DALE BROWN	*	**NO. 2017-C-0759**
VERSUS	*	
		COURT OF APPEAL
DAVID HEINTZ, STEVEN VERRETT, AND ARTHUR LAWSON, IN HIS OFFICIAL CAPACITYAS THE CHIEF FOR POLICE FOR THE CITY OF GRETNA	*	**FOURTH CIRCUIT**
		STATE OF LOUISIANA
	* * * * * * *	

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-00330, DIVISION "M"
Honorable Paulette R. Irons, Judge
* * * * * *

Judge Rosemary Ledet
* * * * * *

(Court composed of Judge Rosemary Ledet, Judge Regina Bartholomew-Woods, Judge Paula A. Brown)

BROWN, J., CONCURS IN THE RESULT WITH REASONS.

ON REMAND FROM THE LOUISIANA SUPREME COURT

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RESPONDENT/PRO-SE

WRIT GRANTED; JUDGMENT REVERSED;
AND JUDGMENT RENDERED DISMISSING SUIT

MAY 2, 2018

This *pro se* inmate's tort suit is before us on remand from the Louisiana Supreme Court for briefing and a full opinion.[1] The narrow question before us is whether the "prison mailbox rule"[2] applies in the present context—a *pro se* inmate filing a tort suit in Louisiana state court. Answering that question in the negative, we grant the Relators' writ application, reverse the trial court's judgment denying the Relators' peremptory exception of prescription, and dismiss the suit.

FACTUAL AND PROCEDURAL BACKGROUND

On January 5, 2014, the Gretna Police Department (the "Department") responded to a 911 call regarding an armed robbery in progress at a local

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[1] *Brown v. Heintz*, 17-2139 (La. 2/23/18), ___ So.3d ___, 2018 WL 1063777. Although the Supreme Court's order included a requirement that the case be argued, the Supreme Court issued a corrected order, on February 28, 2018, deleting the argument requirement.

[2] The "prison mailbox rule" is a jurisprudentially-crafted rule that deems a *pro se* inmate's pleading "filed" when the inmate delivers it to the prison authorities for mailing. *See Ray v. Clements*, 700 F.3d 993, 1002 (7th Cir. 2012) (observing that "[t]his rule is colloquially known as the '*Houston*' or 'prison' mailbox rule"). In *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), the Supreme Court crafted the prison mailbox rule in the notice of appeal context. The Supreme Court interpreted the word "filed" in the rule governing the timeliness of notices of appeal to mean that a notice of appeal could be deemed timely "filed" upon delivery to the prison authorities for mailing. In effect, the prison mailbox rule, which has been extended to other contexts, equates the prison official with the clerk of court for purposes of determining the date of filing. *Fallen v. United States*, 378 U.S. 139, 144, 84 S.Ct. 1689, 1692-93, 12 L.Ed.2d 760 (1964) (Stewart, J., concurring, joined by Clark, Harlan, and BRENNAN, JJ.) (observing that "in such a case the jailer is in effect the clerk of the District Court within the meaning of Rule 37").

convenience store. The Relator, Dale Brown, the driver of the vehicle believed to be involved in the armed robbery, exited the vehicle and attempted to flee. Mr. Brown was apprehended and arrested. In connection with his arrest, Mr. Brown was shot in the leg by one of the Department's officers and bitten in the leg by one of the Department's canines. On August 26, 2014, a jury convicted Mr. Brown of armed robbery and aggravated flight from an officer; his conviction and sentence were affirmed on appeal. *State v. Brown*, 15-96 (La. App. 5 Cir. 9/15/15), 173 So.3d 1262.

While incarcerated at Louisiana State Penitentiary (Angola), Mr. Brown commenced this suit against the Relators—David Heintz; Steven Verrett; and Arthur Lawson, in his official capacity as the Chief of Police for the City of Gretna (collectively the "Defendants"). In his petition, Mr. Brown asserted state tort claims—assault and battery claims—and federal constitutional claims—civil rights violations of unlawful seizure and use of excessive force. He averred that his petition was "filed within one (1) year after the claim[s] accrued, as required by law."[3] Mr. Brown signed and verified his petition on December 30, 2014. According to Mr. Brown, he delivered his petition to prison officials for mailing on that date.

The Clerk of Court of Orleans Parish Civil District Court (the "Clerk") stamped Mr. Brown's petition as being filed on January 13, 2015. In response to the petition, Defendants filed a peremptory exception of prescription, contending that Mr. Brown's suit had prescribed pursuant to La. C.C. art. 3492, because it was

[3] It is undisputed that the one-year prescriptive period for delictual actions set forth in La. C.C. art. 3492, applies here. *See also Dean v. Nunez*, 503 So.2d 212 (La. App. 4th Cir. 1987) (holding the Louisiana one-year prescriptive period for tort actions applies to a civil rights suit under 42 U.S.C. §1983).

filed more than one year after the events complained of in the petition—Mr. Brown's January 5, 2014 apprehension and arrest.

In his traversal (memorandum in opposition) to the exception (the "Traversal"), Mr. Brown argued, based upon the prison mailbox rule, that the date on which he presented his petition to prison officials for mailing was the date that should be used for prescription purposes, not the date that the Clerk stamped the petition as being filed. *See Houston, supra*.

Following a hearing, the trial court denied Defendants' prescription exception. From that ruling, Defendants filed a writ application, which this court denied.[4] As noted at the outset of this opinion, this matter is now before us on remand from the Louisiana Supreme Court for briefing and a full opinion.

DISCUSSION

The standard of review applicable to a trial court's ruling on a peremptory exception of prescription hinges on whether evidence is introduced at the hearing on the exception. *See* La. C.C.P. art. 931 (providing that evidence may be introduced to support or to controvert an exception of prescription). When evidence is introduced, the trial court's findings of fact are reviewed under the manifestly erroneous-clearly wrong standard of review;[5] when no evidence is introduced, a *de novo* standard of review applies.[6]

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[4] *Brown v. Heintz*, 17-0759 (La. App. 4 Cir. 11/30/17) (*unpub.*).

[5] *See Specialized Loan Servicing, LLC v. January*, 12-2668, pp. 3-4 (La. 6/28/13), 119 So.3d 582, 584; *Rando v. Anco Insulations, Inc.*, 08-1163, p. 20 (La. 5/22/09), 16 So.3d 1065, 1082; *London Towne Condo. Homeowner's Ass'n v. London Towne Co.*, 06-401, p. 4 (La. 10/17/06), 939 So.2d 1227, 1231; *Scott v. Zaheri*, 14-0726, pp. 8-9 (La. App. 4 Cir. 12/3/14), 157 So.3d 779, 785 (observing that "[w]hen evidence is introduced and evaluated at the trial of a peremptory exception, we must review the entire record to determine whether the trial court manifestly erred with its factual conclusions").

[6] *See Denoux v. Vessel Mgmt. Servs., Inc*., 07-2143, p. 6 (La. 5/21/08), 983 So.2d 84, 88 (observing that "[i]n the absence of evidence, the exception of prescription must be decided on

"The standard controlling review of a peremptory exception of prescription requires that this Court strictly construe the statute against prescription, and in favor of the claim that is said to be extinguished." *Reggio v. E.T.I.*, 07-1433, p. 4 (La. 12/12/08), 15 So.3d 951, 954 (citing *Louisiana Health Serv. and Indem. Co. v. Tarver*, 93-2449, pp. 11-12 (La. 4/11/94), 635 So.2d 1090, 1098; *Fontaine v. Roman Catholic Church of Archdiocese of New Orleans*, 625 So.2d 548, 551 (La. App. 4th Cir.1993)). "[T]hus, of two possible constructions, that which favors maintaining, as opposed to barring, an action should be adopted." *Lima v. Schmidt*, 595 So.2d 624, 629 (La 1992).

Because a copy of the transcript of the hearing on Defendants' exception is not included in the record and because the trial court's judgment is silent on the issue, we cannot discern whether either party introduced any evidence at the hearing on the exception. Although Mr. Brown attached exhibits to the Traversal,[7] "'[d]ocuments attached to memoranda do not constitute evidence and cannot be considered as such on appeal.'" *Felix v. Safeway Ins. Co.*, 15-0701, pp. 6-7 (La. App. 4 Cir. 12/16/15), 183 So.3d 627, 631-32 (quoting *Denoux*, 07-2143 at p. 6, 983 So.2d at 88 (collecting cases)). "'Evidence not properly and officially offered

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the facts alleged in the petition, which are accepted as true"); *Cichirillo v. Avondale Indus., Inc.*, 04-2894, 04-2918, p. 5 (La. 11/29/05), 917 So.2d 424, 428.

[7] Mr. Brown attached to the Traversal the following two documents: "Offender's Request for Legal/Indigent Mail," dated December 30, 2014, and addressed to "41st Judicial District Court Civil Division Parish of Orleans, 421 Loyola Avenue, New Orleans, La. 70112"; and "Offender Funds Withdrawal Request" for "Legal Mail" dated December 30, 2014. Defendants note that they objected to the consideration of those two documents. They further note that "[n]either document is certified or otherwise authenticated because no affidavit of [Mr.] BROWN, or any other party was provided." They still further note that "these documents do not clarify or establish the proper mail procedure in place at the La. State Penitentiary." Although the trial court's judgment states that "[Mr.] Brown appeared by telephone as ordered by the Court;" the judgment makes no reference to any evidence being introduced or being considered in denying the exception.

and introduced cannot be considered, even if it is physically placed in the record.'" *Id*. Hence, we apply a *de novo* standard of review here.[8]

A party (generally a defendant) urging an exception of prescription has the burden of proving facts to support the exception unless the petition is prescribed on its face. *Winford v. Conerly Corp*., 04-1278, p. 8 (La. 3/11/05), 897 So.2d 560, 565. "[I]f prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show that the action has not prescribed." *Id.*

As noted elsewhere in this opinion, the one-year tort prescription period applies here. La. C.C. art. 3492 (providing that "[t]his [one-year] prescription [period] commences to run from the day injury or damage is sustained"). In his petition, Mr. Brown alleges that he sustained damages during his apprehension and arrest, which occurred on January 5, 2014. The Clerk marked the suit as having been filed on January 13, 2015—eight days after the one-year period elapsed. Thus, the petition is prescribed on its face.

To negate prescription, a plaintiff must establish that one of the following three theories applies: interruption, renunciation, or suspension.[9] Mr. Brown contends that prescription was interrupted, under the prison mailbox rule, when he delivered his petition to prison officials for mailing within the one-year

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[8] A second reason that we apply a *de novo* standard here is because the issue before us on remand is a legal one—whether the prison mailbox rule applies in the context of filing a tort suit in Louisiana state court. *See Felix*, 15-0701 at pp. 7-8, 183 So.3d at 632 (stating that "the relevant facts here are undisputed; and the questions presented are purely legal"); *Lloyd v. Monroe Transit Auth. ex rel. City of Monroe*, 50,292, p. 4, n. 3 (La. App. 2 Cir. 1/13/16), 185 So.3d 866, 868, *writ denied*, 16-0277 (La. 4/8/16), 191 So.3d 585 (stating that "when the sole issue before the court is legal (such as the interpretation of a statute), it is reviewed under a *de novo* standard of review"); *TCC Contractors, Inc. v. Hosp. Serv. Dist. No. 3 of Parish of Lafourche*, 10-0685, 10-0686, p. 8 (La. App. 1 Cir. 12/8/10), 52 So.3d 1103, 1108 (citing *Kevin Associates, L.L.C. v. Crawford*, 03-0211, p. 15 (La. 1/30/04), 865 So.2d 34, 43).

[9] *SS v. State ex rel. Dep't of Soc. Servs*., 02-0831, p. 7 (La. 12/4/02), 831 So.2d 926, 931 (citing *Lima v. Schmidt*, 595 So.2d 624, 629 (La. 1992)); *Glasgow v. PAR Minerals Corp.*, 10-2011, p. 5 (La. 5/10/11), 70 So.3d 765, 768.

prescriptive period. The gist of Mr. Brown's counter argument is that the defense of interruption, by filing suit, applies here. *See* La. C.C. art. 3462 (providing that "[p]rescription is interrupted when the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue").

Defendants, on the other hand, contend that Mr. Brown failed to present any competent, legal defense—suspension, interruption, or renunciation—to negate prescription. Defendants further contend that Mr. Brown's petition was not timely filed pursuant to the prison mailbox rule because the claims in his petition do not involve a request for judicial review of an adverse administrative procedure, but rather involve a personal injury claim unrelated to his incarceration.

Defendants emphasize that the Louisiana Supreme Court has declined the opportunity to extend the prison mailbox rule to all civil filings in *Skipper v. Boothe*, 08-1292 (La. 10/3/08), 991 So.2d 462. Defendants also cite a trio of Louisiana appellate court decisions, from three other circuits (the First, Second, and Third)—*Richardson v. Say*, 31,989 (La. App. 2 Cir. 7/22/99), 740 So.2d 771; *Knockum v. Waguespack*, 12-0277 (La. App. 1 Cir. 11/2/12), 111 So.3d 370; and *Cutler v. City of Sulphur*, 10-690 (La. App. 3 Cir. 12/8/10) (*unpub*.), 2010 WL 5027144—for the proposition that the prison mailbox rule repeatedly has not been applied in civil matters that are unrelated to judicial review of adverse administrative procedures. Finally, Defendants contend that allowing an extension of the prison mailbox rule to all civil filings is contrary to the four cases they cite, in particular, and Louisiana law on prescription, in general.

To provide a background for addressing the issue of whether Mr. Brown's interruption defense, based on the prison mailbox rule, has merit, we first review the four cases that Defendants cite—*Skipper*, *Richardson*, *Knockum*, and *Cutler*.

Skipper

In *Skipper*, the Louisiana Supreme Court found untimely, and thus declined to consider, a *pro se* inmate's writ application in a civil case.[10] Two of the justices—current Chief Justice Johnson and former Chief Justice Calogero—dissented. Both dissenting justices opined that the prison mailbox rule should apply to all inmate filings, civil and criminal. Expressing her view, Justice Johnson stated as follows:

> In my mind, Louisiana should adopt the "mailbox rule," in criminal and civil cases, finding that a document is considered "filed" when it is delivered to prison officials. *Tatum v. Lynn*, 93-1559 (La. App. 1st Cir.5/20/94), 637 So.2d 796. The U.S. Supreme Court, in *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), concluded that a document is timely when the inmate has deposited the document with prison authorities. The U.S. Supreme Court reasoned that the inmate had used the only means available to him to ensure the timely filing of his petition, namely delivery to the prison authorities. There was nothing further he could do to protect his rights.

Skipper, 08-1292 at p. 2, 991 So.2d at 463-64 (Johnson, J., dissenting).

In his dissent, Justice Calogero likewise expressed the view that the prison mailbox rule should apply to all criminal and civil filings. In the alternative, he stated that he would "deem the writ application timely filed, because the allegations asserted in, and the relief requested by, relator's petition in the district court suggest the case is more in the nature of a criminal proceeding than a civil one. *See and compare Richardson v. Say*, 31,989, pp. 3-4 (La. App. 2 Cir.

[10] A writ denial by the Louisiana Supreme Court has no precedential value. *St. Tammany Manor, Inc. v. Spartan Bldg. Corp*., 509 So.2d 424, 428 (La. 1987); *see also State v. Williams*, 00-1725,

7/22/99), 740 So.2d 771, 773-74." *Skipper*, 08-1292 at p. 1, 991 So.2d at 463 (Calogero, J., dissenting). Based upon the fact that the underlying case related entirely to the relator's criminal convictions and sentences,[11] Justice Calogero stated that he "would apply the 'mailbox rule' that we apply to criminal matters, even though the petition is styled as a civil pleading." *Skipper*, 08-1292 at p. 2, 991 So.2d at 463 (Calogero, J., dissenting).

Richardson

In *Richardson*, the plaintiff-inmate filed a medical malpractice claim seeking to recover for his sister's alleged wrongful death. Affirming the trial court's judgment granting the defendant-doctor's exception of prescription, the Second Circuit rejected the plaintiff-inmate's argument that the prison mailbox rule should be applied to render his suit timely filed the moment it was delivered to prison officials for forwarding to the court. In so doing, the Second Circuit reasoned as follows:

> Generally, Louisiana jurisprudence has rejected the notion that a document is "filed" at the moment it is placed in the mail. *Tatum v. Lynn*, 93-1559 (La. App. 1st Cir. 5/20/94), 637 So.2d 796; *Thomas v.*

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p. 4, n. 3 (La. 11/28/01), 800 So.2d 790, 795 (citing *St. Tammany Manor, supra*.).

[11] Justice Calogero explained that he would treat the unique factual allegations of the relator's petition as criminal in nature for the following reasons:

> [Relator] filed suit against *inter alia* the Honorable Leo Boothe, who had presided over relator's criminal proceeding and had sentenced relator to serve concurrent terms of twenty-five years and five years, alleging that Judge Boothe had discriminated against him in violation of his constitutional rights. Relator sought removal of the judge from his criminal case and assignment of the case to another judge in the district. Initially, relator's petition was filed into the district court as a criminal filing, but apparently it was later designated as a civil filing against Judge Boothe and other defendants, and was allotted to Judge Boothe. Judge Boothe then ruled on relator's civil petition, citing prior rulings in the criminal case, and found that the claims asserted in the civil action seeking Judge Boothe's removal had been resolved in favor of Judge Boothe not being disqualified from the criminal proceeding. Judge Boothe concluded the claims were res judicata and dismissed at relator's costs his civil petition.

Skipper, 08-1292 at pp. 1-2, 991 So.2d at 463.

> *Department of Corrections*, 430 So.2d 1153 (La. App. 1st Cir.), *writs denied*, 435 So.2d 432, 438 So.2d 566 (La.1983).
>
> However, in cases involving pro se inmates seeking judicial review of adverse administrative procedures, Louisiana has adopted the "mailbox rule," finding that a document is considered "filed" when it is delivered to prison officials. *Tatum v. Lynn*, *supra*; *Shelton v. Louisiana Dept. of Corrections*, 96-0348 (La. App. 1st Cir. 2/14/97), 691 So.2d 159.
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> The present case is distinguishable from the cases relied on by the plaintiff. The plaintiff's complaint does not involve a request for judicial review of an adverse administrative procedure, but involves a personal injury claim unrelated to his incarceration. Therefore, the plaintiff's medical malpractice claim does not fit into the category of claims governed by the "mailbox rule."

Richardson, 31,989 at pp. 3-4, 740 So.2d at 774. The Second Circuit thus refused to apply the prison mailbox rule in this context.

Knockum

In *Knockum*, a plaintiff-inmate filed a petition for damages sustained during his arrest, which occurred on August 13, 2010. Although the plaintiff-inmate delivered his petition to prison officials for mailing on August 11, 2011, the clerk of court did not receive and mark the petition filed until a week later, on August 18, 2011. The trial court granted the defendant's peremptory exception of prescription because the suit was filed more than one year after the injuries allegedly were sustained (the date of the arrest). On appeal, the plaintiff-inmate asserted that his petition was timely filed based on the prison mailbox rule. Rejecting this argument, the First Circuit's analysis of the prison mailbox rule issue consisted of one sentence: "the 'mailbox rule,' pronounced by the U.S. Supreme Court in *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), has been held not to apply to non-administrative, civil suits filed by prisoners." *Knockum*, 12-0277 at pp. 2-3, 111 So.3d at 371-72 (citing *Richardson*,

31,989 at p. 4, 740 So.2d at 774). The First Circuit thus refused to apply the prison mailbox rule in this context.

Cutler

In *Cutler*, the plaintiff-inmate filed a civil suit for property damages resulting from the search of his trailer on January 6, 2008. From the trial court's judgment granting the defendant's exception of prescription, the plaintiff-inmate appealed. The plaintiff-inmate argued that his lawsuit was timely based on the prison mailbox rule. Rejecting this argument, the Third Circuit's analysis of the prison mailbox rule consisted of one sentence: "[t]he [Louisiana] supreme court has declined to extend the 'mailbox rule' to all civil proceedings." *Cutler*, 2010 WL 5027144 at *1 (citing *Skipper*, *supra*). The Third Circuit thus refused to apply the prison mailbox rule in this context.[12]

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[12] *See also Castillo v. St. Charles Corr. Ctr.*, CIV A 06-0043 (E.D. La. Aug. 15, 2006) (*unpub.*), 2006 WL 4510439, at *2, n.14 (citing *Richardson*, *supra*, in support of its decision that the prison mailbox rule did not apply in the context of a civil filing and noting that '[t]he Court is aware that in another civil case the Louisiana Third Circuit Court of Appeal noted that the 'mailbox rule' might apply in some circumstances; however, that comment was dicta" and citing *Davis v. Huey P. Long Reg'l Med. Ctr.*, 02-806, pp. 3-4 (La. App. 3 Cir. 2/5/03), 841 So.2d 7, 10). We, too, note that, in *Davis*, the Third Circuit's discussion of the prison mailbox rule was dicta; specifically, the discussion was as follows:

> [I]t would serve no purpose to remand for determination of whether the "mailbox rule" might have saved the case from prescription, because there is another critical time period in the present case, and that is the requirement for request of service within ninety days of the commencement of the action. La. R.S. 13:5107(D)(1). Even if commencement of the action was when the petition was deposited in the inmate's mailbox, his ninety days for service passed without action on his part. So, while the "mailbox rule" in other circumstances might have saved his petition from prescription even though the petition was actually filed with the district court four days after prescription technically ran, it cannot benefit him in the present circumstances. The "mailbox rule" does not extend prescription beyond the date of actual filing, and it does not extend the ninety days statutorily required for requested service of citation where the State is a party. Also, the "mailbox rule" does not exempt Mr. Davis from the statutory consequence that this absence of service of citation within ninety days causes no interruption or suspension of the running of prescription.

02-806 at p. 4, 841 So.2d at 10.

Analysis of the issue presented

The Second Circuit in *Richardson* based its holding on the nature of the underlying claim—a personal injury claim unrelated to a prisoner's incarceration. In so doing, the Second Circuit suggested, as did Justice Calogero in his dissent in *Skipper*, that the result might be different if the claim was related to the prisoner's incarceration. The Second Circuit in *Richardson* also based its holding on the category of the claim, reasoning that the plaintiff's claim did not involve a request for judicial review of an adverse administrative procedure. In so doing, the Second Circuit suggested that only a certain category of claims fall within the scope of the prison mailbox rule.

The Supreme Court in *Houston*, however, did not focus its holding on either the nature of the case or the category of the claims being filed; rather, it focused on the unique nature of the *pro se* prisoner's situation. *See Lewis v. Richmond City Police Dep't*, 947 F.2d 733, 736 (4th Cir. 1991) (observing that "*Houston* itself gives no indication that it should be limited to habeas corpus appeals"). We thus decline to base our decision on either the nature of the case or the category of the claims.

Nonetheless, we reach the same result as in *Richardson*, *Knockum*, and *Cutler*, albeit for a different reason. In finding the prison mailbox rule does not apply in this context, we base our decision on the statutory requirements for commencing suit in Louisiana state court. It is well-settled that "[a]ctions are commenced by filing them in the clerk's office." *Saxon v. Fireman's Ins. Co. of Newark, N. J.*, 224 So.2d 560, 561 (La. App. 3d Cir. 1969) (citing La. C.C.P. arts. 253, 421). The two governing statutory provisions are as follows:

- Article 253(A) provides:

> All pleadings or documents to be filed in an action or proceeding instituted or pending in a court, and all exhibits introduced in evidence, shall be delivered to the clerk of the court for such purpose. The clerk shall endorse thereon the fact and date of filing and shall retain possession thereof for inclusion in the record, or in the files of his office, as required by law. . . .

- Article 421 provides, in pertinent part:

> A civil action is a demand for the enforcement of a legal right. It is commenced by the filing of a pleading presenting the demand to a court of competent jurisdiction.

Consistent with these statutory provisions, Louisiana jurisprudence has rejected the notion that a petition is "filed" at the moment it is placed in the mail. *Richardson*, 31,989 at pp. 3-4, 740 So.2d at 773-74. "Actual delivery must be made to the Clerk of Court and no provision is made for deposit with the U.S. Post Office." *Pelt v. Guardsmark, Inc*., 451 So.2d 621, 625 (La. App. 5th Cir. 1984).[13] As former Justice (then Judge) Lemmon observed:

> [A] party obliged to file a pleading within a time limitation must insure actual delivery, since it is the time when the clerk receives actual delivery of the pleading which determines whether that pleading has been timely filed. Handing the pleading to a friend or even to a court officer who is not authorized to accept delivery is done at the risk that delivery to the clerk may not be accomplished timely.

Squatrito v. Barnett, 338 So.2d 975, 977 (La. App. 4th Cir. 1976).

We acknowledge, as Justice Johnson noted in her dissent in *Skipper*, that the policy concerns enumerated in *Houston* regarding a prisoner's inability to do anything other than deliver his pleading to a prison official for filing equally apply in the context of a *pro se* inmate filing a civil suit in a Louisiana state court. We sympathize with *pro se* inmates' plight—after depositing a pleading with a prison

[13] The Louisiana Supreme Court's rules and the state appellate courts' rules both contain a type of "mailbox" rule. *See* La. Sup. Ct. R. X, Section 5(d); and Uniform Rules of Louisiana Courts of Appeal, Rule 2-13. The Louisiana district courts' rules do not. Indeed, to authorize fax filing of a petition, the Louisiana Legislature enacted a specific statutory provision, setting forth fax-

office, *pro se* inmates have no control over whether, when, or how their pleading is delivered to the court. Moreover, *pro se* inmates lack alternative means of delivering their pleading to the court. Nonetheless, the statutory requirement of actual delivery of the petition to the clerk of court for commencement of a civil suit in a Louisiana state court precludes the extension of the prison mailbox rule to this context.[14]

Our conclusion is bolstered by the reasoning in *Houston* that receipt by the clerk of the district court is not necessarily the moment of filing of a federal appellate notice of appeal. The Supreme Court in *Houston* reasoned that "[t]he question is one of timing, not destination: whether the moment of 'filing' occurs when the notice is delivered to the prison authorities or at some later juncture in its processing." 487 U.S. at 273, 108 S.Ct. at 2383. Continuing, the Supreme Court reasoned that "[n]othing in [Federal Rule of Appellate Procedure] Rules 3 and 4 compels the conclusion that, in all cases, receipt by the clerk of the district court is the moment of filing. The lower courts have, in fact, also held that receipt by a District Judge . . . can be the moment of filing." *Id.*, 487 U.S. at 274, 108 S.Ct. at

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filing rules. *See* La. R.S. 13:850. Likewise, the Louisiana courts have enacted rules of court to authorize e-filing. *See* La. Sup. Ct. R. XLII.

[14] Rejecting the extension of the prison mailbox rule to the filing of a complaint, the Oregon Supreme Court in *Stull v. Hoke*, 326 Or. 72, 81, 948 P.2d 722, 726 (1997), reasoned that, by statute, "the operative moment for 'filing' an action is when the court clerk or a person exercising the duties of that office receives the complaint." *Id.* The court in *Stull* thus held that the prison mailbox rule cannot be extended to apply to complaints by *pro se* prisoners and that a complaint filed by such a prisoner is filed, so as to deem the case commenced for purposes of statutes of limitations, when the court clerk or a person exercising the duties of that office receives it. *See also* Barbara J. Van Arsdale, Annot., *Application of "Prisoner Mailbox Rule" by State Courts under State Statutory and Common Law*, 29 A.L.R.6th 237 (2007) (discussing contexts in which state courts have extended and declined to extend the prison mailbox rule).

2384 (citing *Halfen v. United States*, 324 F.2d 52, 54 (10th Cir. 1963)).[15] In contrast, Louisiana courts have held that "[n]ot even a district court judge may substitute for the Clerk or Deputy Clerk in the performance of this function." *Ansalve v. State Farm Mut. Auto. Ins. Co*., 95-0211, pp. 9-10 (La. App. 4 Cir. 2/15/96), 669 So.2d 1328, 1333-34 (citing *Johnson v. State Farm Mutual Automobile Ins. Co*., 241 So.2d 799 (La. App. 3d Cir. 1970)).

In *Johnson*, the plaintiff attempted to deliver his petition to the clerk of court for filing one day before the prescriptive period ran; however, the clerk's office was closed for painting that day. For that reason, the plaintiff delivered his petition to a judge's office. The judge wrote on the petition the following: "[f]iled this day with me in Chambers-Clerk's Office being painted." *Johnson*, 241 So.2d at 800. Two days later, the clerk of court marked the plaintiff's petition as being filed. Granting the defendant's exception of prescription, the Third Circuit cited the principle that "a paper or pleading is not filed when presented to the judge, but only when it is deposited with the Clerk of the Court, for the purpose of making it a part of the records of the case. *Id.* at 801. Continuing, the Third Circuit reasoned that "[a] claimant is presumed to know the law and he is required to file his suit with the proper official within the proper time." *Id.* at 802.

Summarizing, the Louisiana jurisprudence has steadfastly enforced the statutory requirement of actual delivery of the petition to the clerk of court for filing in order to commence a civil suit. Given the statutory requirement of actual delivery to the clerk of court, extending the prison mailbox rule to this context is

[15] The federal court in *Halfen* observed that "[t]he fact that appellant's Notice of Appeal was mailed to and received by the Judge rather than the Clerk makes no difference as the Clerk is merely an arm of the court." 324 F.2d at 54.

unsupportable. Because the prison mailbox rule is inapplicable in this context, the trial court erred in denying Defendants' peremptory exception of prescription.

DECREE

For the foregoing reasons, the Relators' writ application is granted, the trial court's judgment denying the Relators' peremptory exception of prescription is reversed, and judgment is rendered dismissing the plaintiff's suit.

WRIT GRANTED; JUDGMENT REVERSED; AND JUDGMENT RENDERED DISMISSING SUIT