

S256665

SUPREME COURT
FILED

JAN 09 2020

Jorge Navarrete Clerk

IN THE
SUPREME COURT OF CALIFORNIA

Deputy

CRC
8.25(b)

LUIS SHALABI

Plaintiff and Appellant

v.

CITY OF FONTANA, et al.

Defendants and Respondents.

REVIEW OF A DECISION BY THE COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO, CASE NO. E069671
SAN BERNARDINO COUNTY SUP. CT., CASE NO.: CIVDS1314694

REPLY BRIEF ON THE MERITS

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JASON PERNICIARO**

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I. INTRODUCTION.

Since its inception, California has provided a sensible, statutory method for calculating litigation deadlines. See, California Code of Civil Procedure § 12. Under Section 12, litigation deadlines are calculated with reference to full, 24 hour days. Stated otherwise, partial days do not count against the expiration of litigation deadlines. This deadline calculation rule squares with the statutory definition of a “day” as being a full (not partial) 24 hour period. It also ensures that parties receive the full measure of days granted by the Legislature to meet whatever statutory deadlines they face.

The Fontana Defendants are before this Court because Division Two of the Fourth Appellate District has made a startling departure from these long-settled Section 12 principles. See, Shalabi v. City of Fontana, 35 Cal.App.5th 639 (2019). Specifically, the Court of Appeal has found that one type of litigation deadline (i.e., the statute of limitations for minor plaintiffs) includes one more full day to take action than the Legislature actually provided. Id.

Defendants’ Opening Brief demonstrated that the Court of Appeal’s reading of Section 12 in this context is at odds with almost 150 years of precedent – including this Court’s opinion in Ganahl v. Soher, 5 P. 80 (Cal. 1884). If not corrected by this Court, the Court of Appeal’s troubling misread of Section 12 will unavoidably interject an unwelcome

element of confusion in calculating a host of California litigation deadlines – all of which involve the issue of whether to count full or partial days.

As set forth in further detail below, nothing in Plaintiff’s Brief salvages the Court of Appeal’s novel and erroneous reading of Section 12. Indeed, Plaintiff prudently does not even attempt to defend the Court of Appeal’s stated reasoning – evidently in favor of new, even more exotic deadline calculation arguments of their own invention. As set forth in further detail below, none of Plaintiff’s newly-voiced arguments have any merit.

II. PLAINTIFF’S READING OF SECTION 12 IS ERRONEOUS.

The issue framed by the Court is as follows: “In cases where the statute of limitations is tolled, is the first day after tolling ends included or excluded in calculating whether an action is timely filed?” Shalabi v. City of Fontana, 446 P.3d 234 (Cal. 2019). Respondents’ Opening Brief (“ROB”) squarely addresses this issue, pointing out that Ganahl v. Soher, 5 P. 80 (Cal. 1884) “correctly determined that the day after tolling ends is included within the limitations period, at least in cases where that day is a full and complete day.” (ROB 13.)

In response to the Court’s inquiry, the defense also demonstrated that Code of Civil Procedure § 12 – cited by the Court of Appeal to justify

excluding the day after tolling ends from its statute of limitations count – is largely irrelevant here. This is so because Section 12 has been designed and employed to exclude *partial* days from the calculation of litigation deadlines. (ROB 22-26). And the day following the expiration of minor tolling in this case was a *full* (not partial) day. See, Ganahl v. Soher, 5 P. 80 (Cal. 1884)(on the day before a person’s 18th birthday, s/he is a minor the “whole of the day”; and, on his 18th birthday, s/he is an adult the “whole of the day.”). Accordingly, the full (not fractional) day following the expiration of minor tolling in this case therefore counts against the running of Plaintiff’s statute of limitations. (See, e.g., ROB 27-30).

Plaintiff’s Brief in this Court contains their first real comment on the Court of Appeal’s stated Section 12 rationale in this case – as neither side’s merits briefs below even addressed Section 12. Tellingly enough, and even after many months to ponder the issue, Plaintiff has failed to formulate any principled argument in the defense of the Court of Appeal’s stated Section 12 reasoning. To the contrary, and as Plaintiff candidly acknowledges, “[i]n cases where the statute of limitations is tolled, the first day after tolling ends is included in calculating whether an action is timely filed.” (Appellant’s Answering Brief (“AAB”) 4.) Rather than join the issue framed by the Court of Appeal (and this Court), Plaintiff appears to suggest that the Court of Appeal’s statute of limitations count should be affirmed -- but on wholly different grounds than those actually stated by the

Court below. (Id.) Put most charitably, none of Plaintiff's alternative arguments have any merit.

Plaintiff chiefly discusses what Section 12 means when tolling ends – after part of a complete day had already expired. (AAB 6-9).

Thus, Plaintiff likens himself to the freed prisoner in Cabrera v. City of Huntington Park, 159 F.3d 374 (9th Cir. 1998), whose release from jail on August 8, 1992, was excluded from the deadline count. Id., at 378-379. Of course, because the prisoner in Cabrera was incarcerated a portion of August 8th and did not have the “whole of the day” to go to court (Ganahl, 5 P. at 81), it made sense to count his release date as an excludable day under Section 12. Id. Plaintiff also compares himself to a minor who was emancipated by court order on May 8, 1995. See, W. Shield Investigations & Sec. Consultants v. Superior Court, 82 Cal.App.4th 935, 950 (2000). But again, because the court's order of emancipation did not grant the minor the “whole of the day” to go to court (Ganahl, 5 P. at 81), that day was not counted against the minor's litigation deadline (without mentioning or applying Section 12.) The same is true of Snyder v. Boy Scouts of America, 205 Cal.App.3d 1318 (1988) (which also does not mention or apply Section 12.)

Plaintiff's case cites have no applicability where, as here, tolling did *not* end after part of a day had already been expended. On at least two prior occasions, this Court has forcefully ruled that a person reaches a given age at the first instant of their birthday; a corollary rule is that the prior age ends in the last instant just *before* the subject birthday. See, Ganahl v. Soher, 5 P. 80, 81 (Cal. 1884)(on the day before a person's 18th birthday, s/he is a minor the "whole of the day"; and, on his 18th birthday, s/he is an adult the "whole of the day.") This Court reached the same conclusion in a more recent opinion. See, In re Harris, 5 Cal.4th 813, 844 (1993) ("18 years from the first minute of life would expire — that is, the 19th year would begin — at that same minute on a person's 18th birthday, *i.e.*, the day 'corresponding' to the day of birth."). The Court's opinions in Ganahl and Harris settled the matter.

Even so, Plaintiff seems to invite a re-fight of issues that, as just noted, have already been heard and resolved in Ganahl and Harris. In so doing, Plaintiff inappropriately seeks a decision on an issue beyond the scope of the one question certified for review by this Court. The Court's one question did not re-open the long-settled issue of whether a person's relevant birthday (here, December 3, 2011) is a full or partial day for deadline calculation purposes. (AAB 8)(claiming that Plaintiff's minority "disability ended pursuant to section 352 on December 3, 2011, the day he reached the age of majority.") Apart from its other infirmities, Plaintiff's

attempt to revisit Ganahl and Harris fails for lack of relevance. See, People v. Cole, 38 Cal.4th 964, 984 n.14 (2006) (“We express no view on these questions, which are beyond the scope of the issue on which we granted review.”).

In short, Plaintiff was a minor on December 2, 2011, which was the last day of tolling under Code of Civil Procedure § 352. On December 3, 2011, he was an adult for the “whole of the day.” Ganahl, 5 P. at 81. Nothing of import happened at any point in time on December 3, 2011, that would justify including that day within the tolling provision of Section 352. Tolling ended on December 2nd. The first day after tolling ended was December 3rd. As Plaintiff concedes, “[i]n cases where the statute of limitations is tolled, the first day after tolling ends is included in calculating whether an action is timely filed.” (AAB 4.) The Court of Appeal erred when it reached the opposite conclusion.

III. CONCLUSION.

The parties do agree on at least one important point. “The gravest considerations of public order and security require that the method of computing time be definite and certain.” Ley v. Dominguez, 212 Cal. 587, 594 (1931). For this reason, and for all the forgoing reasons, the Court

should clarify that the first full day after tolling ends is included, and not excluded, in calculating California litigation deadlines.

DATED: January 8, 2020

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 1,900 words as counted by the Microsoft Office Word 2016 version word-processing program used to generate this brief.

DATED: January 8, 2020

Respectfully submitted,
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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1100 Town & Country Road, Suite 1450, Orange, California 92868, (714) 937-1010.

On January 8, 2020, I mailed the foregoing document described as **RESPONDENTS' REPLY BRIEF ON THE MERITS** on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ortiz Law Group 1510 J Street, Suite 100 Sacramento, CA 95814-2097 jesse@jesseortizlaw.com Counsel For Plaintiff LUIS SHALABI (1 copy)	Clerk of the Court, Dept. S32 Hon. Wilfred J. Schneider Jr. SAN BERNARDINO COURTHOUSE 247 W. Third Street San Bernardino, CA 92415 Trial Judge (1 copy)
Fourth District Court of Appeal 3389 Twelfth Street Riverside, CA 92501 (1 Copy)	Supreme Court 350 McAllister St. San Francisco, CA 94102 (1 original plus 13 paper copies)

I placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelopes with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 8, 2020, at Orange, California.

/s/Debra Miranda

DEBRA MIRANDA