SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1353-16T2

RICHARD MARTIN and
PATRICIA MARTIN, his wife,

Plaintiffs-Respondents,

v.

BEL-AIRE GOLF COURSE, and
COUNTY OF MONMOUTH,

Defendants-Appellants.

Argued November 30, 2017 – Decided February 6, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2349-16.

Robert M. Ford argued the cause for appellants (Birdsall & Laughlin, LLC, attorneys; David A. Laughlin, of counsel and on the briefs; Robert M. Ford, on the briefs).

G. John Germann argued the cause for respondents (DeNoia & Tambasco, attorneys; Thomas DeNoia, of counsel; G. John Germann, on the brief).

PER CURIAM

In this slip-and-fall action, plaintiff, Richard Martin,[1] alleges he was injured while playing golf at defendant Bel-Aire Golf Course (BAGC), which is owned and operated by defendant Monmouth County (County). Defendants appeal from the Law Division's October 21, 2016 order[2] permitting plaintiff to file a notice of late claim pursuant to N.J.S.A. 59:8-9, a provision of the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, because plaintiff had substantially complied with the TCA's notice provisions.[3] On appeal, defendants challenge that finding, arguing that it was belied by the fact that plaintiff never served a timely, signed, written notice of claim on the

[1] Patricia Martin is also a named plaintiff having filed a derivative per quod claim. However, in our opinion, for clarity purposes, we refer only to Richard Martin as plaintiff.

[2] Although the order is interlocutory, our Rules permit the filing of an appeal from an order granting permission to file a late notice claim as of right. R. 2:2-3(a)(3).

[3] The order states the judge granted plaintiff's motion to file a late notice of claim and that "[p]laintiff's accident report . . . together with the subsequent Tort Claim Notice prepared by [p]laintiff's attorney and served upon the County . . . is deemed to have substantially complied with the requirements of the [TCA.]" For the reasons expressed in this opinion, we read the judge's order to have deemed as effective the untimely notice served on the County by plaintiff's counsel because the judge did not find extraordinary circumstances supporting a late filing of the claim. See generally Zois v. N.J. Sports and Exposition Auth., 286 N.J. Super. 670 (1996) (addressing the difference between a finding of extraordinary circumstances and substantial compliance).

County and there were no extraordinary circumstances to support a late filing or a finding of substantial compliance. We affirm.

We glean the salient facts from the motion record. They are summarized as follows. Plaintiff was at BAGC playing golf on October 15, 2015 when he tripped over the remnants of trees that had been removed. His fall caused him to sustain injuries to his hip, shoulder and neck. After he fell, plaintiff attempted to continue with his game, but he found his injuries were too painful. He returned to the clubhouse where he reported the incident. Pursuant to a BAGC's employee's instructions, plaintiff prepared and submitted a signed, handwritten statement as to what happened, but he was not provided with a copy.[4] The information plaintiff provided included his personal contact information, and a description of the events leading to his fall and of his injuries. When plaintiff left the clubhouse, he went directly to a hospital for treatment.

After plaintiff left, a County employee, Tom Petraglia, completed an incident report that contained all of the

[4] We observe that the motion record does not contain a copy of plaintiff's written statement or any certification from any BAGC or County employee refuting plaintiff's contention that he supplied a signed, handwritten statement.

information given by plaintiff in his statement. The report was faxed to the County that same day. On October 19, 2015, another County employee prepared a supplementary incident report that set forth additional specific information about the area where plaintiff fell and the results of another employee's follow-up telephone conversation with plaintiff about his injuries. In the report, plaintiff is quoted as advising the employee that he went to the hospital emergency room, had a CT scan, and was prescribed painkiller medication. Plaintiff also stated he wanted his medical bill paid by the County and that he would be following up with his doctor. This report was also faxed to the County. Thus, by October 19, 2015, the County was in possession of all the information it could obtain from plaintiff and had already begun its own investigation of the incident.[5]

Approximately eleven days after he fell, plaintiff met with his attorney who prepared and sent a timely Notice of Claim (Notice) on October 30, 2015. The Notice contained essentially all of the information that plaintiff provided to the BAGC employee fifteen days earlier.

[5] Based on that information, the County sent plaintiff a refund of the fees he paid to the BAGC on the day he was injured, noting on its refund check that plaintiff "slipped on [third] tee at [BAGC] — got injured[.]"

Although the Notice properly identified the County as the agency plaintiff alleged was responsible for his injuries, for some unknown reason, it was mailed by regular and certified mail to Wall Township (Wall) where the BAGC is located. Wall received the Notice on November 2, 2015, but did not advise counsel it was improperly sent to the township until its claims administrator sent a January 12, 2016 letter, which counsel received on January 15, 2016, that contained an Affidavit of Non-Jurisdiction from the township dated December 14, 2015. By the time counsel received this information, the ninety-day period for filing a timely Notice under the TCA had expired.

After plaintiff's counsel received the township's affidavit, he later sent the Notice to the County. However, without explanation, he waited until April 2016 to send the Notice.[6] In his letter to the County, counsel also advised that his client had given a signed statement to BAGC's employee on the date of the accident.[7] On May 4, 2016, the County's claim administrator notified plaintiff's counsel that the Notice was

[6] The parties did not supply us with a copy of this document in their appendices. However, it is evident from the motion judge's findings and the parties' appellate briefs that there is no dispute that the materials were not sent to the County until approximately April 20, 2016.

[7] The parties also did not provide us with a copy of this letter.

untimely and the reports the County received were insufficient for it to consider plaintiff's claim.

In June, 2016, plaintiff filed his complaint and a motion requesting either permission to file a late Notice "or in the alternative [a] determin[ation] that . . . [p]laintiff's report to the public entity on the date of the incident substantially complied with the notice requirements of N.J.S.A. 59:8-4." The motion was supported by plaintiff's and his attorney's certifications. Defendants opposed the motion, but did not file any certifications refuting plaintiff's factual assertions or otherwise.

Judge Jamie S. Perri considered counsels' oral argument on October 21, 2016, before granting plaintiff's motion, and setting forth her reasons on the record. The judge began by reciting the unrefuted facts as to plaintiff's injury, his reporting of the incident, the issues regarding counsel's preparation of the Notice and his unsuccessful attempts to serve it on the County. Turning to the law, Judge Perri acknowledged the ninety-day requirement for service of a Notice under N.J.S.A. 59:8-8. She then quoted from our opinion in Newberry v. Township of Pemberton, 319 N.J. Super. 671, 672-73 (App. Div. 1999) that approved a court permitting a late Notice where a claimant provided "notice substantially complying with" the TCA

and then provided a completed Notice "within a reasonable period of time." Quoting from our opinion in O'Neill v. City of Newark, 304 N.J. Super. 543, 549 (App. Div. 1997), the judge explained the purpose of the TCA's notice requirements as seeking to insure the government agency involved has sufficient information upon the happening of an accident "to undertake an investigation while witnesses are available and facts are fresh."

Next, Judge Perri turned to the TCA's provision for seeking permission to file a late Notice under N.J.S.A. 59:8-9 and the need for the application to be supported by facts establishing "extraordinary circumstances." She reviewed various cases that addressed the meaning of "extraordinary circumstances" and concluded that plaintiff's attorney's errors in mailing the Notice to Wall and then delaying in sending the Notice to the County did not establish extraordinary circumstances.

Addressing plaintiff's claim of substantial compliance, Judge Perri compared the information supplied by plaintiff to the County through BAGC's employees to that which is required for a complying notice under the TCA. The judge identified the goals of the TCA's notice requirements, as explained by the Supreme Court in Velez v. City of Jersey City, 180 N.J. 284, 290 (2004), and the considerations for determining whether there has

been "substantial compliance" with the TCA's notice provisions, as discussed in our opinion in Lebron v. Sanchez, 407 N.J. Super. 204, 215 (App. Div. 2009), and compared them to the facts in this case. She found that immediately after the incident plaintiff provided all of the information the County needed to be able to investigate his claim and that there was no prejudice to the County.

Moreover, the judge was satisfied that plaintiff acted diligently by contacting counsel who took immediate, albeit imperfect, action. The judge distinguished the facts of this case from those in D.D. v. University of Medicine and Dentistry of New Jersey, 213 N.J. 130 (2013), where the government agency did not receive any writings about plaintiff's claim, and was satisfied that the information received by the County from its employees, based on the information supplied by plaintiff, demonstrated substantial compliance with the TCA's requirements warranting the granting of plaintiff's motion.

This appeal followed.

On appeal, defendants challenge Judge Perri's conclusion by asserting that the TCA requires, even for a finding of substantial compliance, a timely written and signed notice from a claimant or his or her representative. According to defendants, the fact that the County obtained information soon

after the accident through its employees at BAGC is not relevant to a court's consideration of whether there has been substantial compliance with the TCA's notice requirements. We disagree.

"[C]laims against a public entity for damages are governed by the [TCA, which] defines the extent of the Legislature's waiver of sovereign immunity and 'establishes the procedures by which claims may be brought[.]'" D.D., 213 N.J. at 146 (third alteration in original) (quoting Beauchamp v. Amedio, 164 N.J. 111, 116 (2000)). The "statutory provision, which requires that the notice be filed within ninety days of a claim's accrual, deems a claimant to 'be forever barred' if he or she fails to comply with that time frame." Ibid. (quoting N.J.S.A. 59:8-8).

"[T]he 'harshness' of the ninety-day requirement is alleviated by [another] statutory provision that allows the late filing of a notice of a claim under limited circumstances[,]" ibid., which include a demonstration of a lack of "substantial[] prejudice[]" to the agency and the existence of "extraordinary circumstances." N.J.S.A. 59:8-9. The harshness may also be avoided if a claimant demonstrates substantial compliance with the TCA's requirements and that "[t]he purposes of the [TCA's] notification requirements--to inform the [agency] of plaintiff's accident and alleged personal injuries-were satisfied[,]" especially where it is shown that "receipt of plaintiff's tort

claims notice . . . prompted, rather than impeded, the commencement of an investigation." Lebron, 407 N.J. Super. at 220-221.

The decision to grant permission to file a late Notice 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. Glob. Landfill Reclaiming, 111 N.J. 134, 146 (1988)); see also N.J.S.A. 59:8-9. As compared to decisions to grant a litigant the ability to file a late notice, decisions denying permission to file a late claim are "examine[d] more carefully . . . to the end that whenever possible cases may be heard on their merits, and any doubts which may exist should be resolved in favor of [permitting] the application." Lowe v. Zarghami, 158 N.J. 606, 629 (1999) (quoting Feinberg v. N.J. Dep't of Envtl. Prot., 137 N.J. 126, 135 (1994)). In determining whether to deny permission to file a late Notice, the court must consider all of the circumstances in combination. Ibid. "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." D.D., 213 N.J. at 147 (citing McDade v. Siazon, 208 N.J. 463, 473-74 (2011)).

Applying that standard, we conclude from our review of the totality of the unique circumstance presented in the motion record that Judge Perri did not abuse her discretion by granting plaintiff's motion. We affirm substantially for the reasons expressed in her comprehensive oral decision. We add only the following comments.

The doctrine of substantial compliance is an alternative to the extraordinary circumstances requirement and can serve to relieve a claimant of the TCA's notice requirements. See D.D., 213 N.J. at 149, 159. It is an equitable doctrine

> utilized "to avoid the harsh consequences that flow from technically inadequate actions that nonetheless meet a statute's underlying purpose." Thus, the doctrine operates "to prevent barring legitimate claims due to technical defects." In general, it rests on a demonstration that a party took "a series of steps . . . to comply with the statute involved," and those steps achieved the statute's purpose, as for example, providing notice. Even so, the doctrine can only apply if there is no prejudice to the other party and if there is "a reasonable explanation why there was not strict compliance with the statute."
>
> [Cty. of Hudson v. State, Dep't of Corrs., 208 N.J. 1, 21-22 (2011) (alteration in original) (citations omitted).]

The doctrine of substantial compliance cannot apply where the notice provided was exclusively oral. D.D., 213 N.J. at 159-160. However, the doctrine may apply where the notice was

written and given in a way, which though technically defective, substantially satisfies the purposes for which notices of claims are required. Lebron, 407 N.J. Super. at 214-15. For example, substantial compliance was found where the deficient written notice identified the plaintiff and her attorney, set forth the date and general description of the incident, listed the injuries, and demanded damages, but did not specifically assert a legal theory. Id. at 215-16, 220. Substantial compliance was also found where a claim for damages was sent to the public entity's insurer and the public entity investigated the incident. Tuckey v. Harleysville Ins. Co., 236 N.J. Super. 221, 225-26 (App. Div. 1989). What is important is that the technical deficiencies in the written notice did not deprive the public entity of the effective notice contemplated by the TCA. D.D., 213 N.J. at 159.

Here, the County received written notice of plaintiff's claim for personal injuries through the County's own incident reports. Although the reports were not signed by plaintiff, they were signed by county employees and timely filed with the County. Significantly, plaintiff's unrefuted certified statement asserts that the reports were based upon a signed written statement he gave to one of those employees. The reports clearly contained enough information to notify the

County of its potential liability for plaintiff's injuries and afford it the opportunity to promptly review, settle, and adequately investigate the claim and correct the conditions that gave rise to the claim.

We do not suggest that an incident or police report generally would satisfy the TCA's notice requirements. Rather, we conclude that under the specific facts of this case, the County's incident reports gave the County effective and timely notice of plaintiff's claim as contemplated by the TCA's notice requirements.

Affirmed.