

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0571-23

C.A.L.¹ and C.T.,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY, NEW
JERSEY STATE PAROLE BOARD,
GURBIR S. GREWAL, Individually
and In His Official Capacity,
MATTHEW J. PLATKIN,
Individually and In His Official
Capacity,² SAMUEL J. PLUMERI,
JR., Individually and In His Official
Capacity, ROBERT M. GOODALE,
Individually and In His Official
Capacity, ROBERT H. BALICKI,
Individually and In His Official
Capacity, KERRI CODY,
Individually and In Her Official
Capacity, ALLEN DELVENTO,
Individually and In His Official

¹ We identify plaintiffs by initials to protect the identity of the minor victim of sexual assault. R. 1:38-3(c)(12).

² Grewal served as Attorney General until July 2021. Platkin was nominated for the position in February 2022, and confirmed in September 2022.

Capacity, THOMAS HAAF,
Individually and In His Official
Capacity, JAMES B. JEFFERSON,
Individually and In His Official
Capacity, CHARLIE JONES,
Individually and In His Official
Capacity, JULIO MARENCO,
Individually and In His Official
Capacity, ROBERT
RICCARDELLA, Individually and
In His Official Capacity, RONALD
L. SLAUGHTER, Individually and
In His Official Capacity, TRUDY
M. STEINHARDT, Individually
and In Her Official Capacity,
CLARENCE K. TAYLOR,
Individually and In His Official
Capacity, JOHN PAITAKES,
Individually and In His Official
Capacity, KENNETH L.
SAUNDERS, Individually and In
His Official Capacity, STEVEN T.
YGLESIAS, Individually and In His
Official Capacity, STEVEN
TALLARD, Individually and In His
Official Capacity, SENIOR
PAROLE OFFICER ALICIA
GRIPPALDI, Individually and In
Her Official Capacity,
LIEUTENANT RAQUEL ORTIZ,
Individually and In Her Official
Capacity,

Defendants-Respondents.

Argued May 14, 2024 – Decided June 19, 2024

Before Judges Susswein and Vanek.

On appeal of the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-0954-22.

James H. Maynard argued cause for appellants (Maynard Law Office, LLC, attorneys; James H. Maynard, on the briefs).

Christopher C. Josephson, Deputy Attorney General, argued the cause for respondents (Matthew J. Platkin, Attorney General, attorney; Sara M. Gregory, Assistant Attorney General, of counsel; Christopher C. Josephson, on the brief).

PER CURIAM

Plaintiffs C.A.L. and C.T., a married couple, appeal the September 12, 2023 Law Division order dismissing their civil complaint for damages with prejudice for failure to state a claim as barred by the applicable statutes of limitations. C.A.L. was sentenced to parole supervision for life (PSL) pursuant to Megan's Law, N.J.S.A. 2C:7-1 to -23, following a 2005 conviction for endangering the welfare of a child when she and her then-boyfriend, both adults, engaged in sexual acts with a fourteen-year-old girl.

On June 20, 2018, after a hearing, C.A.L. was found by the New Jersey State Parole Board (NJSPB) to have violated the special conditions of her PSL by accessing social media and viewing or otherwise possessing pornography. The NJSPB ordered C.A.L. to serve twelve months in State prison. C.A.L. filed an appeal and, during its pendency, began to serve her one-year prison sentence.

On February 6, 2020, nearly one year after C.A.L. finished serving her one-year sentence, the NJSPB vacated its June 20, 2018 final decision. At C.A.L.'s request, the NJSPB subsequently clarified its February 6, 2020 decision. Plaintiffs filed a complaint for damages on May 27, 2022. Based upon careful review of the record and prevailing law, we affirm the trial court's order dismissing plaintiffs' complaint with prejudice for failure to satisfy the applicable statutes of limitations.

I.

We recount the salient facts in the record relevant to our disposition. In 2005, C.A.L. was convicted of one count of endangering the welfare of a child, N.J.S.A. 2C:24-4(a), by "engag[ing] in sexual conduct which would impair or debauch the morals of [a] child." According to the presentence investigation report, relied on by the NJSPB in its June 20, 2018 notice of decision, C.A.L. and her boyfriend, who were both twenty years old at the time, engaged in sexual acts with a fourteen-year-old female. C.A.L. was given a suspended sentence of five years of incarceration and was ordered to pay \$1,550 in fines.

Because C.A.L. was convicted under N.J.S.A. 2C:24-4(a) for engaging in a sexual act with a minor pursuant to N.J.S.A. 2C:7-2(b)(2), she was subject to the requirements of Megan's Law which included PSL under N.J.S.A. 2C:43-6.4(a). Since C.A.L.'s five-year term of incarceration was suspended,

she was immediately subject to PSL. As part of her PSL, C.A.L. had regular visits with a parole officer, who recorded relevant aspects of their interactions in a chronological supervision report (CSR).

On November 29, 2007, the NJSPB began prohibiting individuals on PSL from accessing social media platforms absent an exemption from a parole officer.³ On January 23, 2008, C.A.L. agreed to the PSL condition banning her from accessing social media stating

I shall refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room (including but not limited to MySpace, Facebook, Match.com, Yahoo 360) in my own name or any other name for any reason unless expressly authorized by the District Parole Supervisor.

On May 12, 2009, the NJSPB notified C.A.L. that because she was found to be in possession of "excessive amounts" of pornographic material during the PSL monitoring, a special condition was being added to her PSL

³ On December 6, 2010, this condition was codified at N.J.A.C. 10A:71-6.12(d)(24) (2010) as requiring an offender on PSL to "[r]efrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in the offender's name or any other name for any reason unless expressly authorized by the district parole supervisor." On January 29, 2020, the Board announced it would no longer enforce this provision, and it was removed from the administrative code on August 16, 2021. See N.J.A.C. 10A:71-6.12(d) (2021); 53 N.J.R. 211(a). Both the announcement and the removal occurred after C.A.L. finished serving her one-year term of incarceration.

prohibiting her from viewing sexually oriented material. C.A.L. agreed to the special condition which reads:

I am to refrain from viewing or possessing a picture, photograph, negative, film, movie, videotape, DVD, CD, DC-ROM, streaming video, computer generated or virtual image or other representation, publication, sound recording or live performance that is predominately orientated to descriptions of sexual activity.

For the purpose of this special condition, sexual activity means actual or simulated ultimate sexual acts including sexual intercourse, oral sex, masturbation or bestiality.

For the purpose of this special condition, a picture, photograph, negative, film, movie, videotape, DVD, CD, DC-ROM, streaming video, computer generated or virtual image or other representation, publication, sound recording or live performance shall not be considered predominately orientated to the description or depiction of sexual activity unless the medium features or contains such descriptions or depictions on a routine or regular basis or promotes itself based upon such description or depictions.

On February 9, 2018, C.A.L. was taken into custody and charged with violating the Special Conditions⁴ as to social media and sexually oriented material based on the facts set forth in the CSR. The charges included the allegation that C.A.L. was on a social media site complaining about her parole

⁴ We refer to the special conditions imposed on C.A.L.'s PSL on January 23, 2008 and May 12, 2009 collectively as the "Special Conditions."

officer which led to an anonymous report being relayed and the subsequent retrieval of pornography and other electronic evidence from C.A.L.'s home.

On May 30, 2018, a NJSPB hearing officer conducted a hearing regarding the charge. On June 5, 2018, in an eight-page written decision, the NJSPB hearing officer recommended C.A.L.'s PSL status be revoked and a one-year term of incarceration be imposed, making findings of fact and conclusions of law grounded in the hearing record.

On June 20, 2018, a NJSPB panel reviewed the hearing officer's recommendation and entered a notice of decision (NOD). The NOD set forth that the NJSPB review panel reviewed the record and concurred with the findings of fact issued by the hearing officer, concluding that clear and convincing evidence established C.A.L. violated the PSL Special Conditions. The NJSPB review panel set forth in the NOD the violations are serious and revocation of PSL is warranted. The June 20, 2018 NOD revoked C.A.L.'s PSL status and imposed a twelve-month term of incarceration. C.A.L. further appealed the decision to a NJSPB review panel, which affirmed on October 31, 2018. C.A.L. subsequently filed a notice of appeal of the October 31, 2018 order to this court.

On February 9, 2019, after completing her one-year sentence, C.A.L. was released from prison and resumed PSL. The Special Conditions were re-

imposed because the NJSP found during her PSL supervision she "has felt compelled to use the [i]nternet to not only view pornography and share nude images of herself online but to access [s]ocial [n]etworking and [online] gaming [sites] in direct violation of her conditions of supervision." On December 23, 2019, we granted the NJSPB's motion⁵ for remand so it could reconsider the Special Conditions in light of our published decision in K.G. v. N.J. State Parole Bd., 458 N.J. Super. 1 (App. Div. 2019).⁶

On February 6, 2020, a NJSPB panel vacated the NOD revoking C.A.L.'s PSL and sentencing her to one year in prison for violating the social media and pornography prohibitions. On April 6, C.A.L.'s counsel appealed the NJSPB's February 6 decision, requesting the NJSPB amend its decision to additionally vacate its findings that she had violated the PSL Special Conditions and declaring those Special Conditions unconstitutional.⁷

⁵ C.A.L.'s prior appeal to this court proceeded under A-1509-18. The December 23, 2019 remand order constituted a final disposition of that appeal. We did not retain jurisdiction.

⁶ Under K.G., the imposition of "[i]nternet-use restrictions" as part of PSL, must be "tailor[ed] . . . to the needs of the individual offender." Id. at 34.

⁷ The NJSPB advised plaintiffs' counsel on May 6, 2020 that an additional May 5, 2020 letter would be considered in connection with plaintiffs' further appeal.

On April 13, 2020, the NJSPB removed the PSL special condition prohibiting C.A.L. from accessing social media. The special condition prohibiting C.A.L. from watching or possessing sexually oriented materials was vacated on April 21, 2020. C.A.L. was informed both Special Conditions were removed on April 20, 2020 and her counsel received that disposition the next day.⁸

On June 1, 2020, a NJSPB panel considered C.A.L.'s appeal of its February 6 determination and issued an amended notice of decision finding that "clear and convincing evidence does not exist that [she] violated the conditions of [her PSL]" and setting forth that her PSL status was not revoked. The panel established the record "did not sustain any violation(s) and decided that revocation is not desirable." The amended notice of decision was transmitted to C.A.L.'s attorney on June 4, 2020. On May 7, 2021, C.A.L. was discharged from PSL.

On May 27, 2022, plaintiffs filed a four-count complaint naming the State, the NJSPB, and various NJSPB employees in their individual and official capacities as defendants. The complaint alleges the Special Conditions of C.A.L.'s PSL and the subsequent one-year term of imprisonment she faced

⁸ The record sets forth that C.A.L. was told about the discharge of both special conditions on April 20, 2020, even though the sexually oriented material ban was not vacated until April 21, 2020. Neither party addresses this discrepancy.

for violating those requirements constituted: (1) substantive due process violations under the New Jersey Civil Rights Act (NJCR), N.J.S.A. 10:6-1 to -2, and the New Jersey Tort Claims Act (NJTCA), N.J.S.A. 59:1-1 to 12-3; (2) gross negligence and failure to train under the NJCR and the NJTCA; (3) deliberate indifference, failure to train, and violations of substantive rights under the NJCR; and (4) false arrest and false imprisonment under the NJCR and the NJTCA. The complaint sets forth that plaintiffs suffered harms and economic damages as a result of: (1) C.A.L. being subjected to a one-year term of incarceration for violation of the terms of her PSL; (2) loss of consortium during C.A.L.'s incarceration; (3) lost income and benefits for C.A.L. during her incarceration; (4) expenses incurred by plaintiffs as a result of C.A.L.'s incarceration; (5) denial of C.A.L.'s substantive constitutional rights; and (6) economic damages and substantive due process violations suffered by both plaintiffs.

On September 19, 2022, defendants filed a motion to dismiss plaintiffs' complaint under Rule 4:6-2(e) for failure to state a claim upon which relief could be granted, arguing that the complaint was filed after the applicable statutes of limitations had lapsed. In the alternative, defendants' motion requested summary judgment under Rule 4:46-2.

On September 12, 2023, the trial court entered an order granting defendants' motion and dismissing plaintiffs' complaint with prejudice for failure to state a claim. In the accompanying five-page written statement of reasons, the trial court set forth that "[e]ven when applying the most favorable timeline" for plaintiffs, the claims alleged were not filed within the applicable two-year statute of limitations. The trial court did not consider defendants' alternative arguments seeking summary judgment on the merits for failure to comply with the NJTCA notice requirements, finding it was not necessary to do so given the with-prejudice dismissal.

In the written statement of reasons accompanying the order, the trial court set forth the date on which each of plaintiffs' causes of action accrued and the date on which the statute of limitations as to that claim expired. As to the false arrest and false imprisonment claims, the trial court determined the cause of action accrued on February 9, 2019, the date of C.A.L.'s release from incarceration. Accordingly, the trial court determined plaintiffs had until February 9, 2021 to file those claims under the two-year statute of limitations, rendering their May 27, 2022 complaint untimely.

Next, the trial court considered plaintiffs' failure to train and supervise claims, finding those causes of action accrued on February 9, 2018, the date on which C.A.L. was arrested for the PSL violation. Therefore, plaintiffs had

until February 9, 2020, to file, so the May 27, 2022 complaint was untimely as to those claims.

As to the substantive due process claims, the trial court found the statute of limitations for any substantive due process claims in light of the new, heightened standard applicable to causes of action stemming from PSL monitoring conditions set forth in K.G. began to run on the day the decision was published, January 24, 2019. Accordingly, the two-year period lapsed on January 24, 2021, rendering the May 27, 2022 complaint untimely for any substantive due process claims predicated on the Special Conditions.

Finally, the trial court addressed plaintiffs' argument that the complaint could not have been filed until after the PSL violation had reached favorable termination. Plaintiffs asserted that favorable termination took place on June 1, 2020. However, the trial court found June 1, 2020 "is an incorrect date to apply to this claim since it is just the date when [the NJSPB] issued a decision clarifying a lack of clear and convincing evidence to support the violations imposed." The trial court concluded plaintiffs' substantive due process violations accrued on February 6, 2020, the date on which the NJSPB panel vacated the June 20, 2018 decision revoking C.A.L.'s PSL and sentencing her to one year in prison for violating the Special Conditions, which were no longer imposed as of April 21, 2020.

To support this conclusion, the trial court cited to Thompson v. Clark, where the United States Supreme Court held that in order for a favorable termination to occur, "plaintiff need only show that the criminal prosecution ended without a conviction." 596 U.S. 36, 49 (2022). The trial court opined that: "Therefore, starting on February 6, 2020, the day [C.A.L.'s] parole violations were vacated, it was evident that there was a lack of clear and convincing evidence supporting parole violations." Since plaintiffs had until February 6, 2022 to file a complaint for relief related to the vacating of the parole violations, the May 27, 2022 complaint was untimely.

II.

We review a trial court's decision to grant a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(e) de novo. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). When considering a Rule 4:6-2(e) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019)). In determining the adequacy of the pleadings to sustain the motion, the court must determine "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739,

746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)); see also Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124-25 (App. Div. 2014) ("[i]n determining whether dismissal under Rule 4:6-2(e) is warranted, the court should not concern itself with plaintiffs' ability to prove their allegations" (emphasis omitted)).

On appeal, plaintiffs contend that the favorable termination rule established by the United States Supreme Court in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), supports a conclusion their claims were not ripe until June 1, 2020, when the NJSPB vacated its prior finding that C.A.L. violated the Special Conditions, which were violative of the First Amendment under K.G. Defendants argue the trial court's dismissal of their complaint with prejudice based upon the failure to satisfy the applicable two-year statutes of limitations and determinations of the accrual dates were not erroneous. Defendants also argue that the favorable termination rule does not apply to plaintiffs' causes of action and, even if it did, the accrual dates set forth by the trial court were proper.

We consider plaintiffs' arguments on appeal, in turn.

III.

After considering prevailing law, we discern no error with the trial court's dismissal of plaintiffs' complaint with prejudice for failure to file

within the applicable two-year statutes of limitations. All four counts in the complaint were asserted under the NJCRA, the NJTCA, or both. Plaintiffs' claims rest on the constitutional argument that C.A.L.'s rights were infringed when the Special Conditions added to her PSL restricted her access to social media and pornography. Plaintiffs also contend the one-year term of incarceration that C.A.L. served—beginning February 9, 2018, after being found to have violated the PSL Special Conditions—constituted an infringement of her rights, leading to harm and economic damages suffered by both plaintiffs.

The parties in this matter do not dispute the trial court's finding that a two-year statute of limitations applies to all counts of the complaint under N.J.S.A. 2A:14-2(a). Only the accrual date is at issue. "The traditional rule is that a cause of action accrues on the date when the right to institute and maintain a suit, first arises." Russo Farms, Inc. v. Vineland Bd. of Educ., 144 N.J. 84, 98 (1996) (internation quotation marks omitted).

Although we find no error with the dismissal of plaintiffs' false arrest and false imprisonment claims, we conclude based on prevailing law that those causes of action accrued on February 9, 2018, when C.A.L. was detained. See Velez v. City of Jersey City, 180 N.J. 284, 295 (2004); Bayer v. Twp. of Union, 414 N.J. Super. 238, 258 (App. Div. 2010). "[T]he statute of

limitations upon a . . . claim seeking damages for a false arrest . . . begins to run at the time the claimant becomes detained pursuant to legal process." Wallace v. Kato, 549 U.S. 384, 397 (2007). Since C.A.L. was incarcerated on February 9, 2018, and released on February 9, 2019, the May 27, 2022 complaint was untimely.

We also affirm the trial court's dismissal of plaintiffs' failure to train and supervise claims, finding those causes of action accrued on February 9, 2018, the date on which C.A.L. was arrested for the PSL violation. Plaintiffs specify the failure to train and supervise claims stem from NJSPB officials improperly overseeing their employees as to respecting the constitutional rights of parolees, thus causing C.A.L. to suffer unlawful arrest and incarceration. Based on the two-year statute of limitations, plaintiffs had until February 9, 2020, to file the complaint. Thus, the May 27, 2022 complaint was untimely.

Plaintiff's substantive due process claims are based on the argument that the internet-use restrictions as part of the PSL Special Conditions were unconstitutional as applied. In analyzing this claim, the trial court properly considered our published decision in K.G., where we set forth that internet-use restrictions imposed as part of PSL should be tailored to the individual offender. K.G., 458 N.J. Super. at 34. We find no error in the trial court's conclusion that the statute of limitations for any substantive due process claims

predicated on the new, heightened standard in K.G. began to run on the day the decision was published, January 24, 2019. Since the two-year statute of limitations expired on January 24, 2021, plaintiffs' May 27, 2022 complaint is untimely.

IV.

Plaintiffs contend the trial court erred in determining the accrual dates, positing "an individual cannot pursue civil rights claims for detention and incarceration in violation of their constitutional rights until the prior proceeding is terminated in the individual's favor." Plaintiffs assert each of their causes of action accrued after favorable termination on June 1, 2020, rendering the May 27, 2022 complaint timely filed and the trial court's dismissal of their complaint erroneous.

In support of their argument, plaintiffs cite to Heck where the United States Supreme Court explained:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid . . . plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable

[512 U.S. at 486-87 (emphasis omitted).]

Prior to Heck, favorable termination had already been applied to malicious prosecution claims. See Mondrow v. Selwyn, 172 N.J. Super. 379, 384 (App. Div. 1980) (finding "a favorable termination of the criminal proceeding is elemental to the maintenance of" the cause of action of malicious prosecution). We applied the favorable termination principle in Heck to malicious prosecution claims in Alampi v. Russo, 345 N.J. Super. 360, 367 (App. Div. 2001), and its progeny. See Bustamante v. Borough of Paramus, 413 N.J. Super. 276, 288 n.5 (App. Div. 2010) (explaining that "a plaintiff in a malicious prosecution civil action need[s to] establish innocence of the criminal charges in order to" proceed with the claim).

Plaintiffs cite to Ex Parte Siebold, 100 U.S. 371, 376-77 (1879), to support the argument that their false arrest and false imprisonment claims were not time-barred, as they were not ripe for judicial review until there had been a favorable termination. No binding case law subsequent to 1879 was proffered to us supporting plaintiffs' position as to the false arrest and imprisonment claims specifically.

Even if we applied the law posited by plaintiffs, a favorable determination triggering the accrual date to file causes of action for false arrest and false imprisonment occurred on February 6, 2020, when the NJSPB issued

its decision vacating the NOD. The February 6, 2020 decision was tantamount to a favorable termination since the NJSPB vacated its prior decision revoking C.A.L.'s PSL and sentencing her to one year in prison for violating the social media and pornography restrictions of the Special Conditions.

Thus, it was the February 6, 2020 NJSPB notice of decision that vacated the sentence and triggered the accrual of any cause of action based upon an alleged substantive due process violation. A favorable termination is established if "the plaintiff can demonstrate that the conviction or sentence has . . . been invalidated." Bustamante, 413 N.J. Super. at 290 (quoting Heck, 512 U.S. at 487). The February 6, 2020 decision vacated both the conviction and sentence imposed on June 20, 2018.

We are unconvinced by plaintiffs' argument that the accrual date is June 1, 2020, since the NJSPB merely clarified its February 6, 2020 decision on that date in response to plaintiffs' request. The February 6, 2020 decision provided a favorable termination and sufficient basis for concluding the NJSPB vacated the conviction and sentence to trigger the statute of limitations. "It is not necessary that a claimant be aware of all the evidence that will be ultimately relied upon before the statute begins to run." Freeman v. State, 347 N.J. Super. 11, 22 (App. Div. 2022) ("Where, for example, a plaintiff claimed that he was deprived a fair trial as a result of alleged systematic racial

discrimination in the selection of a jury, the cause of action for statute of limitation purposes was deemed to have accrued at the time the trial took place."). To the extent C.A.L.'s parole violations were vacated on February 6, 2020, as set forth by the trial court "it was evident that there was a lack of clear and convincing evidence supporting parole violations."

We discern no error with the trial court's reliance on Thompson for the conclusion that June 1, 2020 "is an incorrect date to apply to this claim since it is just the date when [the NJSPB] issued a decision clarifying a lack of clear and convincing evidence to support the violations imposed." 596 U.S. at 49 (finding a "plaintiff need only show that the criminal prosecution ended without a conviction"). Since plaintiffs had until February 6, 2022, to file their complaint, the May 27, 2022 litigation was untimely.

To the extent we have not addressed plaintiffs' remaining arguments, we are satisfied they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION