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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1446-22

ROBERT DAVIS,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,
NORTHERN STATE PRISON,
NEW JERSEY DEPARTMENT
OF CORRECTIONS, AND
LIEUTENANT DOUGLAS
STARK,

Defendants-Respondents.

Submitted June 5, 2024 – Decided June 25, 2024

Before Judges Vernoia and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Docket No. L-2708-22.

Robert Davis, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for
respondents (Janet Greenberg Cohen, Assistant
Attorney General, of counsel; Christopher C.
Josephson, Deputy Attorney General, on the brief).

PER CURIAM

On May 6, 2022, plaintiff Robert Davis filed a Law Division complaint against defendants State of New Jersey, Northern State Prison, New Jersey Department of Corrections (NJDOC), and NJDOC Lieutenant Douglas Stark, alleging causes of action for assault and battery and violations of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50. Plaintiff appeals from an order granting defendants' motions to dismiss the complaint under Rule 4:6-2(e) on statute-of-limitations grounds. We affirm.

In a complaint filed on May 6, 2022, by his then-counsel, plaintiff alleged he is an "African American male" who at all times relevant to his claims was "an inmate under the supervision of the [NJDOC] and was housed at Northern State Prison" where Lieutenant Stark was employed by the NJDOC as a corrections officer. In the complaint plaintiff that on March 13, 2020, Lieutenant Stark "struck [plaintiff] numerous times while [he] was handcuffed" and "used racial slurs to demean and insult" plaintiff. Plaintiff claimed he "sustained severe personal injuries" and suffered other damages.

In the complaint plaintiff also claimed Lieutenant Stark had "unlawfully discriminated against [plaintiff] on the basis of his race" in violation of the NJLAD and averred the other defendants had aided and abetted Lieutenant

Stark's alleged conduct or were otherwise vicariously liable for his conduct. The complaint also included a claim defendants had acted willfully, intentionally, wantonly, recklessly, and maliciously, such that plaintiff was entitled to punitive damages under the NJLAD.

Defendants filed two motions to dismiss the complaint for failure to state a claim on which relief may be granted under Rule 4:6-2(e).¹ In pertinent part, defendants argued plaintiff's complaint was barred under the two-year statute of limitations for personal injury claims under N.J.S.A. 2A:14-2(a), which is also the applicable statute of limitations for causes of action under the NJLAD. See generally Montells v. Haynes, 133 N.J. 282, 291-95 (1993) (explaining the two-year personal injury statute of limitations under N.J.S.A. 2A:14-2 applies to claims under the NJLAD).² Plaintiff did not dispute that the two-year statute of

¹ At oral argument on the motions, the deputy attorney general representing defendants explained the first dismissal motion had been filed on behalf of the State of New Jersey, Northern State Prison, and the NJDOC prior to the Attorney General's Office undertaking the representation of Lieutenant Stark. Following the Attorney General's Office's decision to represent Lieutenant Stark, defendants filed the second motion, reiterating the statute-of-limitations argument made in the first motion.

² Plaintiff does not include in the record on appeal the pleadings filed by the parties in support of and in opposition to the motions to dismiss the complaint. See R. 2:6-1(a)(1)(A) and (I) (requiring that an appellant include in the appendix on appeal all the pleadings filed in a civil action and "such other parts of the

limitations cited by the State applied to his claims and that his complaint was filed on May 6, 2022—two years and fifty-four days after his alleged causes of action accrued on March 13, 2020.

Plaintiff argued his complaint was timely even though it had been filed fifty-four days beyond the two-year period following the March 13, 2020 accrual of his causes of action. In support of his claim, plaintiff principally relied on the Supreme Court's Fourth Omnibus Order, issued in response to the COVID-19 pandemic. See Sup. Ct. of N.J., Notice to the Bar: COVID-19 – Fourth Omnibus Order on Court Operations and Legal Practice (June 11, 2020) [hereinafter Fourth Omnibus Order].

In the Fourth Omnibus Order, the Supreme Court affirmed the three prior 2020 Omnibus Orders,³ Fourth Omnibus Order, at ¶ 6, also issued in response

record . . . as are essential to the proper consideration of the issues"). Nonetheless, based on the colloquy between the court and counsel during argument on the motions, we discern that defendants had also argued the complaint failed to state a claim because: the assault-and-battery claim was preempted under the NJLAD; the State of New Jersey, Northern State Prison, and the NJDOC were not liable for the alleged intentional torts of their employees; and Lieutenant Stark is not liable under the NJLAD because he could not "aid and abet his own conduct." During its decision on the motions, the court explained it was unnecessary to address the merits of those arguments because plaintiff's complaint had been filed outside the limitations period.

³ The Court issued three Omnibus Orders in response to the COVID-19 pandemic prior to the Fourth Omnibus Order on which plaintiff relied in support

to the COVID-19 pandemic, that in combination directed that the fifty-five-day period from March 16, 2020, through May 10, 2020 shall be deemed "the same as a legal holiday" "[i]n the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts." Second Omnibus Order, at ¶ 7(d).

Plaintiff conceded the three prior Omnibus Orders had not tolled any statutes of limitations, but instead they had simply rendered the designated fifty-five days as legal holidays. Plaintiff, however, argued that the language in the Fourth Omnibus Order suggested the Court had modified its prior orders and had determined the fifty-five days from March 16, 2020, through May 10, 2020, tolled the statutes of limitations for all claims arising prior to or during that period. Plaintiff claimed the effect of the Fourth Omnibus Order was to toll the statutes of limitations for fifty-five days beyond the two-year period following

of his opposition to defendants' motions to dismiss the complaint. See Sup. Ct. of N.J., Notice to the Bar: COVID-19 Coronavirus – Supreme Court's March 27, 2020 Omnibus Order Continuing the Suspension of Court Proceedings and Extending Deadlines and Timeframes through April 26, 2020 (Mar. 27, 2020); Sup. Ct. of N.J., Notice to the Bar: COVID-19 – Second Omnibus Order on Court Operations and Legal Practice (Apr. 24, 2020) [hereinafter Second Omnibus Order]; Sup. Ct. of N.J., Notice to the Bar: COVID-19 – Third Omnibus Order on Court Operations and Legal Practice (May 28, 2020).

the March 13, 2020 accrual of his causes of action such that the filing of his complaint fifty-four days beyond the two-year period was timely.

The motion court granted defendants' motion, finding that in Barron v. Gersten, 472 N.J. Super. 572, 579-80 (App. Div. 2022), we had rejected the identical argument made by plaintiff here. In Barron, we held the 2020 Omnibus Orders had converted the fifty-five days between March 16, 2020, and May 10, 2020, that fell within the scope of the orders to be legal holidays, and they "did not have the effect of adding days to any statute of limitations." Ibid.

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. We also rejected the claim plaintiff made before the motion court that the language in the Fourth Omnibus Order directed that the fifty-five days—from March 16, 2020, through May 10, 2020—falling within the first three Omnibus Orders tolled the running of any statute of limitations. Id. at 580.

The motion court determined the complaint was barred under the two-year statutes of limitations applicable to personal-injury actions and claims under the

NJLAD. See N.J.S.A. 2A:14-2(a); Montells, 133 N.J. at 292. The court entered an order dismissing the complaint for failure to state a claim on which relief may be granted. The court further concluded it was therefore unnecessary to address defendants' alternative arguments supporting their dismissal motions. This appeal followed.

We conduct a de novo review of an order granting or denying a motion to dismiss a complaint for failure to state a claim under Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). We must thoroughly review the complaint "with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary," ibid. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)), but we must dismiss a complaint if it "states no claim that supports relief, and discovery will not give rise to such a claim," ibid. (quoting Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107 (2019)).

Measured against that standard, we discern no basis to disturb the court's order. In his pro se brief on appeal, plaintiff does not address the statute-of-limitations issue and does not argue the court erred by finding his complaint failed to state a claim on which relief may be granted because it was filed outside

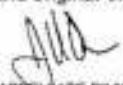
the two-year limitations period. Plaintiff has therefore abandoned any claim that court erred by dismissing the complaint as time-barred, see generally Drinker Biddle & Reath LLP v. N.J. Dep't of L. & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not briefed on appeal is deemed abandoned), and we affirm the court's order on that basis alone.

We note, however, that even if plaintiff had not opted to abandon the issue, we would otherwise affirm the court's order because the complaint was filed on May 10, 2022, more than two years after the accrual of his causes of action on March 13, 2020. And, for the reasons we explained in Barron, 472 N.J. Super. at 580, the Court's 2020 Omnibus Orders did not toll the statutes of limitations and therefore offer no refuge for plaintiff's untimely filing of his complaint more than two years after the accrual of his causes of action. In short, plaintiff did not assert a claim on which relief could be granted because his claims are barred by the two-year statute of limitations applicable to his claims. See Rappeport v. Flitcroft, 90 N.J. Super. 578, 580-81 (App. Div. 1966) ("[W]here the bar of the statute of limitations appears on the face of the complaint, it may be asserted as a 'failure to state claim upon which relief can be granted.'" (quoting R.R. 4:12-2(e) (1953), predecessor to R. 4:6-2(e))).

Plaintiff's remaining arguments are founded on the contention that the asserted causes of action have merit. He argues we should reverse the order dismissing his complaint because he was the victim of an assault and battery, and he was discriminated against based on his race in violation of the NJLAD. We reject the arguments because they ignore that "[a] statute of limitations is what its name indicates: a statute enacted by the Legislature to limit the period in which a lawsuit can be filed." Barron, 472 N.J. Super. at 576. Accordingly, plaintiff's failure to timely file his complaint renders it unnecessary to consider the alleged merits of his claims. We otherwise find plaintiff's arguments are without sufficient merit to warrant further discussion. 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