SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1603-15T2

RYAN RANKIN,

Plaintiff-Respondent,

v.

STATE OF NEW JERSEY, BOROUGH OF METUCHEN, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, and ROOM RENOVATORS, INC.,

Defendants,

and

METUCHEN PARKING AUTHORITY and NEW JERSEY TRANSIT CORPORATION,

Defendants-Appellants.

Argued December 13, 2016 – Decided February 15, 2017

Before Judges Koblitz and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-5231-14.

Nicole M. Grzeskowiak argued the cause for appellants (Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys; Jennifer Passannante, on the briefs).

Norman Kline argued the cause for respondent.

PER CURIAM

In this slip-and-fall case, defendants, Metuchen Parking Authority (MPA) and New Jersey Transit (NJT), appeal from the Law Division's November 20, 2015 order permitting plaintiff, Ryan Rankin, to serve MPA with a late notice of tort claim (Notice), N.J.S.A. 59:8-9.[1] The motion judge permitted the late service after concluding that the discovery rule applied and tolled the accrual date of plaintiff's claim.[2] NJT and MPA argue that the judge erred because under the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 13-10, the trial court lacked jurisdiction to consider plaintiff's application. In addition, they contend the discovery rule did not apply because plaintiff failed to comply with the TCA's notice requirements and failed to diligently pursue his claim. We disagree and affirm.

The facts derived from the motion record can be summarized as follows. Plaintiff slipped on ice on December 13, 2013, and sustained injuries while in a parking lot at the NJT Metuchen train station. There are eleven parking lots at the station that

[1] Although the order under appeal is interlocutory, it is "deemed a final judgment for appeal purposes." R. 2:2-3(a)(3).

[2] The discovery rule tolls the commencement of a statutory notice period until an injured party reasonably becomes aware of the injury or the identity the party that caused the injury. See McDade v. Siazon, 208 N.J. 463, 474 (2011); see also, infra.

are owned by either NJT or defendant Borough of Metuchen (Metuchen).

On February 21, 2014, plaintiff served Notices on NJT, Metuchen, and defendants the State of New Jersey and The Port Authority of New York and New Jersey. Plaintiff's Notice described the location of his fall as "the parking lot of Metuchen (NJ Transit) Station."

On August 27, 2014, plaintiff filed a complaint against the same defendants it served with Notices and also against defendant Room Renovators, Inc. The complaint described the location where defendant fell as "a parking lot adjacent to the Metuchen train station . . . ." By the beginning of December 2014, all defendants named in the complaint had filed their answers.

After defendants filed their answers, the parties pursued discovery. NJT and the State served answers to plaintiff's interrogatories in February 2015. The answers revealed that MPA was responsible for the maintenance of the parking lot where plaintiff fell pursuant to a lease dated February 18, 1959, between NJT's predecessor, Pennsylvania Railroad Company, and the Parking Authority of the Borough of Metuchen.[3] After learning about MPA's involvement, plaintiff immediately served MPA with a Notice on

[3] The Parking Authority of the Borough of Metuchen is also known as the Metuchen Parking Authority.

February 24, 2015. The Notice, however, did not identify MPA as an entity that plaintiff claimed caused his injuries and was served without leave of court. Plaintiff later filed a motion for leave to file an amended complaint to name MPA as an additional defendant, which the court granted on May 29, 2015. Plaintiff served MPA with the amended complaint, and on August 18, 2015, MPA filed its answer.[4]

MPA filed a motion for summary judgment in September 2015, based upon plaintiff's failure to serve a timely Notice with prior leave of court. The court granted that motion on October 29, 2015, without prejudice, finding that the Notice plaintiff served was defective for not identifying MPA "as a state agency . . . that caused the alleged damage in the Notice" and because plaintiff did not first seek leave of court to serve a late Notice.

Immediately after the court granted MPA's motion, plaintiff sought leave on November 3, 2015, to serve a late Notice on MPA. The court considered oral argument on November 20, 2015 and granted plaintiff's application. According to the motion judge, the discovery rule applied because plaintiff only learned of MPA's

[4] Prior to MPA filing its answer, it and Metuchen filed motions for summary judgment, seeking dismissal of the complaint with prejudice. The court granted that motion on August 21, 2015, as to Metuchen only, dismissing the complaint against it with prejudice.

involvement through the February 2015 discovery responses, and the delay in learning about MPA's role was not due to plaintiff's "lack of diligence" as MPA's lease "would not have been easily discoverable except by doing discovery" in this case. The judge further stated that he found any delay in serving MPA did not "cause any hardship . . . or unfairness" to MPA, as "the litigation is still" ongoing and "discovery [is] ongoing so that discovery that has already been obtained will be available to" MPA. According to the judge, because plaintiff could not have discovered the relationship earlier between MPA and the property where plaintiff fell, "the accrual date . . . [of plaintiff's cause of action] occur[ed] at the time that . . . [he] learn[ed] of that lease agreement."

Plaintiff served MPA with the late Notice and then sought and obtained permission from the court to file a new amended complaint, naming MPA as an additional defendant. This appeal followed.

We begin our review by acknowledging the "strict" requirements for the timely service of a Notice upon a governmental entity that are set forth in the TCA. See McDade, supra, 208 N.J. at 468. Pursuant to the TCA, "[n]o action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented" to the appropriate public entity in a written Notice. N.J.S.A. 59:8-3;

see N.J.S.A. 59:8-4 to -7. "A claim relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter not later than the 90th day after accrual of the cause of action." N.J.S.A. 59:8-8.

N.J.S.A. 59:8-1 provides the date of accrual for a cause of action "shall mean the date on which the claim accrued and shall not be affected by the notice provisions contained herein." N.J.S.A. 59:8-8 provides, in relevant part, that a "claimant shall be forever barred from recovering against a public entity . . . if . . . [he or she] failed to file the claim with the public entity within 90 days of the accrual of the claim except as otherwise provided in N.J.S.A. 59:8-9 . . . ."

In enacting N.J.S.A. 59:8-9, "the Legislature recognized that discretionary judicial relief from the ninety-day [TCA] requirement may be necessary to ameliorate the consequence of a late filing in appropriate cases." McDade, supra, 208 N.J. at 476. Because "the notice provisions of the [TCA] were not intended as a 'trap for the unwary,'" Lowe v. Zarghami, 158 N.J. 606, 629 (1999) (citation omitted), the TCA permits a claimant who does not serve a Notice within the ninety-day period to seek permission to file a late Notice. Permission may be granted in the discretion of a judge, "within one year after the accrual of . . . [a] claim, provided that the public entity or the public employee has not

been substantially prejudiced thereby." N.J.S.A. 59:8-9. The statute also states:

> Application to the court for permission to file a late notice of claim shall be made upon motion . . . 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.
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> [N.J.S.A. 59:8-9.]

If a claimant seeks to present a late Notice pursuant to the TCA, "the grant or denial of remedial relief is 'left to the sound discretion of the trial court, and will be sustained on appeal in the absence of a showing of an abuse thereof.'" McDade, supra, 208 N.J. at 476-77 (citation omitted). "Although the ordinary 'abuse of discretion' standard defies precise definition, it arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis,'" Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015) (quoting Flagg v. Essex Co. Prosecutor, 171 N.J. 561, 571 (2002)), or when "the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts

to a clear error in judgment." Id. (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)).

On appeal, MPA and NJT assert the trial court abused its discretion by granting plaintiff's motion because the TCA bars a claimant from serving a late Notice after one year from the date of the accident, as stated in N.J.S.A. 59:8-9. They disagree with the motion judge that the discovery rule tolled the accrual of plaintiff's claim against MPA, arguing instead that date remained the day he fell in December 2013. They also contend the court lacked jurisdiction to permit plaintiff to file a late Notice because plaintiff initially mailed MPA a late Notice without first seeking leave of court and only sought leave after the court granted MPA summary judgment in its favor.

As to the discovery rule, MPA and NJT contend that plaintiff failed to take reasonable steps to ascertain the party responsible for maintenance of the parking lot because he did not show proof that he had searched the public record, filed an Open Public Records Act[5] request, or conducted pre-litigation discovery. According to MPA and NJT, the information regarding the owner of the parking lot where plaintiff fell was readily available online on NJT's website. Furthermore, they claim that even if the

[5] N.J.S.A. 47:1A-1 to -13.

discovery rule was applicable, the trial court did not find that extraordinary circumstances existed that would justify allowing plaintiff to file a late Notice.

In response, plaintiff argues that it was not reasonably possible for him to discover that MPA was a potential defendant until receipt of NJT's responses to discovery, which included MPA's lease. He asserts that searching records of owners or looking at NJT's website would not have revealed MPA's involvement because NJT remained the record owner and its website merely identified MPA as a "contact." Plaintiff contends that his serving Notices upon the other public defendants, within the requisite ninety-day period, and his filing for leave to serve MPA with a late Notice within one year after discovery of the lease supports a finding of extraordinary circumstances. Therefore, the motion judge properly granted plaintiff's motion, especially since MPA did not suffer any undue hardship or prejudice. Plaintiff contends that based on these facts, the motion judge did not abuse his discretion.

We have considered the parties' arguments in light of the record and the applicable legal principles. We conclude from our review that the motion judge did not abuse his discretion because the judge correctly concluded that the discovery rule applied to

plaintiff's claim and he timely sought leave to file the late Notice.

"The Legislature enacted the [TCA] to afford circumscribed relief from the doctrine of sovereign immunity." McDade, supra, 208 N.J. at 474. In light of the public policy that "public entities shall only be liable for their negligence within the limitations of [the TCA]," N.J.S.A. 59:1-2, "[g]enerally, immunity for public entities is the rule and liability is the exception." McDade, supra, 208 N.J. at 474 (alteration in original) (quoting Fleur v. City of Cape May, 159 N.J. 532, 539 (1999)).

The "notice requirements are an important component of the statutory scheme." Ibid. (citing N.J.S.A. 59:8-8 and -9). Although notice requirements, such as the one stated in N.J.S.A. 59:8-9, are typically strictly construed, "in certain circumstances . . . they are subject to equitable constraints." Fox v. Millman, 210 N.J. 401, 415 (2012).

The discovery rule is an example of an "equitable restraint" applicable to the TCA's bar for failure to serve a timely Notice. That rule "may affect the timeliness of a notice of claim in appropriate cases, by tolling the date of accrual for purposes of computing the ninety-day period set forth in N.J.S.A. 59:8-8(a)." McDade, supra, 208 N.J. at 474 (citing Lamb v. Glob. Landfill Reclaiming, 111 N.J. 134, 145 (1988)). "The discovery rule tolls

the commencement of the ninety-day notice period only '[u]ntil the existence of an injury (or, knowledge of the fact that a third party has caused it) is ascertained.'" Id. at 475 (alteration in original) (quoting Beauchamp v. Amedio, 164 N.J. 111, 122 (2000)). When applying the discovery rule, the trial court must determine "whether the facts presented would alert a reasonable person, exercising ordinary diligence, that he or she was injured due to the fault of another." Caravaggio v. D'Agostini, 166 N.J. 237, 246 (2001).

When a claimant has filed a motion for leave to file a late Notice, a court must apply a two-step process in determining whether to grant the motion. Beauchamp, supra, 164 N.J. at 118-19.

> The first task is always to determine when the claim accrued. The discovery rule is part and parcel of such an inquiry because it can toll the date of accrual. Once the date of accrual is ascertained, the next task is to determine whether a notice of claim was filed within ninety days. If not, the third task is to decide whether extraordinary circumstances exist justifying a late notice. Although occasionally the facts of a case may cut across those issues, they are entirely distinct.
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> [Ibid.]

In addition, there must "be a showing of 'sufficient reasons constituting extraordinary circumstances' for the claimant's

failure to timely file, and second, that the public entity not be 'substantially prejudiced' thereby." McDade, supra, 208 N.J. at 477 (quoting N.J.S.A. 59:8-9).

Applying these guiding principles, we discern no abuse of discretion in the motion judge's decision. The motion judge's findings were supported by sufficient facts and consistent with the TCA. The judge properly determined the accrual date of plaintiff's claim, recognizing his accident occurred in December 2013, but that plaintiff could not reasonably determine MPA's role before February 2015, despite plaintiff taking reasonable steps to ascertain the party responsible for the property where he fell. The judge then determined that plaintiff took all reasonable action to serve a Notice on MPA and, although he initially dismissed the claim without prejudice for failing to seek leave of court, he properly held that permission to serve the late Notice within one year of the claim's accrual date should be granted. The judge relied upon plaintiff's diligent actions, the extraordinary circumstances[6] that prevented plaintiff from identifying MPA, and the lack of prejudice to MPA.

[6] Although the motion judge did not use the words "extraordinary circumstances," we can infer from his decision he made that finding, see Giannakopoulos v. Mid State Mall, 438 N.J. Super. 595, 607 n.5 (App. Div. 2014) (inferring a judge's finding of "exceptional circumstances" under Rule 1:13-7 from the judge's "quoted language"), certif. denied, 221 N.J. 492 (2015).

MPA's reliance on McDade does not compel a different result. In that case, the Supreme Court affirmed our decision to bar a plaintiff's claim because the discovery rule was inapplicable. The Court observed:

> There . . . [was] no evidence that plaintiffs searched the public record, inquired about the ownership of the pipe . . . [that caused plaintiff to fall], or took any affirmative steps to determine the identity of the pipe's owner. Given plaintiffs' awareness of the injury, and their knowledge that the entity responsible for the pipe was a potential tortfeasor, the discovery rule does not toll the date of accrual of plaintiffs' cause of action.
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> [McDade, supra, 208 N.J. at 479 (citations omitted).]

Moreover, in McDade, the plaintiffs never filed a motion for leave to file a late Notice. Ibid. In this case, the evidence established plaintiff searched for and found the owner of the property where he fell and filed for leave of court to serve a late Notice when he learned of MPA's involvement. These significant distinctions make MPA's reliance on McDade inapposite.

Under these circumstances and affording the judge's decision the deference to which it is entitled, see id. at 476-77, we have no reason to disturb the result in this case.

Affirmed.