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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTOPHER SPATGEN, Plaintiff, vs. R.J. REYNOLDS, INC., Defendant.	No. 4:03-cv-40029 ORDER ON MOTION TO DISMISS

Plaintiff Christopher Spatgen ("Plaintiff"), an inmate at the Anamosa State Penitentiary, filed suit against R.J. Reynolds Tobacco Company ("Defendant"). Plaintiff alleges that Defendant's tobacco products contributed to the addiction and death of his mother, Pamela Sue Finney, who died on September 28, 2000.

On January 28, 2003, Defendant R.J. Reynolds, Inc. filed a Motion to Dismiss Plaintiff's Petition, asserting that Plaintiff failed to state a claim upon which relief may be granted. Defendant further asserted that Plaintiff's claims were barred by the statute of limitations. Plaintiff has resisted Defendant's motion and filed a Request For Leave to Amend the Petition. For the reasons discussed below, Plaintiff's Request For Leave to Amend the Petition is denied and Defendant's Motion to Dismiss Plaintiff's Petition is granted.[1]

[1] The Court finds this case is determined by application of the statute of limitations. Accordingly, the Defendant's second argument, that the Plaintiff has failed to state a claim for which relief may be granted, is not addressed by the Court.

Summary of Material Facts

Plaintiff brought suit against Defendant claiming that Defendant's tobacco products contributed to and were responsible for the death of his mother, Pamela Sue Finney. Plaintiff filed suit in Iowa District Court for Polk County. Plaintiff alleges that he placed his petition in the Anamosa prison mail system on September 27, 2002. Plaintiff certifies that his petition "was filed with the Polk County Clerk of Court by depositing in the United States mail on the 27th day of September, 2002", however the notary date on the petition's certificate of service is October 15, 2002.[2]

The Polk County Clerk of Court sent Plaintiff an order for payment of the filing fee along with a copy of Plaintiff's petition on October 7, 2002. Plaintiff paid the filing fee on October 31, 2002, and the Clerk date stamped the petition later that same day. On January 21, 2003, Defendant removed the case to this Court and subsequently filed the Motion to Dismiss.

Applicable Law and Discussion

Plaintiff's claim against the Defendant seeks to recover damages for "injuries to the person", i.e., the death of his mother, and is therefore governed by the two-year statute of limitations contained in Iowa Code § 614.1(2) (2001). It is undisputed that

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[2] This apparent inconsistency between the notary date of October 15, 2002, and the date of September 27, 2002, the date on which Plaintiff certifies the petition was mailed, has not been resolved in the record, however it is not material to the court's ultimate determination on the motion.

Plaintiff's mother, Pamela Sue Finney, died on September 28, 2000. Plaintiff argues that this two year statute of limitations is two calendar years, asserting that the statute of limitations expired on Saturday, September, 28, 2002. Defendant argues that the statute of limitations expired on Friday, September 27, 2002.

> In computing time for the purposes of statute of limitations, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings . . . falls on a Saturday . . . the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

Iowa Code § 4.1(34). September 28, 2002 fell on a Saturday. Consequently, the statute of limitations on Defendant's claim in the present case expired on Monday, September 30, 2002.

"For all purposes, a civil action is commenced by filing a petition with the court. The **date of filing** shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy." Iowa R. Civ. P. 1.301(1) (emphasis added). "[G]enerally, "filing" is accomplished when the document is delivered to the proper officer." Miller v. Civil Constructors, 373 N.W.2d 115, 117 (Iowa 1985); see also Mills v. Bd. of Supervisors of Monona County, 290 N.W. 50, 51 (Iowa 1940)

("statutory requirement of 'filing with the auditor' was satisfied when the papers were delivered to the auditor for that purpose"). Therefore, even assuming Plaintiff deposited his Petition in the mail on September 27, 2002, the action was not commenced by merely placing the Petition in the mail. Rather, the date that is critical to the determination of whether Plaintiff complied with the statute of limitations date is when the Petition was **filed** with the court. Under the "commenced by filing" rule, the Petition needed to be filed with the court on or before September 30, 2002.

Plaintiff argues that under the prisoner mailbox rule, his Petition was filed at the point he deposited it with prison officials for mailing, which Plaintiff asserts was on September 27, 2002. "In its original form, the prison mailbox rule deemed a *pro se* prisoner's notice of appeal "filed" at the moment he delivered it to the warden for forwarding to the clerk of the district court." Grady v. United States, 269 F.3d 913, 916 (8th Cir. 2001) (citing Houston v. Lack, 487 U.S. 266, 270-76, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988)). The Supreme Court observed in Houston that "a prisoner cannot control the notice of appeal after it has been delivered to prison officials, the prisoner lacks legal counsel to institute and monitor the process, and the prison authorities have incentive to delay a filing beyond the applicable time limit." Sulik v. Taney Co., Mo., 316 F.3d 813, 815 (citing Houston, 487 U.S. at 270-72). The Court's holding in Houston was later incorporated into Rule 4 of the Federal Rules of Appellate Procedure, which governs the timeliness of notices of appeal. See Fed. R.

App. P. 4(c). The Rule provides:

> If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

Fed. R. App. P. 4(c)(1)).

Though Rule 4(c)(1) on its face applies only to notices of appeal, the prison mailbox rule has been applied to *pro se* prisoner filings outside the appellate sphere. Specifically, the Eighth Circuit has extended the prisoner mailbox rule to pro se state prisoners who file 28 U.S.C. § 2254 habeas petitions. Nichols v. Bowersox, 172 F.3d 1068, 1077 (8th Cir. 1999) (en banc). The rule also extends to pro se federal prisoners seeking similar relief under 28 U.S.C. § 2255. Moore v. United States, 173 F.3d 1131, 1135 (8th Cir. 1999); Grady, 269 F.3d at 916. In doing so, the Eighth Circuit concluded the Supreme Court's reasoning in Houston applies with "virtually equal force" in the habeas context. Nichols, 172 F.3d at 1075.

In addition, the Eighth Circuit recently held that "the prison mailbox rule governs the determination of when a prisoner's civil complaint has been filed." Sulik, 316 F.3d at 815. In Sulik, the pro se state prisoner's complaint was a § 1983 claim against the county and various law enforcement officers. Id. at 814. In support of its application of the prisoner mailbox rule, the court stated "[t]he pro se prisoner has no

control over the processing of his complaint after he turns it over to prison authorities for mailing, the prisoner lacks legal counsel to institute and monitor the process, and the prison authorities have reason to delay the filing of lawsuits, especially those against prison officials." Id. at 815. See also Casanova v. Dubois, 304 F.3d 75, 79 (1st Cir. 2002) (extending Houston to § 1983 complaints); Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993) (§ 1983 complaints); Lewis v. Richmond City Police Dep't, 947 F.2d 733, 736 (4th Cir. 1991) (per curiam) (§ 1983 or all civil complaints); Cooper v. Brookshire, 70 F.3d 377, 380 (5th Cir. 1995) (all civil complaints); Richard v. Ray, 290 F.3d 810, 813 (6th Cir. 2002) (per curiam) (all civil complaints); Edwards v. United States, 266 F.3d 756, 758 (7th Cir. 2001) (per curiam) (extending rule to all pro se filings absent exceptional circumstances); Garvey v. Vaughn, 993 F.2d 776, 783 (11th Cir. 1993) (§ 1983 & FTCA complaints).

The Supreme Court in Houston interpreted a federal rule, not the Constitution, therefore Houston is not binding on state courts. Adams v. LeMaster, 223 F.3d 1177, 1182 n. 4 (10th Cir. 2000), cert. denied, 531 U.S. 1195, 121 S.Ct. 1198, 149 L.Ed.2d 113 (2001) (noting that Houston was based on interpretation of federal statutes and procedural rules, not constitutional principles, and therefore state courts are not bound by the decision).

A number of state supreme courts have adopted Houston's rationale in concluding that a petition for review or other document is "filed" at the time a pro se

prisoner delivers it to the proper prison authorities for mailing. See, e.g., Ex parte Williams, 651 So.2d 569, 571 (Ala. 1992); Mayer v. State, 908 P.2d 56, 58 (Ariz. App. 1995); In re Jordan, 840 P.2d 983, 985 (Cal. 1992); Haag v. State, 591 So.2d 614, 617 (Fla. 1992); Munson v. State, 917 P.2d 796, 800 (Idaho 1996); Taylor v. McKune, 962 P.2d 566, 569-70 (Kan. App. 1998); State ex rel. Egana v. State, 771 So.2d 638 (La. 2000); Commonwealth v. Hartsgrove, 553 N.E.2d 1299, 1302-03 (Mass. 1990); Kellogg v. Journal Communications, 835 P.2d 13 (Nev.1992); Woody v. State, 833 P.2d 257, 259-60 (Okla. 1992); Commonwealth v. Jones, 700 A.2d 423, 426 (Pa. 1997); State ex rel. Shimkus v. Sondalle, 620 N.W.2d 409, 413 (Wis. App. 2000); Massaline v. Williams, 554 S.E.2d 720, 721-22 (Ga. 2001); Setala v. J.C. Penney Co., 40 P.3d 886, 890 (Haw. 2002). These courts generally find the reasoning of Houston persuasive and apply it in the absence of any countervailing statute or court rule.

Those states that have declined to adopt the mailbox rule generally have done so on the grounds that a statute or rule governing filing deadlines explicitly precludes it. See, e.g., Carr v. State, 554 A.2d 778, 779-80 (Del. 1989); State ex rel. Tyler v. Alexander, 555 N.E.2d 966, 967 (Ohio 1990); Kinnard v. Carnahan, 25 S.W.3d 266, 269 (Tex. App. 2000); State v. Parmar, 586 N.W.2d 279. 283-84 (Neb. 1998); Grant v. Senkowski, 744 N.E.2d 132 (N.Y. 2001); State v. Smith, 702 N.E.2d 1245, 1246 (Ohio App. 1997); Norby v. Santiam Correctional Inst., 841 P.2d 1 (Or. App. 1992);

O'Rourke v. State, 782 S.W.2d 808, 809 (Mo. App. 1990); Carr v. State, 554 A.2d 778, 779 (Del. Super. 1989). "In addition, some courts do not accept the reasoning of Houston or do not feel compelled to apply it in state cases, on policy grounds or because state prisons, unlike federal prisons, may not have a detailed mail record-keeping system." Carlstad, —P.3d at —, 2002 WL 31830558, at *3.

The Iowa Supreme Court has not adopted the prisoner mailbox rule. As this Court's jurisdiction over Plaintiff's case is based on diversity under 28 U.S.C. §1332, state law, not federal, controls the determination of when an action is commenced and the tolling of any statutes of limitation. See Walker v. Armco Steel Corp., 446 U.S. 740, 753, 100 S. Ct. 1978, 1986, 64 L. Ed. 2d 659 (1980).

Under Iowa law, "[f]or **all** purposes, a civil action is commenced by filing a petition with the court. The **date of filing** shall determine whether an action has been commenced within the time allowed by statutes for limitation of actions, even though the limitation may inhere in the statute creating the remedy." Iowa R. Civ. P. 1.301 (emphasis added). Rule 1.301(1) speaks to all purposes, therefore allowing an exception for the prisoner mailbox rule would be in direct conflict with the rule. Moreover, the Iowa Legislature has made specific exceptions to procedural rules for prisoner litigants. See e.g. Iowa Code 610A.1 (allowing prisoner litigants to pay reduced or deferred court costs). However, the Iowa Legislature did not create a prisoner's exception to the filing requirements under Rule 1.301(1), which at least

infers the legislative intent to require prisoners to be bound by the general filing rules. See Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995) (holding that "legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned").

The State of Iowa has not adopted the prisoner mailbox rule, therefore Plaintiff must comply with the normal filing procedures. In order to satisfy the statute of limitations requirement, Plaintiff's Petition must have been filed with the court on or before September 30, 2002. Plaintiff's petition bears a date stamp of October 31, 2002, and therefore the date of filing of Plaintiff's petition was October 31, 2002.[3] Because the date of filing determines when an action has been commenced, Plaintiff's claim is barred by the statute of limitations.

Plaintiff has requested leave to file an amended petition. Plaintiff states that in his amended petition, he will sue as a fiduciary to the estate of Pamela Sue Finney or, alternatively, he would illustrate that it is impossible or impracticable to continue his action through the estate. The proposed amendment to Plaintiff's petition will not cure Plaintiff's failure to timely file within statute of limitations. Any claims belatedly filed

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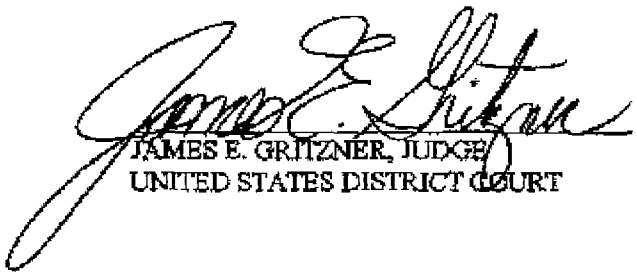
[3] The record indicates the Plaintiff's Petition was in the office of the Clerk of Court for Polk County on or before October 7, 2002 when the Clerk sent the notice of need to provide the filing fee, but does not provide the specific date on which the Petition arrived at the office of the Clerk. Since the Petition was not accompanied by the necessary filing fee and therefore not *filed* by the Clerk until October 31, 2002, the Court need not resolve the factual issue of when the Petition was actually received by the Clerk. Any litigant seeking to file a claim at the last possible moment does so at the risk of missing essential steps to the commencement of the action.

by Plaintiff as a secondary fiduciary or by the administrator of his mother's estate would be barred by the statute of limitations for the reasons stated above.

Conclusion

In determining when the Plaintiff's action was commenced, the Court must apply the law of the State of Iowa. The State of Iowa has not adopted the prisoner mailbox rule; therefore Plaintiff must comply with normal filing procedures. Plaintiff's proposed amendment will not cure his failure to comply with the applicable statute of limitations; therefore Plaintiff's Motion to Amend his complaint is **denied**. As his complaint was not filed with the Court in a timely manner, Defendant's Motion to Dismiss based on the statute of limitations is **granted**.

IT IS SO ORDERED.

Dated this 25th day of June, 2003.