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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1984-16T3

J.C.,

Plaintiff-Appellant,

v.

CAROL D'ANNUNZIO,

Defendant,

and

LENAPE VALLEY REGIONAL HIGH SCHOOL,  
LENAPE VALLEY REGIONAL SCHOOL BOARD,  
and LENAPE REGIONAL SCHOOL DISTRICT,

Defendants-Respondents.

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Submitted December 5, 2017 – Decided December 21, 2017

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Sussex County, Docket No. L-  
0193-16.

Fuggi Law Firm, PC, attorneys for appellant  
(Robert R. Fuggi, Jr., of counsel and on the  
brief; Carrie Ayn Smith, on the brief).

Sciarrillo, Cornell, Merlino, McKeever &  
Osborne, LLC, attorneys for respondents

(Anthony P. Sciarrillo, of counsel; Paul E. Griggs and Jaclyn M. Morgese, on the brief).

PER CURIAM

Plaintiff, J.C., appeals from a June 1, 2016 order denying his motion to file a late notice of tort claim pursuant to N.J.S.A. 59:8-9 to pursue suit against defendants Lenape Valley Regional School Board, Lenape Valley Regional High School (LVHS), and Lenape Valley Regional School District, and a November 30, 2016 order denying reconsideration. We affirm.

I.

The essential facts are not in dispute. Plaintiff was a student at LVHS from 1990 to 1994. He alleges his French teacher, Carol D'Annunzio, sexually abused him from 1991 to 1993, when he was between fifteen and seventeen years old.

Following his high school graduation, plaintiff earned a Bachelor's degree in French from Old Dominion University and a Master's degree in Education from Seton Hall University. In 2000, he began teaching French at Kittatinny Regional High School. In 2007, plaintiff was arrested for sexually abusing a fifteen-year-old student at the school. Plaintiff was charged with first-degree sexual assault, second-degree endangering the welfare of a child, and third-degree criminal sexual contact, and ultimately pled guilty to second-degree sexual assault. At plaintiff's

sentencing, the court found as a mitigating factor that plaintiff "was [himself] the subject of sexual victimization as a teenage[r] . . . by one of his high school teachers who was a female." Plaintiff received a three-year prison sentence and was required to register as a sex-offender.

Following his arrest, plaintiff entered therapy with Dr. Michael Fiore, a psychologist, and was still receiving weekly psychotherapy from him in 2016. In 2013, plaintiff authored a memoir, with the help of Dr. Fiore. The book detailed plaintiff's abusive relationship with D'Annunzio, as well as a trip he took to Florida to confront D'Annunzio in February 2013. The book received news and media attention, including a two-part newspaper article about plaintiff, his crime, and his allegations against D'Annunzio, which was published in November 2014. Around that time, detectives from the Sussex County Prosecutor's Office investigated plaintiff's allegations, but did not bring charges against D'Annunzio.

In October 2015, plaintiff's attorney referred him to Dr. Christine Hatchard, a licensed psychologist, to conduct an evaluation. In her March 7, 2016 report, Dr. Hatchard concluded plaintiff "did not fully realize that he was a victim of sexual abuse until May 2015, and has since developed Post Traumatic Stress Disorder" (PTSD).

On March 30, 2016, plaintiff's counsel filed a motion for leave to file a late notice of tort claim, and simultaneously served defendants with a tort claim notice alleging plaintiff was a victim of sexual abuse while a student at LVHS. Plaintiff contended his claim did not accrue until May 2015, when he finally recognized he was a victim of sexual abuse by D'Annunzio. He argued he then began experiencing symptoms of PTSD and other psychological disorders, which constituted "extraordinary circumstances" justifying the late filing.

In their opposition, defendants argued plaintiff's position was belied by: (1) plaintiff's numerous psychiatric evaluations in 2007 relating to his criminal case, where the sentencing court accepted his prior abuse by D'Annunzio as a mitigating factor; (2) plaintiff's 2013 book, in which he admitted being sexually abused by D'Annunzio; (3) the November 2014 newspaper article in which plaintiff detailed his three-year relationship of sexual abuse by D'Annunzio; and (4) plaintiff's meetings with detectives in August and September 2014, when the Sussex County Prosecutor's Office was considering whether to criminally charge D'Annunzio. Defendants also asserted they suffered substantial prejudice by the filing of the late tort claim notice.

The trial court denied the motion on June 1, 2016. In a comprehensive written opinion, Judge Robert M. Hanna reasoned:

Here, the claim accrued as early as 1993[,] when the alleged sexual abuse began between [p]laintiff and . . . D'Annunzio. Indeed, [p]laintiff acknowledges this in his [2013] book . . . . In Chapter Eleven of [p]laintiff's [b]ook, plaintiff describes in detail the alleged sexual abuse by his former teacher . . . D'Annunzio albeit under an alias. Plaintiff further describes his negative connotations and feelings of anxiety associated with the sexual abuse as depicted in [p]laintiff's [b]ook.

. . . .

The [statutory] ninety[-]day notice [period] could also have been triggered in 2007 when [p]laintiff underwent evaluations relative to his criminal conviction, during the eight years of therapy with Dr. Fiore, when [p]laintiff authored his book and admitted to the sexual abuse, or when detectives from the Sussex County Prosecutor's Office investigated the alleged abuse by . . . D'Annunzio and did not pursue a claim of abuse. All of the aforementioned events show that [p]laintiff knew of his claim and failed to act upon it.

Judge Hanna rejected plaintiff's contention that his PTSD, related symptoms, and other psychological disorders constituted the "extraordinary circumstances" required by N.J.S.A. 59:8-9 to excuse the late filing. The judge instead found:

Before May 2015, [p]laintiff wrote his [b]ook, traveled to Florida to confront . . . D'Annunzio, was interviewed for a two-part article, and was interviewed by the Sussex County Prosecutor's Office. Plaintiff was counseled by Dr. Fiore as [p]laintiff's therapist for eight years. Plaintiff had to have known of his sexual abuse before May 2015

when he perceived himself as a victim of sexual abuse.

Plaintiff filed a motion for reconsideration, which the court denied on November 30, 2016. The court again rejected plaintiff's contention, based on Dr. Hatchard's expert report and opinion, that plaintiff's cause of action did not accrue until May 2015, when he then purportedly had sufficient knowledge of his injury and its causal relationship to the alleged abuse by D'Annunzio. The court also rejected plaintiff's further contention that, at a minimum, Dr. Hatchard's report and opinion gave rise to factual issues that required a Lopez<sup>1</sup> hearing to determine the accrual date of plaintiff's claims.

The judge concluded plaintiff failed to meet the standard for reconsideration established in D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). In his written statement of reasons, Judge Hanna elaborated:

The [c]ourt concludes that it correctly denied [p]laintiff's motion to file a late notice of tort claim, and takes this opportunity to clarify and amplify its reasoning. The [c]ourt found and confirms that two events – [p]laintiff's 2007 criminal sentencing and the writing and publication of [p]laintiff's book . . . - each independently establish as a matter of law that [p]laintiff had sufficient

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<sup>1</sup> Lopez v. Sawyer, 62 N.J. 267, 272 (1973) (requiring a hearing when "a plaintiff claims a right to relief from the bar of the statute of limitations by virtue of the so-called 'discovery' rule").

knowledge of his injury and the causal relationship between such injury and the alleged abuse by . . . D'Annunzio so that his claims accrued as of the dates thereof. Both of those dates - 2007 for the criminal sentencing and 2013 for [p]laintiff's book - exceed the maximum two years from accrual permitted for a [l]ate [t]ort [c]laim under N.J.S.A. 59:8-9. The [c]ourt did not find, and does not find, that [p]laintiff's claims accrued as of the time of the sexual abuse allegedly perpetrated by . . . D'Annunzio while [p]laintiff was a high school student.

The [c]ourt carefully considered Dr. Hatchard's report and opinions, proffered as the "sufficient reasons" to permit a [l]ate [t]ort claim. Dr. Hatchard's opinion that [p]laintiff "did not fully realize he was a victim of sexual abuse until May 2015" does not mean, for purposes of accrual under the discovery rule, that [p]laintiff lacked sufficient realization to trigger accrual of his causes of action. The [c]ourt found, as a matter of law, that [p]laintiff had sufficient knowledge and understanding of injury and causal connection to seek and receive mitigation of his criminal sentence in 2007, and that such knowledge and understanding was sufficient to trigger accrual of his civil claims. Again, it is undisputed that [p]laintiff sought and received a criminal sentencing benefit by citing the sexual abuse he endured at the hands of . . . D'Annunzio. The sentencing proceeding, the [c]ourt notes, was reviewed by this [c]ourt and is a readily available matter of public record. As the [c]ourt previously noted, Dr. Hatchard did not address this point in her report.

A similar analysis applies to plaintiff's book, which reveals that [p]laintiff, as a matter of law upon his own undisputed statements, had sufficient knowledge and

understanding and causal connection to seek to trigger accrual of his civil causes of action.

[(Footnote omitted).]

## II.

On appeal, plaintiff argues the trial court abused its discretion by denying his motion to file a late tort claim. Specifically, he contends the court failed to appreciate the significance of Dr. Hatchard's report, and should have conducted a Lopez hearing to determine the accrual date of plaintiff's claim.

A "claimant shall be forever barred from recovering against a public entity or public employee if: (a) The claimant failed to file the claim with the public entity within [ninety] days of accrual of the claim except as otherwise provided in N.J.S.A. 59:8-9." N.J.S.A. 59:8-8. Pursuant to N.J.S.A. 59:8-9,

[a] claimant who fails to file notice of his claim within [ninety] 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.

Trial courts are empowered to permit the filing of a late notice only upon a claimant's showing of "sufficient reasons constituting extraordinary circumstances" for the failure to file a timely notice of claim. N.J.S.A. 59:8-9. The Supreme Court has



recently emphasized that "[t]he Legislature has commanded that relief be granted only in circumstances that are extraordinary." D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 158 (2013). Extraordinary circumstances is a "strict standard." Zois v. N.J. Sports & Exposition Auth., 286 N.J. Super. 670, 673 (App. Div. 1996).

The decision to grant or deny permission to file a notice of late claim is "'left to the sound discretion of the trial court, and [its decision] will be sustained on appeal in the absence of a showing of an abuse thereof.'" D.D., 213 N.J. at 147 (alteration in original) (quoting Lamb v. Global Landfill Reclaiming, 111 N.J. 134, 164 (1998)). "Although deference will ordinarily be given to the factual findings that undergird the trial court's decision, the court's conclusions will be overturned if they were reached under a misconception of the law." Ibid. (citing McDade v. Siazon, 208 N.J. 463, 473-74 (2011)). Following our review of the record and applicable law, we conclude Judge Hanna correctly interpreted the law and did not abuse his discretion in denying plaintiff's motion.

As noted, a claimant must file a notice of claim within ninety days of the accrual of the cause of action. N.J.S.A. 59:8-8. Relying on Dr. Hatchard's report, plaintiff argues his claim did not accrue until May 2015, and the court erred in concluding it

accrued earlier. Alternatively, plaintiff contends a Lopez hearing should have been conducted to ascertain the appropriate accrual date.

We recently rejected such arguments in a strikingly similar context. J.P. v. Smith, 444 N.J. Super. 507 (App. Div.), certif. denied, 226 N.J. 212 (2016). We noted:

N.J.S.A. 59:8-1 . . . clarifies that, for purposes of the statute's notice and filing limitations, "[a]ccrual shall mean the date on which the claim accrued and shall not be affected by the notice provisions contained herein." Under the [Tort Claims Act],<sup>[2]</sup> "the discovery rule is part and parcel" of determining when a claim accrued "because it can toll the date of accrual." Beauchamp [v. Amedio], 164 N.J. 111, 118 (2000)]. "Until the existence of an injury (or, knowledge of the fact that a third party has caused it) is ascertained, the discovery rule will toll accrual." Id. at 122. "However, once an injury is known, even a minor one, the ninety day notice is triggered." Ibid. (emphasis added). "Worsening of that injury does not extend the time [to serve a notice] or otherwise alter the party's obligation." Ibid.; see also Maher v. Cnty. of Mercer, 384 N.J. Super. 182, 186 (App. Div. 2006).

[Id. at 528-29.]

Like J.P., in the present case plaintiff was undoubtedly aware of the abuse, D'Annunzio's identity as his abuser, and D'Annunzio's status as a teacher with LVHS, when: (1) he argued

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<sup>2</sup> N.J.S.A. 59:1-1 to 12-3.

D'Annunzio's abuse as a mitigating factor at sentencing on his 2007 criminal charges; (2) he wrote his 2013 book, in which he admitted being sexually abused by D'Annunzio; (3) he detailed his three-year relationship of sexual abuse by D'Annunzio in a November 2014 newspaper article; and (4) he discussed the allegations of sexual abuse with detectives in August and September 2014. Moreover, at least as early as his sentencing on the 2007 criminal charges, plaintiff was aware he was harmed by D'Annunzio's alleged abuse, and in his 2013 book he referenced his feelings of anxiety associated with that abuse.

In short, by no later than November 2014, "a reasonable person, possessing plaintiff's knowledge, could have discovered a basis for a cause of action with the exercise of ordinary diligence." J.P., 444 N.J. Super. at 528. Plaintiff was thus required to file his tort claim notice within ninety days of that time. He failed to do so. He also failed to seek leave to file a late claim within one year of the accrual of his claim. "Plaintiff's failure to comply with the time requirement of N.J.S.A. 59:8-8(a) constitutes an absolute bar to recovery against [these defendants]." Id. at 529 (citing Karczewski v. Nowicki, 188 N.J. Super. 355, 357 (App. Div. 1982)).

Even if we accept May 2015 as the accrual date of the claim, as plaintiff urges, plaintiff must still show: (1) there are

sufficient reasons constituting extraordinary circumstances for his failure to file the tort claim notice within ninety days of that time; and (2) there is no substantial prejudice to the public entities. D.D., 213 N.J. at 147. We need not reach the second prong because plaintiff's medical condition is insufficient to constitute extraordinary circumstances.

In general, medical conditions may satisfy the extraordinary circumstances test if they are "severe or debilitating." Id. at 149. Whether an injury rises to this level requires the judge to analyze the "severity of the medical condition and the consequential impact on the claimant's very ability to pursue redress and attend to the filing of a claim." Id. at 150. A judge performs this analysis with knowledge that the extraordinary circumstances test is a "'more demanding' one." Id. at 148 (quoting Lowe v. Zarghami, 158 N.J. 606, 625 (1999)).

We have previously addressed whether "severe or debilitating" medical conditions have met the extraordinary circumstances standard. See, e.g., Mendez v. S. Jersey Transp. Auth., 416 N.J. Super. 525, 533-36 (App. Div. 2010) (satisfying the test where the plaintiffs were unconscious at the accident scene, suffered from severe head trauma requiring ambulance transport to a nearby trauma center, spent considerable time in hospitals and rehabilitation facilities, and had no recollection of events occurring

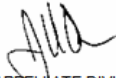
immediately before or after the accident); R.L. v. State-Operated School Dist., 387 N.J. Super. 331, 340-41 (App. Div. 2006) (meeting the extraordinary circumstances test where a high school student was preoccupied with thoughts of death after learning he contracted HIV infection from sexual relationship with teacher); Maher, 384 N.J. Super. at 189-90 (constituting sufficient extraordinary circumstances where a severe staph infection was treated with an induced coma with little chance of survival). These cases illustrate the magnitude of what is meant by "severe or debilitating."

Plaintiff failed to show his medical condition meets this standard. Plaintiff's own expert, Dr. Hatchard, opined that his "symptoms comprising PTSD began in May 2015." As a result, plaintiff reported experiencing nightmares, "the frequency of [which] can range anywhere from twice a month to every night if he is reminded of the abuse." Plaintiff also reported difficulty sleeping. However, Dr. Hatchard further wrote "[plaintiff does not appear to be experiencing any additional mental disorders" and "[h]e is not currently taking any prescription medication and reports no current or past physical health problems." Also, "[h]e currently works full-time as a self-employed mechanic with his father." We do not conclude from this evidence that plaintiff's mental condition is so "severe and debilitating" that it prevented

him from filing a timely tort claim notice within ninety days of May 2015. Accordingly, plaintiff has failed to demonstrate extraordinary circumstances that would excuse the late filing.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION