COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED: July 8, 2020 8:48 PM FILING ID: 545402C2E01E2 CASE NUMBER: 2020CA216
Appeal District Court, City and County of Denver, Colorado The Honorable Robert L. McGahey, Jr. Case No: 2019CV32714	
Plaintiff-Appellant: **ELIZABETH MORIN,** v. Defendant-Appellee: **ISS FACILITY SERVICES, INC., and CITY AND COUNTY OF DENVER.**	▲ COURT USE ONLY ▲
Attorney for Plaintiff-Appellant: Todd F. Bovo BOVO LAW, LLC 650 S. Cherry Street, #1400 Denver, CO 80246 Tele: (303) 333-4686 Fax: (303) 595-5334 Email: todd@bovolaw.com Attorney Registration No.: 38691	Case Number: **2020CA216**
REPLY BRIEF	

Appellant, by and through counsel, Bovo Law, LLC, respectfully submits her Reply Brief as follows:

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

A. The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒ It contains 1835 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words.

B. The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☑ **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

☐ **In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

Signature of attorney or party

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I. Reply Argument

A. Plaintiff Did File Her Complaint on Time

The Defendants have emphasized that *Williams v. Crop. Prod. Servs.,* 361 P.3d 1075 (Colo. App. 2015) defines how to calculate the statute of limitations for year based limitations, which the Plaintiff has not disputed. Plaintiff's argument is that the *William's* Court did not define what happens when the statute of limitations end date falls on a court holiday, or a Saturday or Sunday. In *Williams*, the court distinguished C.R.S. § 2-4-108(1) & (3), which deal with calculating the statute of limitations period. The court was not dealing with a Saturday, Sunday or legal holiday as the last day of a statute of limitations period, so *Williams* is silent in regards to C.R.S. § 2-4-108(2).

As applied in *Matthews v. City & County of Denver*, 20 P.3d 1227 (Colo. App. 2000), C.R.S. § 2-4-108(2) states "If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday." This applies to **any** statute of limitations period whether it is based on years, months, or days. It was this statute and C.R.S. § 24-11-110, that the *Matthews'* Court relied on in their opinion. These statutes do not toll, waive, or extend the statute of limitations period, they simply allow the period to be given effect and provide a uniform method for determining when a

statutory period begins and ends. *Matthews* and C.R.S. § 2-4-108(2) clarify that regardless of what the statute of limitations period is for, or what public office or government entity is involved, any period that ends on a Saturday, Sunday, or legal holiday, actually ends on the next day that is not a Saturday, Sunday or legal holiday. This is regardless of whether the entity is closed, and defines no exceptions for electronic filing. This makes sense, as only attorneys can electronically file, otherwise creating an uneven playing field or prejudicial environment for those that do not have access to electronic filing.

C.R.S. § 2-4-108(2) is clear, the Plaintiff filed her complaint timely on the Monday following the Saturday deadline of her statute of limitations. Therefore, this Court should find that Plaintiff's complaint was timely filed.

B. Plaintiff Did File Her Notice of Appeal on Time

The question raised by the Defendants is whether the October District Court Order, [CF, p. 53-55], or the December District Court Order, [CF, p. 68-71], is the final judgment that triggers the filing of the notice of appeal. The Defendants maintain the October District Court Order was the final judgment, leaving nothing further for the court to do except for attorney fees. The Plaintiff maintains the

December District Court Order is the final judgment, as Judge Robert McGahey so ordered.

To resolve this difference, one needs to start with the Defendants Motion to Dismiss. Here, the Defendants have requested the following: [CF, p. 32-33]

1. All Plaintiff's claims be dismissed;
2. Attorney fees pursuant to C.R.S. § 13-17-201 for dismissal under C.R.C.P. 12(b);
3. Attorney fees pursuant to C.R.S. § 13-17-102(2), and;
4. Costs and fees, independent of C.R.C.P. 12 for Plaintiff's C.R.C.P. 11 alleged violations.

As the Defendants point out in their argument, fee-shifting attorney fees, such as C.R.S. § 13-17-201, are independent from the claims, and may be asserted in a separate proceeding. Except in this case, the Defendants have made a claim for costs and fees, independent of C.R.C.P. 12, for Plaintiff's alleged C.R.C.P. 11 violations. While the District Court granted the Defendants' motion to dismiss, the District Court did not finalize all of Defendants' requests and/or claims. The District Court still had more than fee-shifting attorney fees to do.

Specifically, the Defendants requested sanctions pursuant to C.R.C.P. 11. This request is not an independent claim that can be presented in a separate proceeding. *Henry v. Kemp,* 829 P.2d 505 (Colo. App. 1992). The policies for allowing District Courts to require the losing party to pay appellate, as well as District Court, attorneys' fees are not applicable to Rule 11, therefore Rule 11 is not a fee-shifting statute. *Cooter & Gell v. Hartmarx Corp.* 496 U.S. 384 (1990).

Further, sanctions provided under C.R.C.P. 11 are an exclusive remedy. *Henry*. Like the division in *Henry*, the federal courts hold that Rule 11 orders are incidental to the substantive claims asserted in an action. *State Farm Fire & Cas. Co. v. Bellino,* 976 P.2d 342 (Colo. App. 1998); *Estate of Drayton v. Nelson,* 53 F.3d 165 (7th Cir. 1994); *M.A. Mortenson Co. v. United States,* 877 F.2d 50 (Fed. Cir. 1989); *Mulay Plastics, Inc. v. Grand Trunk Western R.R. Co.,* 742 F.2d 369 (7th Cir. 1984). Similar to C.R.C.P. 11, Fed. R. Civ. P. 11 does not create an independent cause of action, it is merely a remedial tool available to the court. *Henry*; *Chromatics v. Telex Computer Products, Inc.,* 695 F. Supp. 1184 (N.D. Ga. 1988); *East-Bibb Twiggs Neighborhood Ass'n v. Macon-Bibb Planning & Zoning Commission,* 674 F. Supp. 1475 (M.D. Ga. 1987).

Therefore, when the District Court issued its October Order, Judge McGahey was correct when he ruled that this was not the final order. He stilled

needed to determine any violations of C.R.C.P. 11, if any, and the appropriate remedy, if any, from that determination. Since any remedy ordered for a C.R.C.P. 11 violation is not a fee-shifting attorney fee, and the alleged violation may not be asserted in a separate claim and is incidental to the claims dismissed, the District Court was correct in its order, and the final judgment was issued on December 20, 2019. The Plaintiff then had until February 7, 2020 to file her notice of appeal, which she did on February 3, 2020.

II. Attorney Fees Should Not be Awarded

The Plaintiff in good faith has followed the Colorado statutes in filing her complaint. The case law that defines the statute of limitations deadlines for periods based upon years, does not address the actual filing deadline when the statute of limitations ends on a Saturday. Plaintiff has not found any case law that clarifies this issue, as most likely, one refers to the existing statutes that clearly allow the filing on a Monday. This is a first impression, which pursuant to C.R.S. § 13-17-102, no attorney or party shall be assessed attorney fees. In regards to the issue of timely filing the notice of appeal, this issue is also a first impression, and the Plaintiff has relied in good faith on the orders of the District Court which clearly defined the final judgment.

III. Conclusion

The Plaintiff has shown that C.R.S. § 2-4-108(2) clearly allows the Plaintiff to file her complaint, that was due on a Saturday, on the next Monday, and still be considered timely. This statute applies to **any** statute of limitations period, including those calculated by yearly anniversaries. Further, the District Court's final judgment was on December 20, 2019, making Plaintiff's notice of appeal timely filed on February 3, 2020. The District Court had not finalized all claims, specifically any C.R.C.P. 11 violations, if any, in its October Order. The District Court has ruled appropriately relative to the final judgment determination.

DATED: July 8, 2020.

Respectfully Submitted,
BOVO LAW, LLC

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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2020, I served a true and correct copy of the above and foregoing REPLY BRIEF on the following via ICESS:

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