

***Shalabi v. City of Fontana*, 2021 Cal. LEXIS 4762**

In cases where the statute of limitations is tolled based on a plaintiff minor's age, pursuant to Cal. Code Civ. Proc., § 12, the day after tolling ends is excluded in calculating whether an action is timely filed.

**FACTS/PROCEDURE**

On December 3, 2013, Plaintiff Luis Shalabi filed a lawsuit against the City of Fontana and several of its police officers (Defendants), asserting deprivation of civil rights under 42 U.S.C. § 1983. Plaintiff alleged officers wrongfully shot and killed his father in May 2011. Plaintiff was a minor at the time of his father's death. He reached the age of majority on December 3, 2011, and filed his original complaint on December 3, 2013.

The trial court ruled that Plaintiff filed his claim one day outside the appropriate two-year statute of limitations and therefore, was time-barred. The court found that Plaintiff's 18th birthday must be included in calculating the limitations period, and accordingly, December 2, 2013, had been the final day for him to file suit. The Court of Appeal reversed, holding that Plaintiff's 18th birthday should have been *excluded* pursuant to Cal. Code Civ. Proc., § 12 (section 12), in calculating when the statute of limitations period began running after tolling during minority ended. Therefore, the appellate court held Plaintiff's complaint was timely filed. The Supreme Court of California granted review.

**HOLDING/DISCUSSION**

The Supreme Court of California affirmed the judgment of the Court of Appeal. In California, when a minor is injured, the statute of limitations is tolled during minority and until the minor turns 18. (Cal. Code Civ. Proc., § 352 (section 352).) Here, the Supreme Court addressed the question of *whether Plaintiff's 18th birthday—the day after the tolling period ended—should be included or excluded in calculating Plaintiff's last date by which to file suit.* Section 12 sets forth “the ordinary rule of computation of time.” (*Ley v. Dominguez* (1931) 212 Cal. 587, 594 (*Ley*)). This section provides in full: ***“The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.”***

The Court reasoned a uniform rule governing the method of computing time promotes clarity and stability. In keeping with these important policy concerns, the Court reiterated its holding in *Ley*, affirming that “[b]efore a given case will be deemed to come under an exception to the general rule the intention must be clearly expressed that a different method of computation was provided for.” (*Ley, supra*, 212 Cal. at p. 595.)

While Defendants argued that section 12 was alternatively enacted to ensure that fractions of a day are not to be counted in calculating the applicable limitations period, the Supreme Court was unpersuaded. On the contrary, it found the general rule for computing time was adopted to end the uncertainty inherent in deciding whether the first day is to be included or excluded, depending on a particular case's context or subject matter. If the Legislature wished to exclude only fractional days, it could do so. Instead, the plain language of section 12 remains unchanged since its 1872 enactment.

Furthermore, the Court found the public policy goals of ensuring certainty and uniformity weighed in favor of a general rule in computing time for statute of limitation periods. Applying section 12 to exclude a plaintiff's birthday in calculating a limitations period after age-based tolling ends under section 352 serves to protect the rights of minors. By contrast, allowing an exception to the general rule when a plaintiff reaches the age of majority would punish the minor plaintiff whom the law is intended to protect. **Thus, in cases where the statute of limitations is tolled based on a plaintiff minor's age, as set forth in section 12, the day after tolling ends is excluded in calculating whether an action is timely filed.** Therefore, Plaintiff's lawsuit was timely filed.