

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2615-13T3

TERESA RAMEY,

Plaintiff-Appellant,

v.

SAMUEL DEMAIO, NEWARK'S
ACTING POLICE DIRECTOR,

Defendant-Respondent,

and

THE NEWARK STAR LEDGER, and
ESSEX COUNTY PROSECUTOR'S
OFFICE HOMICIDE TEAM, (Romesh
Sukhdeo, Phillip Gregory, Miguel
Arroyo, Carolyn A. Murray, and
Thomas Fennelly),

Defendants.

Submitted August 5, 2015 – Decided August 25, 2015

Before Judges Reisner and Espinosa.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No.
L-5182-13.

Teresa Ramey, appellant pro se.

Karen Brown, Corporation Counsel, attorney
for respondent (Emilia Perez, Assistant
Corporation Counsel, on the brief).

PER CURIAM

Plaintiff appeals from the dismissal of her complaint against Samuel DeMaio, the acting director of the Newark Police Department, based upon her failure to comply with the notice provisions of the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3. We affirm.

Plaintiff's daughter, K.O., was murdered on July 5, 2011. Approximately two years later, on June 27, 2013, she filed a complaint against Samuel DeMaio, the acting police director of Newark, the Essex County Prosecutor's Office and the Star Ledger.¹ The thrust of the complaint was that DeMaio and the Prosecutor's Office provided false information regarding K.O.'s homicide, which was published in the Star Ledger. The complaint alleged defendants committed the following wrongful acts:

1. Tort claim of police negligence
2. False police report to cover of [sic] a crime
3. Defamation and libel slander
4. Denial of discovery to cover [sic] a false investigation.

¹ By letter dated December 23, 2014, the Prosecutor's Office advised the court that it was never served with a copy of the summons and complaint; it did not enter an appearance in the case; and its only involvement was to provide discovery pursuant to court order. The Newark Star Ledger is not a party to this appeal. The record before us does not reveal the disposition of plaintiff's claim against it.

Pursuant to N.J.S.A. 59:8-8, a plaintiff is required to present his or her claim against any public defendant "not later than the 90th day after accrual of the cause of action." If the claimant fails to file a notice of claim within that period, he or she "shall be forever barred from recovering" on the claim unless the claimant obtains permission to file a notice of late claim pursuant to N.J.S.A. 59:8-9, which provides, in pertinent part:

A claimant who fails to file notice of his claim within 90 days as provided in section 59:8-8 of this act, may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity or the public employee has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits . . . showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter

[Emphasis added.]

Defendant DeMaio filed a motion for summary judgment in lieu of an answer pursuant to R. 4:6-2(e), based upon plaintiff's failure to file a notice of claim within ninety days of the accrual of her claim as required by N.J.S.A. 59:8-8.

Plaintiff filed a motion asking the court to permit the late filing of her notice of claim pursuant to N.J.S.A. 59:8-9. The court granted DeMaio's motion and denied plaintiff's motion by order dated September 12, 2013. Plaintiff's motion for reconsideration was later denied.²

In this appeal, plaintiff argues the court erred in denying her request to file a late notice of claim and dismissing her complaint with prejudice. Citing Beauchamp v. Amedio, 164 N.J. 111 (2000), she argues that the ninety-day notice period should be tolled by the application of the discovery rule. She contends that it took her nearly two years to obtain documents from the Prosecutor's Office that revealed incorrect information regarding her daughter's murder had been supplied to the Star Ledger and other papers. Plaintiff submits that these facts warrant the application of the discovery rule and support a finding that extraordinary circumstances exist to warrant granting her motion to file a late notice of claim.

The decision to grant permission to file a late notice under the Tort Claims Act "within the one year period is a

² Although the order entered on plaintiff's motion for reconsideration grants her request to file a notice of late claim, this appears to be an error as it conflicts with the transcript of the court's decision. See Cnty. Realty Mgmt. v. Harris, 155 N.J. 212, 228 (1998).

matter left to the sound discretion of the trial court, and will be sustained on appeal in the absence of a showing of an abuse thereof." Lamb v. Global Landfill Reclaiming, 111 N.J. 134, 146 (1988); Mendez v. S. Jersey Transp. Auth., 416 N.J. Super. 525, 532-533 (App. Div. 2010).

In Mendez, the plaintiffs were seriously injured when Mendez's vehicle struck a snow removal truck parked on the shoulder. Mendez, supra, 416 N.J. Super. at 529. They were rendered unconscious and there were no eyewitnesses. Id. at 530. Although notices of claim were timely filed against the public entity that owned the snow removal truck, the plaintiffs did not file notices of claim against a municipally-owned ambulance until their attorneys viewed a videotape relating to the accident. Id. at 531-32. Plaintiff's attorneys diligently pursued obtaining the videotape. However, it was not provided until after the notice period had run. Id. at 534. We affirmed the trial court's decision to permit the filing of a late notice, noting there were no eyewitnesses to the accident and all pertinent information was contained on the videotape. Id. at 528, 536.

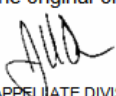
Mendez differs from this case in two important respects. First, the motions were brought within the one-year period mandated by N.J.S.A. 59:8-9. Id. at 536. Second, in Mendez,

the information contained in the videotape provided a factual basis for the plaintiffs' claims against the ambulance that did not exist without the videotape. The videotape revealed that the ambulance made a lane change as it approached the snow removal trucks, moving directly in front of the Mendez vehicle, and potentially causing Mendez to take an evasive maneuver and lose control of his vehicle. Id. at 534. In this case, although plaintiff did not receive the requested reports until late, the information contained therein fails to provide a factual basis for plaintiff's claims. In describing the contents, plaintiff cites certain reported facts that were "red flags" to her regarding deficiencies in the investigation, particularly regarding her daughter's estranged husband. Although we appreciate that every detail, no matter how small, has major significance to plaintiff, the alleged inaccuracies she has cited from the materials lack cognizable legal consequence.

We therefore conclude that the trial court did not abuse its discretion in declining to grant plaintiff's motion to file a late notice of claim and in granting summary judgment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION