

**UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

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No. 96-60801  
Summary Calendar

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JOHN R. NICHOLS,

Plaintiff-Appellant,

versus

WAL-MART STORES, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Mississippi  
(1:95-CV-372)

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April 15, 1997

Before POLITZ, Chief Judge, JONES and SMITH, Circuit Judges.

PER CURIAM:\*

The sole issue presented on this appeal is whether the defendant's motion for summary judgment was filed timely. Concluding that it was, we affirm.

John R. Nichols filed suit against Wal-Mart Stores, Inc. for personal injuries

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

allegedly sustained as the result of a slip and fall on an oily substance in the automotive department. The matter was referred by consent of the parties for trial before a magistrate judge.<sup>1</sup> The magistrate judge entered a case management order which, *inter alia*, required that “all motions other than *in limine* motions shall be filed by September 15, 1996.”

September 15, 1996 was a Sunday. On Friday, September 13, 1996, counsel mailed defendant’s motion for summary judgment from Tupelo, Mississippi to the clerk’s office in Aberdeen, a distance of 33 miles. At 8:00 a.m. on Monday, September 16, 1996 clerk’s office personnel marked the motion as filed. Nichols maintains that the trial court erred by considering the motion because it was filed fatally untimely. Counsel unsuccessfully advanced untimeliness in the trial court.

The trial court summarily rejected Nichols’ untimeliness challenge. In so doing, the court either concluded that the filing was within the time limits of its scheduling order or it implicitly extended that order by a few hours. Either way, we perceive no error.

The judgment appealed is **AFFIRMED**.

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<sup>1</sup> 28 U.S.C. § 636(c).