

SUPREME COURT OF LOUISIANA

NO. 09-CC-1097

KIM S. DARDEN AND DAVID E. DARDEN,
BOTH INDIVIDUALLY AND ON BEHALF OF
THEIR MINOR CHILDREN, LADADRIAN N.
DARDEN AND LATRESE M. DARDEN

V.

LINDA DANIEL AND ALLSTATE
INSURANCE COMPANY

PER CURIAM

The court of appeal denied plaintiffs' writ application on April 14, 2009. Pursuant to Supreme Court Rule X, §5(a), the last day for plaintiffs to file a timely writ application in this court was Thursday, May 14, 2009. This application was filed with a United States Post Office Automated Postal Center ("APC") label dated May 14, 2009, but was not received by this court until May 18, 2009. Because the application was not received by the court on the first legal day following the expiration of the delay, the presumption of timely mailing set forth in Supreme Court Rule X, § 5(d) does not apply.

This court sent a letter to plaintiffs' counsel explaining that the presumption of timeliness did not apply, and requested that he "please forward a copy of the official receipt or certificate obtained from the United States Post Office where the writ was mailed" Plaintiffs' counsel responded by providing a copy of a May 14, 2009 "Sales Receipt" for postage from the Commerce Park Post Office on Perkins Road in Baton Rouge.

Supreme Court Rule X, § 5(d) provides that "the timeliness of the mailing shall be shown only by an official United States postmark or by official receipt or certificate from the United States Postal Service made at the time of mailing which

indicates the date thereof.” The APC label does not constitute an official U.S. postmark; therefore, timeliness in this case may only be established by an official receipt or certificate from the United States Postal Service made at the time of mailing which indicates the date thereof. As discussed in the revision notes to the rule, the term “official receipt” refers to “a receipt for certified mail secured from the postal clerk at the time of mailing” or “a receipt for registered mail secured from the postal clerk at the time of mailing.” The “sales receipt” for postage produced by plaintiffs’ counsel does not satisfy either of these requirements, and does not establish the date of mailing.

Accordingly, the application is not considered, as it was not timely filed.