

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1964-13T3

STEVE WILLIAMS,

Plaintiff-Respondent,

v.

WESTAMPTON POLICE DEPARTMENT,

Defendant-Appellant.

Submitted October 16, 2014 – Decided October 24, 2014

Before Judges Fuentes and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Docket No.
L-1144-13.

Parker McCay, P.A., attorney for appellant
(John C. Gillespie, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff Steve Williams filed a complaint seeking compensatory personal injury damages against defendant the Township of Westampton Police Department.¹ Defendant appeals

¹ Although the complaint filed by plaintiff pro se only names the Westampton Police Department as a defendant, we note that the actual party in interest is the Township of Westampton. The

(continued)

from the order of the Law Division denying its motion to dismiss plaintiff's complaint based on his failure to serve defendant with the Notice of Claim required under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to -12-3, within the ninety-day period established in N.J.S.A. 59:8-8. Defendant argues the Law Division judge erred in finding plaintiff offered or established sufficient reasons to satisfy the "extraordinary circumstances" standard under N.J.S.A. 59:8-9 that permits a claimant to file the TCA notice after ninety days from the date the cause of action accrued.

After reviewing the record before us, and mindful of prevailing legal standards, we agree with defendant's argument and reverse.

I

On January 9, 2013, plaintiff appeared before the Municipal Court of the Township of Westampton on an unrelated criminal matter and was ordered to be detained and remanded to the Burlington County Detention Center (BCDC). Plaintiff alleges he was injured when the Westampton police vehicle he was placed in to be transported to the BCDC collided with another vehicle. The accident occurred in the Westampton municipal parking lot.

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Westampton Police Department is merely a department or agency of the municipality.

There is no dispute that the accident occurred on January 9, 2013. Plaintiff began this cause of action against defendant by filing a pro se complaint dated April 18, 2013. The Superior Court Clerk's Office received the complaint on May 6, 2013. Plaintiff did not serve the Township of Westampton with a copy of the complaint until June 16, 2013. Defendant filed its answer and affirmative defenses on July 23, 2013. Among the affirmative defenses, defendant specifically identified plaintiff's failure to abide by the TCA notice requirements.

On September 27, 2013, defendant moved to dismiss plaintiff's complaint for failure to file a TCA notice containing the information required by N.J.S.A. 59:8-4, within ninety days of the accrual of the cause of action as mandated under N.J.S.A. 59:8-8. The only response plaintiff gave to defendant's motion was a handwritten letter received by the Cumberland County Civil Division Case Management Office on October 1, 2013. Plaintiff acknowledged receipt of defendant's motion and asked the court: "Is there a motion that I have to fill out if I want to file an opposition for the motion? If so could you send me one."

There is no indication on the face of plaintiff's letter that he copied or otherwise notified defendant's counsel of his communication to the court. Defendant first became aware of

plaintiff's October 1, 2013 letter to the court, when defense counsel received a fax transmission from the Burlington County Civil Division forwarding a copy of plaintiff's October 1, 2013 letter along with a completed pro se motion kit filed by plaintiff with the court on October 16, 2013. In this motion, plaintiff sought the court's permission to file "a notice of late claim at any time within one year after the accrual of the claim under N.J.S.A. 59:13-6."

The matter came for oral argument before the court on November 8, 2013. Plaintiff did not appear because he was presumably incarcerated. Defendant's counsel noted that plaintiff's cause of action accrued on January 9, 2013. Plaintiff was required under N.J.S.A. 59:8-8 to serve the municipality with the TCA notice within ninety days of this date, which in this case was April 9, 2013. Plaintiff submitted the following handwritten statement in support of his motion to extend the statutory time restriction:

While I was at the Burlington County jail I filed a tort claim notice with Trenton, with the Department of the Treasury, after I filed the notice the social worker let me call to make sure that everything was alright. The person I talked to told me he didn't think, that they didn't think the local police was . . . a state entity, but it was up to the commit [sic] to decide, so I told him I would also send a notice to the municipality to make sure and he told me that would be good just in case. I tired

[sic] to call a few times with the help of the social worker, but we never got any answer. I would like the courts to take into consideration that I have had to mail my letter's [sic] out by regular mail and that I'm an inmate and I have little control of the mail. Trenton did respond back (copy inside) to let me know that they did not consider Westampton Police Dept. a state entity. This is the reason I would like to have the court's approve my application of N.J.S.A. 59:13-6 notice of late claim. There is something wrong with my back, but I have to get M.R.I. and more medical treatment.

Defendant argued that under these undisputed circumstances, plaintiff had not established "extraordinary circumstances" under N.J.S.A. 59:8-9 to warrant the relaxation of the statutory ninety-day time restriction. The Law Division judge reserved decision at the conclusion of oral argument. In an order dated November 8, 2013, the Law Division denied defendant's motion to dismiss plaintiff's complaint and granted plaintiff's motion to file "a late" TCA Notice of Claim. In a memorandum of opinion attached to the order, the Law Division judge summarized the salient facts we have described, and found plaintiff:

mistakenly sent the original notice to the State rather than the municipality. He also attempted to contact Defendant in order to verify that notice was received, but his calls were not answered. The delay in notice was due to a mere mistake and has not unduly prejudiced Defendant. In the interests of justice, Plaintiff must be allowed to file the late notice of tort claim.

II

N.J.S.A. 59:8-8 requires those who seek to recover compensatory damages against a public entity based on a tort claim to file a claim notice "not later than the 90th day after accrual of the cause of action." N.J.S.A. 59:8-9 provides that

A claimant who fails to file notice of his claim within 90 days as provided in section 59:8-8 of this act, may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity or the public employee has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter; provided that in no event may any suit against a public entity or a public employee arising under this act be filed later than two years from the time of the accrual of the claim.

[(Emphasis added).]

In D.D. v. University of Medicine & Dentistry of New Jersey, 213 N.J. 130 (2013), the Court emphasized that the authority granted by the Legislature "to trial courts to permit a late notice in the exercise of their discretion does not equate with a grant of authority to override the statute's

declaration of purpose or to substitute a lesser standard of proofs for the extraordinary circumstances" Id. at 148. The Court also admonished appellate courts that in reviewing decisions by the trial courts, they

must ensure that their decisions are faithful to the overall legislative framework in order that the statute's essential purposes be preserved and not eroded through excessive or inappropriate exceptions. Courts faced with applications for leave to file a late notice of claim, therefore, must proceed with their evaluation mindful of the Legislature's direction that the proofs demonstrate circumstances that are not merely sufficient, but that they instead be extraordinary.

[Id. at 148-49.]

Within the meaning of N.J.S.A. 59:8-9, the term "extraordinary circumstances" does not include attorney inattention or ignorance of the law by a pro se litigant. See id. at 156. Although the analysis of what constitutes "extraordinary circumstances" is always done through a case by case approach, the facts presented here do not even come close to meeting this legal requirement. Here, plaintiff merely proceeded in a manner oblivious to the statutory requirements. The Law Division's analysis condoned this willful blindness by plaintiff and insulated him from the legal consequences of his failure to take action in a timely and informed fashion.

Under the standards established by the Legislature in N.J.S.A. 59:8-9, and reaffirmed by the Court in D.D., supra, we are compelled to reverse and vacate the trial court's order granting plaintiff's motion to file a late TCA notice and grant the defendant's motion to dismiss plaintiff's complaint with prejudice.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION