

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Friday the 30th day of January, 2015.*

Neil Landini, et al., Appellants,

against Record No. 140591
Circuit Court No. CL12-062

Bil-Jax, Inc., et al., Appellees.

Upon an appeal from a
judgment rendered by the Circuit
Court of Powhatan County.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no error in the
judgment of the circuit court.

Neil Landini and VACORP* (collectively "Landini") sought to
bring a personal injury action against Bil-Jax, Inc., The Haulotte
Group, and James C. Pemberton Corp (collectively "the Defendants").
The alleged injury occurred on September 9, 2008. On September 2,
2010 Landini mailed a complaint to the Clerk of the Circuit Court
for Powhatan County with a check in the amount of \$344 to pay the
associated filing fees. The package was received the next day,
September 3, 2010. On September 9, 2010, the date on which the
statute of limitations expired, the Clerk informed Landini that the
check for the filing fee was \$2 short. Landini mailed a check for

* VACORP provides worker's compensation coverage to the Powhatan
County School Board and its employees. Landini alleges that he was
injured while performing his duties as an assistant band director
employed by Powhatan County School Board. VACORP asserts a right
of subrogation with respect to any damages recovered by Landini as
a result of his personal injury suit.

the \$2 deficiency, and the Clerk filed the action on September 13, 2010. Landini subsequently took a voluntary nonsuit on November 7, 2011 and refiled the action on April 2, 2012.

The Defendants filed pleas in bar, asserting that the suit should be dismissed as time-barred because the initial complaint was not filed within the two-year statute of limitations imposed by Code § 8.01-243(A). After a hearing, the trial court sustained the Defendants' pleas in bar and dismissed the action with prejudice. Landini subsequently filed a Motion to Rehear, attributing the \$2 deficiency to the library assessment collected under Code § 42.1-70. Landini argued that the action was timely filed because Code § 17.1-275(A)(13), which lists the clerk's fees to be paid at the time of filing, does not require payment of the library fee. Thus, Landini concluded, the Clerk should have filed the complaint on September 3, 2010, the date it was received, despite the \$2 deficiency in the library assessment. The trial court denied the Motion to Rehear, finding that the library fee is incorporated into those fees to be collected by the clerk at the time of filing, pursuant to Code § 17.1-275(D).

Code § 17.1-275(A)(13) lists the clerk's fees for civil actions asserting claims for monetary damages, concluding with the following requirement: "The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions." Noting the absence of the library fee among those fees "prescribed above," Landini maintains that the library fee need not be paid at the time of filing. However, Code § 17.1-275(D) commands that "[i]n accordance with § 42.1-70, the clerk shall collect fees under subdivision[] . . . A 13 . . . to be designated

for public law libraries." Given this express integration, Landini's argument fails. The library fee is to be collected with the clerk's fee assessed under Code § 17.1-275(A)(13), at the time of filing. Thus, because the library fee was not tendered in full until after the expiration of the limitations period, Landini's suit was not timely filed.

For this reason, we will affirm the judgment of the Circuit Court of Powhatan County.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamister

Clerk