

IN THE COURT OF APPEALS OF IOWA

No. 6-345 / 05-1054
Filed June 14, 2006

CHARLES E. ROBINSON,
Plaintiff-Appellant,

vs.

STATE OF IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner,
Judge.

An inmate appeals the district court's grant of summary judgment to the
State based on a finding that his claim of tortious injury was untimely.

AFFIRMED.

Jay P. Roberts of Roberts & Stevens, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, and Kristin W. Ensign, Assistant
Attorney General, for appellee.

Considered by Mahan, P.J., and Eisenhauer, J., and Schechtman, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2005).

SCHECHTMAN, S.J.

Charles Robinson (Robinson) alleges that he was assaulted by another inmate while incarcerated at a state penal institution on November 1, 1999. Robinson filed a tort claim, through his attorney, with the State Appeal Board on October 31, 2001. It was denied on September 4, 2002. On Thursday, September 5, 2002, a special assistant attorney general, on behalf of the State Appeal Board, authored a letter, addressed to Robinson's attorney in Waterloo, advising him of the denial. A certified mail delivery receipt indicates it was delivered to the office of the attorney (Jay P. Roberts) on September 9, 2002. Robinson filed this action for tortious injury on March 7, 2003.

Under our Iowa Tort Claims Act, the time to initiate a suit is extended for the period of six months from the date of mailing by the State Appeal Board. Iowa Code § 669.13 (2001). The State's motion to dismiss the action was overruled. On the State's interlocutory appeal, the denial of the motion to dismiss was affirmed as the State failed to establish the date of actual mailing as opposed to the date of its drafting. *Robinson v. State*, 687 N.W.2d 591, 596 (Iowa 2004). After remand, the State moved for summary judgment.

An affidavit by the mail supervisor for the Iowa Department of Administrative Services, stated that she had reviewed the records for certified mail sent on September 5, 2002, and a certified letter was sent to Jay P. Roberts from the Special Litigation Division of the Iowa Attorney General's office. An appended exhibit is a mail list for that office which identifies a mail item directed to Roberts at his office address in Waterloo. It is identified as article number

7099 3220 0001 3334 4282 which correlates exactly with the article number on the certified mail delivery receipt signed by Robert's office personnel. The mail list has the date of "9-5-02" upon it in ink. It is embossed with a postmark of the Des Moines main post office with "SEP 5,2002," within its center.

Robinson contends that the district court referenced the postmark as "barely visible"; that the issue of the postmark was not argued which did not allow him to combat the favorable assessment of it; that the record does not establish its actual mailing on that date; that a postmark on a mailing list is not as probative of the mailing date as one stamped on an envelope; and, examining the postmark in the light most favorable to the non-moving party, it does not conclusively establish the mailing date.

We inspect the record before the district court to determine if any genuine issue of fact exists, and whether the court correctly applied the law. *Sons of the Union Veterans of the Civil War v. Griswold Am. Legion Post 508*, 641 N.W.2d 729, 731 (Iowa 2002). The standard for review is for corrections of errors at law. *Hagen v. Texaco Ref. & Mktg. Inc.*, 526 N.W.2d 531, 534 (Iowa 1995).

It is abundantly clear that the mail list is an administrative record of certified mailings. It reflects six mailings on that day, listing the addressee and the respective addresses of each, Roberts being the fifth numerically. Above each mailing is reference to the State Appeal Board's file, in this matter, "T020380 – Robinson." Though the date is inserted in ink, the instructions on this official form is to "Complete by Typewriter, Ink, or Ball Point Pen." The

postmark is sufficiently legible to conclude that it is a Des Moines postmark and stamped on September 5, 2002.

Those undisputed facts coupled with the affidavit of the mail supervisor are sufficient to support a summary judgment that the mailing to Roberts occurred on that date and that this suit was appropriately dismissed as not filed within the statute of limitations and its extension. There are no undisputed material facts and all these issues were before the district court and ripe for resolution. We affirm the decision of the district court.

AFFIRMED.