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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-3490-21**

**WON Y. KIM and  
WON IK LEE,**

**Plaintiffs-Appellants,**

**v.**

**PIERRE A. BLANC and  
SHORE REGIONAL HIGH  
SCHOOL DISTRICT,**

**Defendants-Respondents.**

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Argued May 10, 2023 – Decided July 10, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-0670-22.

Michael S. Kimm argued the cause for appellants (Kimm Law Firm, attorneys; Michael S. Kimm, on the briefs).

Joanne Venino argued the cause for respondents (Keenan & Doris, LLC, attorneys; Thomas A. Keenan, of counsel; Joanne Venino, on the brief).

## PER CURIAM

Plaintiffs Won Young Kim and Won Ik Lee were involved in a car accident on October 8, 2019 with a vehicle driven by defendant Pierre A. Blanc and owned by defendant Shore Regional High School District. Plaintiffs filed their complaint, asserting defendants' negligence caused them to sustain injuries, on March 8, 2022. The trial judge granted defendants' motion for summary judgment because the complaint was filed after the expiration of the statute of limitations. We affirm.

In moving for summary judgment, defendants asserted the accident occurred on October 8, 2019, and plaintiffs' complaint was filed five months after the two-year statute of limitations had run. In opposing the motion, plaintiffs argued the COVID-19 pandemic "excluded approximately two months from the computation of any statute of limitations generally and that the remaining three months in dispute should be deemed equitably tolled."

Following oral argument on July 13, 2022, the court issued an oral decision finding there was no dispute regarding the dates of the accident or the filing of the complaint. The court also noted counsel signed the complaint on September 21, 2021, but it was not filed until March 8, 2022. The court relied on Barron v. Gersten, 472 N.J. Super. 572 (App. Div. 2022), in rejecting

plaintiffs' argument that the Supreme Court's Omnibus orders during the pandemic tolled the statute of limitations. The court also found plaintiffs had presented no reasons to excuse the untimely filing and, therefore, equitable tolling was not an available remedy.

Because the complaint was filed after the prescribed two-year statute of limitations under N.J.S.A. 2A:14-2(a), the court granted defendants summary judgment. A memorializing order was filed the same day.

On appeal, plaintiffs renew their arguments, asserting the Supreme Court's Omnibus orders starting in March 2020 both expressly and implicitly tolled the statute of limitations for two months. They contend equitable tolling should apply to excuse the additional untimeliness because the complaint was filed before New Jersey courts returned to pre-pandemic levels of operation and trial courts were then routinely granting extensions. We are unconvinced.

Our review of the trial court's decision on a motion for summary judgment is de novo, applying the same standard as the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). According the non-movants all legitimate inferences, we grant the motion for summary judgment if there is no genuine issue of material fact. R. 4:46-2(c).

However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (alteration in original) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We first address plaintiffs' assertion that the Supreme Court Omnibus orders provided for express and implicit tolling of the statute of limitations for two months during the early days of the COVID-19 pandemic. Our recent decision in Barron is dispositive of this issue.

In Barron, we held that the Omnibus orders only converted the days that fell within the scope of the Omnibus orders to be legal holidays, and they "did not have the effect of adding days to any statute of limitations." 472 N.J. Super. at 579-80. We reasoned that, under Rule 1:3-1, "when [a] statute of limitations expires on a legal holiday, the party must act on the next day that is not a Saturday, Sunday, or legal holiday. The [Rule] does not add to the statute of limitations all Saturdays, Sundays, or legal holidays that fall within the statute-of-limitations period." Id. at 578.

Plaintiffs' accident occurred on October 8, 2019. Under N.J.S.A. 2A:14-2(a), plaintiffs had two years, until October 8, 2021, to file their claim. The

complaint was not filed until March 8, 2022, two years and five months after the accident. The Omnibus orders do not provide plaintiffs any relief for the five-month delay in filing the complaint.

Turning to plaintiff's second assertion, we review a trial court's decision regarding equitable remedies for an abuse of discretion. See Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). We are satisfied equitable tolling was not applicable under these circumstances.

A court may equitably toll a statutory limitations period "under very limited circumstances." Barron, 472 N.J. Super. at 577. The remedy may be appropriate "(1) [if] the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his [or her] rights, or (3) if the plaintiff has timely asserted his [or her] rights mistakenly in the wrong forum." Ibid. (alterations in original) (quoting F.H.U. v. A.C.U., 427 N.J. Super. 354, 379 (App. Div. 2012)).

Plaintiffs have not met the requirements to be accorded the extraordinary relief of equitable tolling. They were able to retain counsel as the complaint was prepared and signed on September 21, 2019, well within the statutory filing period. However, the complaint was not filed for another five months. Plaintiffs

cannot assert they were diligently pursuing their claims. See ibid. The trial court did not abuse its discretion in denying equitable tolling.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION