall v. City & Cnty. of Denver*, 238 P.3d 659, 663 (Colo. 2010).

CHIEF JUDGE BERNARD and JUDGE ROMÁN concur.