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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-2993-20**

RAMON TORRES,

Plaintiff-Appellant,

v.

**NEW JERSEY TRANSIT,
and SHANIAH MCLENDON,**

Defendants-Respondents.

Submitted May 9, 2022 – Decided May 18, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Docket No. L-8515-20.

Riley E. Horton, Jr., attorney for appellant.

Matthew J. Platkin, Acting Attorney General, attorney
for respondent (Sookie Bae-Park, Assistant Attorney
General, of counsel; Thai L. Nguyen, Deputy Attorney
General, on the brief).

PER CURIAM

Plaintiff appeals the trial court's May 19, 2021 order dismissing her negligence claims against codefendants New Jersey Transit and Shaniah S. McLendon, a bus driver employed by New Jersey Transit. The dismissal order was based on plaintiff's failure to serve a timely notice of tort claim upon those defendants within the ninety days prescribed by N.J.S.A. 59:8-8(a). We affirm, substantially based on the sound analysis set forth by Judge Thomas M. Moore, in his written statement of reasons that accompanied his order.

The pertinent circumstances may be concisely stated as follows. Plaintiff was injured on May 28, 2019 when his vehicle collided with a New Jersey Transit bus operated by McLendon, a New Jersey Transit employee. Because New Jersey Transit is a public entity and McLendon is a public employee, plaintiff was obligated under N.J.S.A. 59:8-8(a) to serve a notice of tort claim upon New Jersey Transit within ninety days, i.e., by on or before August 26, 2019.

Plaintiff issued a notice of claim by certified mail on July 22, 2019, within the ninety-day period. However, for reasons that neither he nor his counsel explain in a certification, the notice was not served on New Jersey Transit. Instead, the notice was served on a wholly different entity, the Tort and Contract Unit in the State Department of the Treasury. It is undisputed that no notice of

claim was served on New Jersey Transit concerning plaintiff's claim, as confirmed by a certification from an investigator and records custodian with New Jersey Transit.

Plaintiff filed this negligence case against New Jersey Transit and the bus driver in December 2020. In lieu of an answer, defendants moved to dismiss the case due to plaintiff's failure to file a timely notice. Plaintiff opposed the motion, arguing his lapse in serving the notice was an excusable "technical defect," that he "substantially complied" with the statute by transmitting the notice to the Treasury, and that defendants' dismissal motion should be disallowed by principles of equitable estoppel.

We agree with Judge Moore's rejection of these arguments and his dismissal of the lawsuit. As an undisputed matter of law that can be easily verified by consulting the statutes, New Jersey Transit is a distinct "sue and be sued" public entity that is not part of the State Department of Treasury. N.J.S.A. 27:25-5(a) (concerning New Jersey Transit's legal status); N.J.S.A. 59:1-3 (defining public entities under the Tort Claims Act ("TCA")); see also Muhammad v. N.J. Transit, 176 N.J. 185, 193-94 (2003) (confirming New Jersey Transit's status as a distinct public entity).

The Treasury had no obligation to forward the misdirected notice to New Jersey Transit. O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 345 (2019) (reiterating that under the TCA, "[t]he notice of claim must 'be filed directly with the specific local entity at issue.'") (quoting McDade v. Siazon, 208 N.J. 463, 476 (2011)) (emphasis added). It is a plaintiff's obligation to serve the notice of claim on the correct public entity within the ninety-day deadline, so that the entity has an opportunity to promptly investigate the claim and consider resolving it expeditiously. McDade, 208 N.J. at 476; Leidy v. Cnty. of Ocean, 398 N.J. Super. 449, 454-55 (App. Div. 2008). Due to plaintiff's mistake, that obligation was not fulfilled.

The motion judge did not misapply his discretion in rejecting plaintiff's arguments of substantial compliance and equitable estoppel. Plaintiff did not substantially comply with the statute. H.C. Equities, LP v. Cnty. of Union, 247 N.J. 366, 386 (2001) (explaining the limited grounds for applying the substantial compliance doctrine, including "a reasonable explanation [as to] why there was not a strict compliance with the statute.") (internal citations omitted). Although New Jersey Transit had received a police report about the collision, that report did not (and normally would not) alert the transit agency that plaintiff intended to file a personal injury lawsuit against it.

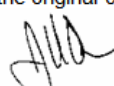
The situation here is markedly different from the scenario in O'Donnell, in which the Turnpike Authority had received a timely notice of tort claim from another injured plaintiff involved in the same accident. 236 N.J. at 350. There was no such parallel notice served by another injured party here.

Moreover, principles of estoppel do not excuse plaintiff's noncompliance, given that defendants diligently and promptly moved for dismissal, in lieu of an answer, shortly after the complaint was served on them. Defendants did not engage in any misleading or protracted conduct. See McDade, 208 N.J. at 481-81 (elucidating the relevant estoppel principles). Moreover, plaintiff did not move for leave to file a late notice within the one-year period allowed under N.J.S.A. 59:8-9.

In sum, the motion judge did not err in enforcing the notice provisions of the statute in this case. Without a timely notice served on the correct agency, the lawsuit was appropriately dismissed.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION