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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1618-20**

LORNA PEART,

Plaintiff-Respondent,

v.

UNIVERSITY HOSPITAL OF
NEWARK, NEW JERSEY, and
UNIVERSITY HOSPITAL
EMERGENCY MEDICAL
SERVICES,

Defendants-Respondents,

and

CITY OF NEWARK,¹ and
CITY OF NEWARK POLICE
DEPARTMENT,

Defendants-Appellants.

Argued May 9, 2022 – Decided May 19, 2022

Before Judges Fasciale and Firko.

¹ Incorrectly and redundantly pled as City of Newark Police Department.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-4622-20.

Emilia Perez, Assistant Corporation Counsel, argued the cause for appellant City of Newark (Kenyatta K. Stewart, Corporation Counsel, attorney; Emilia Perez, on the briefs).

Donald F. Burke argued the cause for respondent Lorna Peart (Law Office of Donald F. Burke, attorneys; Donald F. Burke and Donald F. Burke, Jr., on the brief).

PER CURIAM

We granted leave to appeal from a February 11, 2021 order denying defendant City of Newark's (City) Rule 4:6-2(e) motion to dismiss plaintiff's complaint. Judge Jeffrey B. Beacham entered the order and rendered an oral opinion. In granting leave to appeal, we stayed further proceedings in the trial court. We affirm.

I.

Plaintiff was a police officer employed by the Rutgers Police Department. On July 12, 2018, unidentified City police officers responded to a call for service for an individual (individual). Police were familiar with the individual from an April 2017 incident where he drove erratically in Newark and attempted to evade arrest. The officers placed the individual in restraints and transported him to the Crisis Emergency Room at University Hospital. When the individual arrived at

the Crisis Emergency Room, police officers allegedly removed the restraints before a doctor could conduct a face-to-face evaluation of him.

Within minutes of the restraints' removal, the individual began to act violently, and he was perceived as a threat by University Hospital staff. The University Hospital Behavioral Crisis Response Team was summoned, and a call was made for police assistance shortly thereafter. Officer M. Clifford first arrived on the scene, plaintiff next, and Officer M. Bristol shortly thereafter. The individual attacked the officers and beat plaintiff about her head and body. Plaintiff sustained serious injuries and was determined to be permanently disabled and unable to perform her duties as a Rutgers Police Officer. The individual was charged with aggravated assault for the attack on the officers.

On October 6, 2018, plaintiff filed a notice of claim with the City. The notice of claim alleged plaintiff's "injuries were caused by the negligent acts and/or omissions of . . . defendants." Later that month, the City sent plaintiff a deficiency notice via certified mail. The deficiency notice stated that the City adopted its own notice of claim form that plaintiff must complete and return with additional information and documents. Plaintiff alleged that in "an effort to gather additional facts regarding the claim, plaintiff sought records, reports, communication and other documents from the City of Newark pursuant to the

Open Public Records Act [(OPRA)] and the common law on November 6, 2018." Plaintiff made numerous OPRA requests with the City for the next year and she never returned or responded to the City's deficiency notice with its specialized notice of claim form.

On July 9, 2020, plaintiff filed a complaint against defendants University Hospital of Newark, University Hospital Emergency Services, City of Newark, City of Newark Police Department, and John Does 1-20 (whose identities are presently unknown but may be revealed through discovery) alleging negligence, gross negligence, violations of the New Jersey Civil Rights Act² (NJCRA), and spoliation. On November 6, 2020, the City filed a motion for (1) dismissal of the complaint with prejudice pursuant to Rule 4:6-2(e); and (2) declaratory relief that leave to file a late notice of claim is unavailable under N.J.S.A. 59:8-9. In her opposition, plaintiff noted that if the judge rejects plaintiff's arguments, then she requested to refile her complaint subject to leave to file a late notice of claim. Plaintiff filed an amended complaint on November 20, clarifying that the City was vicariously liable for its officers' alleged violation of plaintiff's rights under the NJCRA.

² N.J.S.A. 10:6-1 to -2.

Following oral argument, the judge entered an order denying the City's motion on February 11, 2021. The judge ruled that plaintiff's notice of claim and supplemental notice—an emailed OPRA request containing details of the attack—substantially complied with the Tort Claims Act³ (TCA). In light of this finding, the judge declined to issue declaratory relief that plaintiff is not entitled to file late notice of claim and did not rule on Newark's immunity arguments. We granted the City's motions for leave to appeal and stayed the trial court proceedings.

II.

On appeal, the City raises the following arguments for our consideration:

POINT I

PLAINTIFF'S TORT CLAIMS SHOULD HAVE BEEN DISMISSED BECAUSE THE INITIAL NOTICE OF CLAIM IS DEFICIENT.

POINT II

PLAINTIFF'S TORT CLAIMS SHOULD HAVE BEEN DISMISSED FOR FAILING TO SERVE THE SUPPLEMENTAL INFORMATION REQUESTED IN THE CITY'S SPECIALIZED CLAIM FORM.

³ N.J.S.A. 59:1-1 to 12-3.

POINT III

THE MOTION [JUDGE] SHOULD HAVE DECLARED THAT PLAINTIFF IS NOT ENTITLED TO FILE A LATE NOTICE OF CLAIM UNDER N.J.S.A. 59:8-9.

POINT IV

THE CITY IS IMMUNE TO INJURIES CAUSED BY PERSONS RELEASED FROM CUSTODY AND INSUFFICIENT POLICE PROTECTION.

POINT V

THE [JUDGE] SHOULD NOT HAVE UPHELD PLAINTIFF'S CLAIM THAT THE CITY IS VICARIOUSLY LIABLE UNDER THE NJCRA.

III.

We disagree with the City's argument that the judge abused his discretion by determining that plaintiff's notice of claim substantially complied with the TCA.

We sustain a trial judge's finding of substantial compliance with the TCA unless there is a showing of abuse of discretion. D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 147 (2013). An "abuse of discretion only arises on demonstration of 'manifest error or injustice,'" Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and occurs when the trial judge's decision is "made without a rational explanation,

inexplicably departed from established policies, or rested on an impermissible basis," Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "'Although deference will ordinarily be given' to a trial [judge's] factual findings, 'the [judge's] conclusions will be overturned if they were reached under a misconception of the law.'" O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 344 (2019) (quoting D.D., 213 N.J. at 147).

The TCA "bars civil actions against public entities unless certain procedures are strictly followed." Lebron v. Sanchez, 407 N.J. Super. 204, 213 (App. Div. 2009). The TCA requires that prior to filing a complaint, a claimant must provide notice of claim to a public entity within ninety days of the claim's accrual. N.J.S.A. 59:8-8(a). The TCA's notice provisions are "not intended as 'a trap for the unwary.'" Lowe v. Zarghami, 158 N.J. 606, 629 (1999) (quoting Murray v. Brown, 259 N.J. Super. 360, 365 (Law Div. 1991)). The underlying goals of providing notice of claim under the TCA are

- (1) to allow the public entity at least six months for administrative review with the opportunity to settle meritorious claims prior to the bringing of suit;
- (2) to provide the public entity with prompt notification of a claim in order to adequately investigate the facts and prepare a defense;
- (3) to afford the public entity a chance to correct the conditions or practices which gave rise to the claim; and
- (4) to inform the State in advance

as to the indebtedness or liability that it may be expected to meet.

[Velez v. City of Jersey City, 180 N.J. 284, 290 (2004) (quoting Beauchamp v. Amedio, 164 N.J. 111, 121-22 (2000)).]

Under N.J.S.A. 59:8-4, the notice of claim must include:

- a. The name and post[-]office address of the claimant;
- b. The post-office address to which the person presenting the claim desires notices to be sent;
- c. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- d. A general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
- e. The name or names of the public entity, employee or employees causing the injury, damage or loss, if known; and
- f. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Here, plaintiff's initial notice of claim—sent on October 6, 2018—was timely but did not meet the requirements of N.J.S.A. 59:8-4. In response to the

"date, place, and other circumstances of the occurrence" that gave rise to the claim, plaintiff's notice of claim states:

On or about July 12, 2018 through July 13, 2018, [plaintiff] was violently assaulted at University Hospital in Newark, New Jersey and sustained severe and permanent injuries. [Plaintiff's] injuries were caused by the negligent acts and/or omissions of . . . defendants named above.

As for the general description of her injury or loss, plaintiff states that the full extent of her injuries "cannot be determined at the present time." In response to the amount requested as of the date of presentation of the claim, plaintiff responded that she is seeking compensatory damages and punitive damages. Plaintiff's initial notice of claim failed to identify the individual and provide sufficient facts to alert the City of its liability. In his oral decision, the judge agreed with the City that the "original notice of claim failed to identify any culpable conduct by the Newark police division and failed to identify any Newark officers, and even failed to identify the assailant who assaulted . . . plaintiff." The judge found, however, that plaintiff's December 7, 2018 email to the City provided supplemental notice that constituted substantial compliance with the TCA.

We have recognized that the doctrine of substantial compliance with the TCA serves "the purpose of alleviating the hardship and unjust consequences

which attend technical defects of otherwise valid claims." Anske v. Borough of Palisades Park, 139 N.J. Super. 342, 347 (App. Div. 1976). "[S]ubstantial compliance means that the notice has been given in a way, which though technically defective, substantially satisfies the purposes for which notices of claims are required." Lebron, 407 N.J. Super. at 216 (quoting Lameiro v. W. N.Y. Bd. of Educ., 136 N.J. Super. 585, 588 (Law Div. 1975)). The doctrine "rests on a demonstration that a party took 'a series of steps . . . to comply with the statute involved,' and those steps achieved the statute's purpose, as for example, providing notice." Cnty. of Hudson v. Dep't of Corr., 208 N.J. 1, 22 (2011) (alteration in original) (quoting Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 353-54 (2001)). The plaintiff must show:

(1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of [the plaintiff's] claim; and (5) a reasonable explanation why there was not strict compliance with the statute.

[Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 151 (2003) (quoting Galik, 167 N.J. at 353).]

On October 23, 2018—five days beyond the statutory ninety-day period—the City's counsel sent a deficiency notice to plaintiff's counsel requesting the completion and return of the City's adopted notice of claim form. Plaintiff never

returned the form. On December 7, 2018, plaintiff's counsel sent an email containing an OPRA request to the OPRA Unit Manager at the Office of the City Clerk, in which he asked for government records related to the "crime perpetrated by [the individual]." The email stated "[a]s set forth in the Rutgers Police Department Incident Report, attached hereto for your reference, [the individual] assaulted [plaintiff] at University Hospital in Newark. Upon information and belief, [the individual] had been transported to University Hospital by members of the Newark Police Department." The attached Rutgers Police Department Incident Report included a narrative from Officer Clifford, who responded to the Emergency Crisis and witnessed the individual's attack on plaintiff.

Plaintiff's initial notice of claim, along with the emailed OPRA request and attached police report gave "some indication of the asserted basis of" the City's liability in compliance with N.J.S.A. 59:8-4(c). See Newberry v. Twp. of Pemberton, 319 N.J. Super. 671, 680 (App. Div. 1999). The emailed OPRA request identified the individual who attacked plaintiff and provided sufficient details to allow the City to investigate the claim.

Plaintiff attempted to provide all possible information to the City by making numerous OPRA requests, many of which went unanswered for several

months. And the City has not demonstrated prejudice because of plaintiff's supplemental notice. Its arguments that it had no means of obtaining information, except through plaintiff, and that it could not timely perform an Internal Affairs investigation, are not persuasive. The purpose of an Internal Affairs investigation is to investigate police misconduct, which was not alleged by plaintiff's notice of claim. Moreover, the City claims audio records have a ninety-day retention period, but an OPRA response from the City stated the files have a one-year retention policy. The incident was serious, and the City had ample opportunity to conduct its own investigation as plaintiff's supplemental notice provided the specific circumstances of the individual's attack. In keeping with the TCA's goals, plaintiff's initial notice of claim and supplemental notice enabled the City to properly "evaluate its liability and potential exposure and, if it chooses, . . . to engage in settlement negotiations prior to the commencement of suit." Id. at 675. The judge did not abuse his discretion in ruling plaintiff's notice substantially complied with the TCA's notice requirement.

The City also contends plaintiff's notice of claim is deficient for failing to return the City's specialized notice of claim form and requested documents in conformity with N.J.S.A. 59:8-6. N.J.S.A. 59:8-6, entitled "Claims forms; additional evidence and information; examinations," prescribes that a public

entity may adopt its own claim form by rule or regulation. Per our decision in Newberry, when a public entity's

adopted form is construed as supplemental, a claimant would not be foreclosed from proceeding with the cause of action if the standard notice of N.J.S.A. 59:8-4 has been supplied, provided, of course, that a reasonably timely response to the demand for the additional information is provided even if not provided within the prescribed ninety days.

[319 N.J. Super. at 676-77.]

The plaintiff's notice need not be supplied on the public entity's specialized notice of claim form so long as the claimant provides the information required by N.J.S.A. 59:8-4, id. at 675, which plaintiff did in her supplemental notice. And plaintiff's failure to return the form can be attributed to her numerous unanswered OPRA requests with the City. The information she provided in her initial and supplemental notice was all that she could obtain despite diligent effort. Under the circumstances, plaintiff's failure to return the form is excusable and does not preclude finding substantial compliance.

Based on the record as a whole, plaintiff's initial notice of claim was timely submitted within the statutory ninety-day period. The information specified in N.J.S.A. 59:8-4 was provided by her initial notice of claim and the December 7 emailed OPRA request and attached police report. The notice

afforded an ample basis for the City's investigation and evaluation of the claim. The judge correctly denied the City's motion to dismiss.

Because we conclude plaintiff substantially complied with the notice requirements of the TCA, we need not address the City's request for declaratory relief that plaintiff is not entitled to leave to file late notice of claim. As for the City's dispositive arguments regarding immunity, the judge found "those arguments are premature and discovery has to be taken before the [c]ourt can rule." We see no reason to address the City's substantive arguments in the first instance. The City is not precluded from renewing its immunity arguments at the appropriate time in the trial court now that we have lifted our stay.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION