

HENRY OKIOGAH,

Plaintiff/Appellant,

vs.

NEW JERSEY TRANSIT, NEW JERSEY  
DEPARTMENT OF TRANSPORTATION,  
STATE OF NEW JERSEY

Defendants/Respondents

SUPREME COURT OF NEW  
JERSEY  
SUPREME COURT DOCK NO.  
090856

On Appeal from Final Order Entered  
in the Superior Court, Law Division,  
Hudson County

*Sat Below:*

Honorable Kimberly Espinales-  
Maloney, J.S.C.

Hudson County Superior Court  
Docket No. HUD-L-395-24

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**BRIEF ON BEHALF OF PLAINTIFF-APPELLANT, HENRY OKIOGAH**

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## PRELIMINARY STATEMENT

This appeal concerns the proper application of N.J.S.A. 59:8-9 and the meaning of “extraordinary circumstances” under the New Jersey Tort Claims Act. Plaintiff/Appellant Henry Okiogah (“Appellant”) was a pedestrian struck by a New Jersey Transit bus, sustaining life-altering multi-system injuries including multiple fractures of his lower extremities that required over four consecutive months of hospitalization and inpatient rehabilitation. During the first 90 days after the crash, the Appellant was wheelchair bound and went through daily physical and occupational rehabilitation, while taking substantial opioid pain medication to treat his pain. Despite the severity of his injuries, the lower courts denied his application for a late notice of claim, functionally converting the “extraordinary circumstances” inquiry into a test involving only cognitive impairment or catastrophic injury.

The New Jersey Tort Claims Act, and the notice provisions within, were enacted in order to regulate what had previously been a haphazard and arbitrary treatment of the rule of sovereign immunity. However, the notice provisions were never meant to act as a means of eliminating meritorious claims. There has always been an exception within the Act for situations where the very condition of the injured claimant makes it impractical to file a notice of claim within ninety (90) days of an occurrence. That exception can be squarely applied here. The facts before this Court present a scenario of justifiably late notice based primarily upon the significant

injuries the claimant suffered during the weeks and months after being hit by a New Jersey Transit bus as a pedestrian.

The instant case also presents an opportunity to further define and clarify the extraordinary circumstances standard under the Tort Claims Act. At present, its application by the lower courts has resulted in inconsistent rulings and a rigid approach producing dismissal of legitimate cases without consideration of the merits of the case. This Court is uniquely positioned to reaffirm a functional, real-world standard, reject overly narrow interpretations and provide clear guidance to lower courts.

## **PROCEDURAL HISTORY**

On October 3, 2023, Plaintiff filed his initial Motion to Deem Notices of Tort Claim Timely Filed or, in the alternative, for Leave to File Late Notices of Tort Claim (Pa12). The application was opposed by the State of New Jersey, New Jersey Transit and the New Jersey Department of Transportation. On November 14, 2023, the Trial Court heard oral argument and denied Plaintiff's application without prejudice. (Pa18). In so doing, the Trial Court held that the Plaintiff's medical records from his stay in Acclaim Rehabilitation & Care Center needed to be obtained. 1TR7:11-16. Thereafter, the Trial Court instructed that the motion should be re-filed with those records to determine whether the Plaintiff's injuries constituted extraordinary circumstances to justify the filing of a tort claim notice outside of the 90-day window from the date of the incident. 1TR9:9-16.

On January 31, 2024, the Plaintiff filed a renewed Motion to Deem Notices of Tort Claim Timely Filed or, in the alternative, for Leave to File Late Notices of Tort Claim after all of the relevant medical records were obtained and produced to defense counsel and the Trial Court. (Pa20). The application was again opposed by the State of New Jersey, New Jersey Transit and the New Jersey Department of Transportation. On March 15, 2024, the Trial Court heard oral argument on Plaintiff's renewed motion, and on March 20, 2024, the Court entered an Order and Memorandum of Decision denying the Plaintiff's motion with prejudice. (Pa27). In

so doing, the Trial Court held that the Plaintiff's medical circumstances did not constitute extraordinary circumstances to justify extending the time to file a tort claim notice. Therefore, Plaintiff filed an Appeal from the Trial Court's Order. (Pa129). On June 5, 2025, the Appellate Division issued an Opinion affirming the Trial's Court's decision. (Pa154). As such, the Plaintiff filed a Notice of Petition for Certification. (Pa175). The Petition for Certification was granted on March 10, 2026. (Pa180).

## STATEMENT OF FACTS

This is an action for personal injuries arising from a bus crash that occurred on May 11, 2023. (Pa1). At that time, Appellant, Henry Okiogah was crossing the street in Jersey City, New Jersey when he was struck by a New Jersey Transit bus as a pedestrian. (Id.). According to the police report, bystanders stated that they observed a New Jersey Transit bus strike Mr. Okiogah and continue driving without stopping. (Id.). New Jersey Transit PD was notified and arrived on scene, and a New Jersey Transit file was created at file #23-05L3408. (Id.).

Mr. Okiogah was transported to Jersey City Medical Center on May 11, 2023, and hospitalized. (Pa36). He arrived at the hospital with full spinal immobilization in place and was disoriented. (Pa45). Imaging revealed the presence of a right frontoparietal subdural hematoma, a frontal extra-axial lesion, acute fractures involving the right L5 transverse process and right sacrum, and fractures of the bilateral superior and inferior pubic rami. (Pa47). Mr. Okiogah was admitted to the telemetry unit for further management and remained in the hospital until May 24, 2023. (Pa101, Pa36).

During his time at the hospital, it was noted that Mr. Okiogah had pain in his pelvis and down his left leg. (Pa89). He required the use of a rolling walker and was only able to ambulate a couple steps at a time. (Pa97). The plan was for Mr. Okiogah to be discharged to a sub-acute rehab facility to undergo gait training, functional

transfer training, patient/family training, compensatory technique education, lower extremity strengthening/range of motion and bed mobility. (Pa96).

On May 24, 2023, Mr. Okiogah was transferred to Acclaim Rehabilitation & Care Center. (Pa108). At this time, he was wheelchair bound and had ulcers on his bilateral lower extremities. (Pa110). He complained of pain in his pelvis and in the right thigh area where he was hit by the bus. (Pa110). During his stay at Acclaim, Mr. Okiogah was provided oxycodone every 6 hours for acute pain management. (Pa113). He was also taking propranolol for a traumatic brain injury and Eliquis for his deep vein thrombosis. (Pa123). Mr. Okiogah was noted to have wounds on the bilateral lower extremities. (Pa119). His rehabilitation plan included physical therapy for ambulation/transfer training, as well as occupational therapy for activities of daily living and cognitive education. (Pa119).

Due to his injuries, Mr. Okiogah required several months of treatment, physical therapy and rehabilitation in order to learn how to walk again. Mr. Okiogah remained in Acclaim rehabilitation facility until September 13, 2023. (Pa128). On September 26, 2023, after four grueling months of rehabilitation and learning to walk again, Appellant sought legal counsel to discuss claims against New Jersey Transit. (Pa16). At the time, Mr. Okiogah was informed that a Notice of Tort Claim needed to be filed. (Pa17). Until that time Mr. Okiogah had no knowledge of the 90-day limit for tort claims. (Id.). As such, on October 2, 2023, a Notice of Claim was filed

on his behalf. (Pa4). This Notice was filed within a year from the original date of the occurrence. The underlying motion practice then followed. It remains Appellant's position that the decisions of the Trial Court and the Appellate Division are manifestly unjust and patently incorrect given the standards for extraordinary circumstances. Therefore, Appellant appeals from the Appellate Division's June 5, 2025 Opinion. (Pa175)

## **LEGAL STANDARD**

### **I. STANDARDS GOVERNING APPEAL**

In reviewing late-notice determinations, appellate courts apply an abuse-of-discretion standard, but conclusions reached under a misconception of law are reversible. O’Donnell v. New Jersey Tpk. Auth., 236 N.J. 335, 344 (2019). “A court abuses its discretion when its ‘decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.’” State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)).

### **II. STANDARDS GOVERNING MOTIONS FOR LEAVE TO FILE A LATE NOTICE OF TORT CLAIM**

Pursuant to the New Jersey Tort Claims Act, a public entity is entitled to notice of a claim against it within ninety days of the accrual of the cause of action. N.J.S.A. 59:8-3, 8-8. Failure to file within this ninety-day period is not fatal. Upon application, under liberally-interpreted circumstances, a Court may permit filing of a claim up to a year from the date of accrual, provided the public entity has not been substantially prejudiced. These applications are made upon motion supported by affidavits “based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances” justifying the late filing. Id.

In 1994, the Legislature amended the Tort Claims Act to require a showing of “extraordinary circumstances.” Despite this change, the Supreme Court held the Tort

Claims Act is not intended to act as a “trap for the unwary.” Lowe v. Zarghami, 158 N.J. 606, 629 (1999). The goal is to ensure “wherever possible cases may be heard on the merits and any doubts which may exist are to be resolved in favor of the application.” Id. Critically, the New Jersey Supreme Court has instructed that courts should examine “more carefully” denials than grants, to the end that wherever possible cases may be heard on their merits, and “any doubts” about extraordinary circumstances should be resolved in favor of the application. Id.

The standard of “extraordinary circumstances” under the Tort Claims Act has never been defined by the Supreme Court or the Legislature. However, the Appellate Division in Flagg v. Township of Hazlet discussed the proper definition of the term extraordinary circumstances in dealing with an application to extend the time for the filing of a trial de novo. 321 N.J. Super. 256 (App. Div. 1999). The following passage appears in that opinion:

Defendant's arguments belie a fundamental misunderstanding of the meaning of the term "extraordinary." This word, in common parlance, denotes something unusual or remarkable. The dictionary includes among its definitions of the word: "exceptional to a very marked extent: most unusual: far from common . . . rarely equaled: singular, phenomenal: strikingly impressive . . . having little or no precedent and usually totally unexpected . . . ." *Webster's Third New International Dictionary Unabridged* 808 (1971).

Flagg, 321 N.J. Super. at 260.

Furthermore, Lowe, supra counsels the imprecision of the “extraordinary circumstances” standard requires each case be determined on their unique facts. To determine if extraordinary circumstances exist, “a judge must consider the collective impact of the circumstances offered as reasons for the delay.” R.L. v. State-Operated Sch. Dist., 387 N.J. Super. 331, 341 (App. Div. 2006). Extraordinary circumstances can be found based on the severity of a party’s injuries. Maher v. Cnt’y of Mercer, 384 N.J. Super. 182, 183 (App. Div. 2006). Physical or mental conditions can qualify as extraordinary circumstances if the medical condition is severe, debilitating or uncommon. See D.D. v. UMDNJ, 213 N.J. 130, 150 (2013)

In Maher, supra, the plaintiff suffered a burn to her arm that advanced into a staph infection. This occurred during the pendency of an unrelated litigation and her illness was communicated to that attorney via plaintiff’s adult daughter while plaintiff was in the hospital. Maher, 384 N.J. Super. at 185. After release from the hospital, she remained in poor health. Id. at 189-90. The Court held plaintiff’s condition satisfied extraordinary circumstances to permit filing after ninety days and found no evidence of prejudice to the defendant.

In R.L., supra, plaintiff was a high school student who contracted HIV from the band director at his school. Plaintiff reported the conduct to his aunt (his legal guardian). After learning of the conduct, his guardian sent him to live with his adult sister for a period of time before returning to the guardian. R.L., 387 N.J. Super at

335. Following his diagnosis, plaintiff was “very distressed,” cried every day, and rarely left his home. Id. at 336. It was noted Plaintiff “felt like he was going to have a nervous breakdown and was preoccupied with thoughts of death.” Id. The Appellate Division found no abuse of discretion in the Trial Court finding of extraordinary circumstances. Id. at 341. The Court opined “similar reasons, when offered individually, were inadequate, a judge must consider the collective impact of the circumstances offered as reasons for the delay.” Id.

In Mendez v. South Jersey Transp. Auth., 416 N.J. Super. 525 (App. Div. 2010), the plaintiffs’ car struck a snow removal truck owned by a public entity. Plaintiffs in this matter were the driver and his minor passenger; the minor’s claims brought through his guardian ad litem. Id. at 529. The Appellate Division found extraordinary circumstances where the plaintiffs were rendered unconscious for a period of time at the crash scene, spent time in hospitals and rehabilitation facilities, and continued to suffer negative effects. Id. at 533-34. The Court cited to the instruction in R.L. that a “judge must consider the collective impact of the circumstances offered as reasons for the delay.” R.L., supra at 341.

In Jeffrey v. State, 468 N.J. Super. 52 (App. Div. 2021), the Appellant demonstrated extraordinary circumstances to justify the filing of a late notice of claim. The Appellant had been in a motor vehicle crash that left him with significant injuries and months of rehabilitation and treatment. Id. at 54, 56. The Appellate

Division noted that clearly, the “plaintiff’s emotional state was, at the very least, extremely delicate and highly fragile” and that “it would thus be beyond insensitive to impose a duty on plaintiff to seek legal advice through surrogates composed of family members or friends, during this life-altering adjustment period.” Id. at 58. The Appellate Division also noted that the “Supreme Court has emphasized the need to examine ‘more carefully cases in which permission to file a late claim has been denied than those in which it has been granted, to the end that wherever possible cases may be heard on their merits, *and any doubts which may exist should be resolved in favor of the application.*’” Id.

In Bates v. Twp. of Jackson, 2018 N.J. Super. Unpub. LEXIS 2370 (App. Div. 2018), the Appellate Division found that extraordinary circumstances existed to allow a late notice of tort claim filing after a motorcyclist was involved in a crash, resulting in broken bones, surgeries and rehabilitation. The Plaintiff was discharged from the hospital eight days after the crash and transferred to a rehabilitation period. Id. at \*3. He was readmitted to the hospital to treat a surgical wound on several occasions and then returned to the rehabilitation center where he remained for approximately two months. Id. The Appellate Division, in affirming the lower court, found that extraordinary circumstances applied because of the Plaintiff’s severe disabling and debilitating injuries to justify the filing of a late notice of tort claim. Id. at \*12.

## **LEGAL ARGUMENT**

### **POINT I: THE APPELLATE DIVISION COMMITTED ERROR BY IMPROPERLY FINDING THAT APPELLANT'S INJURIES WERE NOT SUFFICIENTLY SEVERE OR DEBILITATING TO JUSTIFY THE LATE FILING OF THE NOTICE OF CLAIM (Pa32-33)**

The first issue presented is whether under N.J.S. A. 59:8-9, Appellant should be granted leave to file a late Notice of Tort Claim where he suffered severe multi-system injuries, underwent two weeks of hospitalization followed by approximately four months of inpatient rehabilitation with wheelchair confinement, daily therapy and opioid pain management, and filed a tort claim notice shortly after discharge and within one year of accrual.

#### **a. The Collective Impact of Appellant's Severe and Debilitating Injuries Constitutes Extraordinary Circumstances**

In the present case, the Appellant's injuries were significant and extraordinary. He sustained life-altering injuries when he was hit by a bus, which left him with a multitude of fractures requiring him to learn to walk again. He also suffered a subdural hematoma and cranial lesion, and took medication for a traumatic brain injury. He arrived at the hospital with full spinal immobilization. He was participating daily in physical and occupational rehabilitation with specific goals of learning how to function. He required the use of daily oxycodone to cope with his pain and was wheelchair bound in the hospital for much of his stay at

Acclaim Rehabilitation. He also remained bedridden in Acclaim for long periods of time such that he developed ulcers to his bilateral extremities.

The extraordinary circumstances inquiry is fact-sensitive and turns on whether the claimant's circumstances - viewed in combination - were extraordinary and practically impeded timely compliance. Here, Appellant's circumstances were not a single, isolated injury with routine outpatient care; they were overlapping, severe, multi-system and prolonged: (1) a traumatic brain injury/subdural hematoma with disorientation at presentation; (2) multiple fractures to the pelvis/sacrum/spine; (3) two weeks of hospitalization followed by transfer to sub-acute inpatient rehabilitation for several months; (4) wheelchair confinement and inability to ambulate more than a few steps; (5) gait and functional training; (6) daily physical and occupational therapy; and (7) opioid pain management during inpatient rehabilitation.

Severe or debilitating medical conditions can satisfy extraordinary circumstances because the key theme is the severity of the condition and its consequential impact on the claimant's ability to pursue redress and attend to filing. D.D. v. University of Medicine and Dentistry of New Jersey, 213 N.J. 130 (2013). On these facts, Appellant's condition and treatment course fall squarely within that theme: the practical reality of being hospitalized and then confined to inpatient rehabilitation for months, while undergoing daily therapy and pain management, is

the kind of severe and debilitating circumstance that materially interferes with the ability to investigate legal rights and comply with a 90-day notice deadline. Plaintiff's injuries were not minor or transient; they required prolonged institutional care and functional retraining.

During this time, it is impractical to place the burden on the Appellant – a lay person – to have been focused on obtaining a lawyer and to file a tort claim notice rather than his medical needs. Upon his release from his inpatient rehabilitation on September 13, 2023, the claimant promptly sought legal counsel and a tort claim notice was filed shortly thereafter and nearly a year and a half prior to the Statute of Limitations.

The Supreme Court has instructed that courts must examine denials of late-notice applications “more carefully” than grants, resolving “any doubts” in favor of the claimant so that cases may be heard on their merits. Jeffrey, 468 N.J. Super. at 58. To determine if extraordinary circumstances exist, a court must consider the “collectively impact of the circumstances” offered as reasons for the delay. R.L., 387 N.J. Super. at 341. Here, it is respectfully submitted that the Appellant’s collective injuries and circumstances requiring prolonged hospitalization and rehabilitation justify the reason for his delay in filing a late notice of claim.

In affirming the Trial Court's decision, the Appellate Division relied upon the case of O'Neill v. City of Newark, 304 N.J. Super. 543 (App. Div. 1997). Yet, this case is wholly differentiated from the facts at issue here. In O'Neill, the plaintiff was a police officer that sustained a gunshot wound to his right thigh after investigating a property for potential criminal activity. Id. at 546. The plaintiff was brought to UMDNJ for treatment of the wound, which was cleaned and dressed, and he was discharged within hours of arrival. Id. Thereafter, the Plaintiff followed up with a neurologist on an outpatient basis. Id. at 547. Several months later, he spent approximately a week in the hospital to undergo surgery to repair nerve damage and was thereafter able to travel to and from his surgeon's office for follow-up care. Id. at 552. A motion for late notice of claim was not filed until eleven months after the incident. Id. at 549.

In O'Neill, the Appellate Division found that the injuries were not severe enough, as demonstrated by the fact that the Plaintiff was discharged from the hospital the same day, and was thereafter able to come and go from his home as he pleased. Id. at 553-54. This is unlike the instant case in which the Appellant was not discharged from the hospital the same day. He instead spent several weeks in the hospital, followed by several months in rehabilitation. As soon as he exited the rehabilitation facility four months after the crash, he sought an attorney and a tort claim notice was promptly filed. (Pa4, 16).

The Appellate Division also improperly found that the Appellant's injuries were not severe in comparison to a plaintiff that is paralyzed, in a coma, or preoccupied with thoughts of death. See Jeffrey, 468 N.J. Super. at 54; Mendez, 416 N.J. Super. at 530; Maher, 384 N.J. Super. at 189-90. (Pa171). There is no requirement in the Tort Claims Act that an individual must demonstrate a level of injury to the point of being comatose or paralyzed in order to qualify under the extraordinary circumstances standard. Furthermore, whether the Appellant's injuries are uncommon, severe or debilitating is a question of fact that requires deposition testimony of the Appellant himself, as well as medical examinations, reports and testimony of the treating doctors. To the Appellant, these injuries were certainly life-altering, as he did not willingly choose to be hit by a bus, to be injured, and spend months of his life receiving medical care.

The Appellate Division also did not take into consideration the holding in Murray v. Barnegat Light House, 192 N.J. Super. 399 (Sup. Ct. 1983). While the case was decided prior to the 1994 amendment to the Tort Claims Act, the instant case is similar to the fact pattern in Murray. In the Murray case, the Plaintiff suffered a dislocation of her right ankle and a fracture of her right foot while walking on the walkway around the Barnegat Light House in Barnegat, New Jersey. Murray, 192 N.J. Super. at 401. As a result of her injuries, the Plaintiff was confined to her home for many months and did not consult an attorney until six months later. Id. The Court

found that the Plaintiff's incapacitation following the accident at issue in the case justified her failure to file a Tort Claims Notice within ninety days. Id. This is akin to this matter, as the Appellant spent several months in the hospital and rehabilitation as he recovered from, *inter alia*, fractures of his spine, sacrum and pubic rami.

Moreover, the facts of this case are similar to those of Bates, supra, in which extraordinary circumstances were found to permit a late notice of tort claim. In the instant case, both the Appellant in this case and the Plaintiff in Bates suffered fracture injuries resulting in hospitalizations and rehabilitation. Notably, the Appellant's hospital stay in this case was five days longer and his rehabilitation stay was two months longer than the Plaintiff in Bates.

The record before this Court reflects a claimant who, during the 90-day period after the crash, was coping with a subdural hematoma and multiple pelvic/spinal fractures, required hospitalization, and then remained in inpatient rehabilitation for months while relearning basic mobility and functioning. Against that backdrop, the Supreme Court's directive is not to treat N.J.S.A. 59:8-9 as a narrow exception reserved only for the comatose, catastrophically injured or wholly non-communicative, but to scrutinize denials carefully and resolve doubts in favor of permitting late notice so cases may be heard on their merits. See O'Donnell, 236 N.J. at 344. By treating "alert, oriented, and verbally responsive" status as effectively dispositive, the lower courts functionally converted the extraordinary circumstances

inquiry into a cognitive impairment and catastrophic injury test, which is a misconception of the governing legal standard. The statute and precedent focus on whether circumstances were extraordinary in their total impact on the claimant's ability to attend to filing.

**b. Cognitive Alertness is not Dispositive; The Proper Inquiry is Practical Incapacity and the Real-World Impact of Severe Injury**

The Appellate Division did not fairly evaluate the totality of the circumstances surrounding the Appellant. In reaching their determination, the Appellate Division (like the Trial Court) relied on medical records from Acclaim Rehabilitation demonstrating that Plaintiff was not cognitively impaired, and was alert, oriented and verbally responsive. However, the fact that the plaintiff could communicate is not dispositive. If the test was one of communication, then only an injury that results in a debilitating mental condition - such as a coma or loss of memory - could relieve a plaintiff of their obligation to file a notice of claim. This is clearly not the intention of the Tort Claims Act. Indeed, the plaintiff in Jeffrey, *supra* was alert, oriented and able to communicate with an attorney, despite his significant injuries.

Nothing in N.J.S.A. 59:8-9 requires a claimant to prove coma, amnesia, or formal mental incapacity; the statute requires "extraordinary circumstances" shown by competent proofs. Likewise, the medical-condition cases emphasize severity and the consequential impact on the claimant's ability to pursue redress and attend to filing, not a categorical requirement of cognitive impairment. Thus, even if the

Appellant was at times alert and oriented in rehabilitation, that does not negate extraordinary circumstances where the undisputed treatment course reflects prolonged hospitalization/rehabilitation, wheelchair confinement, daily therapy, and opioid pain management - circumstances that can practically disable a person from timely legal action despite intact orientation. Treating alertness as dispositive improperly collapses the statutory inquiry into a narrower test than the Legislature enacted and the Supreme Court has applied.

Regardless of whether the Appellant was able to speak or understand, he was still learning to walk again as is evidenced by his daily therapy, and his focus was undoubtedly on his medical rehabilitation. His injuries were significant enough to disrupt his lifestyle and his normal daily activities. He was forced into a medical emergency which necessitated four months of hospitalization and rehabilitation, none of which was by his own choosing. If the goal is truly one of ensuring that wherever possible, cases may be heard on their merits and that any doubts which may exist are to be resolved in favor of the claimant, as is articulated in Lowe, supra, then the Appellant's case should proceed forward.

It is respectfully submitted that the lower courts failed to consider the fragile state of the Appellant following a life-altering incident. Through the severe and debilitating injuries sustained, and the intensive treatment received through, and

beyond, the 90 days following the crash, it is respectfully submitted that the Appellant has met his burden of showing that extraordinary circumstances exist.

**POINT II: APPELLANT ACTED DILIGENTLY ONCE HIS EXTRAORDINARY CIRCUMSTANCES ABATED AND DEFENDANTS HAVE NOT CARRIED THEIR BURDEN TO SHOW SUBSTANTIAL PREJUDICE (Pa30)**

The Appellate Division failed to consider that there is no proof to justify a claim of undue or substantial prejudice on behalf of the Defendants. This is relevant as part of the inquiry in deciding whether a late notice of claim can be filed is whether the public entity has been substantially prejudiced by the delay. The statute reads, 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...

N.J.S.A. 59:8-9

The “substantial prejudice” prong of N.J.S.A. 59:8-9 places on the public entity the burdens of production and persuasion on the question of prejudice. Blank v. City of Elizabeth, 318 N.J. Super. 106, 114 (App. Div. 1999). “Substantial prejudice in this context means substantial prejudice in maintaining one’s defense,” such as “the loss of witnesses, the loss of evidence, fading memories, and the like.” Id. at 114-115. Substantial prejudice must be shown by “specificity and not be

general allegation...” Id. at 115. It is well recognized that delay alone does not give rise to an assumption of prejudice. Kleinke v. Ocean City, 147 N.J. Super. 575, 581 (App. Div. 1977).

In affirming the Trial Court’s ruling, the Appellate Division failed to address the issue of Appellant’s diligence and lack of prejudice. Appellant has demonstrated that he acted diligently once he was discharged from rehabilitation. After his hospitalization, Appellant was transferred to Acclaim Rehabilitation, where he remained for a four-month institutional stay until September 13, 2023. Less than two weeks after being discharged, he sought counsel on September 26, 2023 and a Notice of Tort Claim was filed shortly thereafter. This sequence demonstrates prompt action upon discharge and supports the conclusion that the delay was attributable to the extraordinary medical and rehabilitative circumstances rather than neglect.

Furthermore, there exists no prejudice to the Defendants. In the Tort Claim Notice, the Appellant provided the date of injury, the medical issues involved, the relevant time period and the medical care facilities at issue – all of which put the Defendants on proper notice of a potential claim and allowed them to investigate the case. (Pa4-11). Indeed, the Defendants are in the best position to investigate this case as it was a New Jersey Transit bus that hit the Appellant.

Moreover, the police report itself indicates that NJ Transit PD was notified and arrived on scene, and a file number was created. Thus, NJ Transit was already

on notice of a potential claim on the date of the crash and had the opportunity to investigate the incident. Since presumably a state employee drove the New Jersey Transit bus that hit the Appellant, there is no reason why the Defendants would have suffered any delay in interviewing the individual and investigating the matter. There is also no evidence to suggest that information pertaining to the crash is unavailable to the Defendants. Therefore, there exists no prejudice to the Defendants should this Court grant the requested relief.

**POINT III: THE INSTANT CASE PROVIDES AN OPPORTUNITY FOR THIS COURT TO FURTHER DEFINE AND CLARIFY THE MEANING OF EXTRAORDINARY CIRCUMSTANCES**

The instant case presents an opportunity to further define and clarify the extraordinary circumstances standard. The Tort Claims Act was not enacted to extinguish meritorious claims—it was enacted to regulate governmental liability while preserving access to justice. This Court has repeatedly emphasized that the Act is not a “trap for the unwary.” *Lowe*, 158 N.J. at 629. Yet, in practice, the “extraordinary circumstances” threshold has evolved into exactly that: a rigid procedural barrier producing dismissal of legitimate cases untethered to the merits. There is no indication that the Legislature intended on creating an outer barrier in which only the most severe, catastrophic injuries were considered to meet this standard. This Court has the opportunity to clarify a functional, real-world standard that focuses on practical impairment.

**A. Clarification is Necessary to Ensure Consistent Statewide Application of the Extraordinary Circumstances Standard**

This Court has made clear that the relevant inquiry of whether extraordinary circumstances applies must be: (1) fact sensitive; (2) based on the “collective impact” of circumstances; and (3) applied with flexibility. See D.D. v. UMDNJ, supra; R.L. v. State-Operated School District, supra. Yet, recent application such as in this matter reflect a troubling shift in which there is an increasing requirement that claimants demonstrate near-total incapacity. Severe physical trauma and functional limitations are minimized unless paired with cognitive impairment or catastrophic injury. This drift creates inconsistency, unpredictability, and inequity, undermining uniform statewide application of law.

The current standard disproportionately penalizes severely injured plaintiffs such as those that are hospitalized or in rehabilitation, as they are most likely to miss the initial 90-day deadline under the Tort Claims Act while they focus on their medical needs. That outcome is fundamentally inconsistent with fairness and justice. The inequity when compared to other circumstances in legal practice highlights this problem. For instance, when moving to extend discovery after an arbitration or trial date has been fixed pursuant to New Jersey Court Rule 4:24-1(c), a litigant must demonstrate exceptional circumstances – a term similar to extraordinary circumstances and might even be argued to be interchangeable. See Vitti v. Brown, 359 N.J. Super. 40, 49 (Law. Div. 2003). In practice, if an attorney were to be hit as

a pedestrian by a bus and sustain multi-system injuries which required prolonged hospitalization such as in this case, that would very likely constitute exceptional circumstances to extend discovery when an arbitration or trial date is set. Yet, the Appellant - who is a lay person in this case and unfamiliar with the New Jersey Tort Claims Act - is being penalized and is precluded from pursuing his day in Court.

This was highlighted by Justice LaVecchia in D.D., supra, finding that the interpretation of the extraordinary circumstances standard was unduly restrictive that it subordinated the interests of justice to a mere technicality. D.D., 213 N.J. at 161. New Jersey courts have long recognized a foundational principle that cases should be decided on their merits whenever possible. Rigid enforcement of procedural barriers – particularly where no prejudice exists – conflicts with fundamental fairness and judicial efficiency. Therefore, clarification is necessary to ensure consistent statewide application.

**B. The Court Should Adopt a Functional Standard Focused on Practical Impairment**

At present, there are no articulated factors that lower courts may look to for assistance in defining the extraordinary circumstances standard. Rather, courts in New Jersey only have case examples in making a determination as to whether the specific factual scenario they are faced with meets the extraordinary circumstances threshold. The majority of these cases set a nearly impossible threshold, in which one must be catastrophically injured.

The consistent theme of these decisions is the severity of the medical condition and the consequential impact on the claimant's very ability to pursue redress and attend to the filing of a claim. See D.D. v. University of Medicine and Dentistry of New Jersey, 213 N.J. 130, 150 (2013). Yet, each claimant's factual situation, including their injuries, medical treatment and recovery are different, leading to inconsistencies in legal rulings.

To restore balance by allowing cases to be heard on their merits while still maintaining the legislative intent that the waiver of sovereign immunity be limited, it is respectfully submitted that this Court should clarify that "extraordinary circumstances" to include factors for the lower courts to look to in making their determination. Such factors may include: (1) severe physical injury; (2) extended hospitalization or institutional care; (3) functional incapacity; (4) ongoing intensive medical treatment; or (5) combined medical and practical barriers. These factors, and others, can assist lower courts in clarifying what defines extraordinary circumstances and how to evaluate cases more consistently on a case-by-case basis. Furthermore, these factors still allow for the statute's essential purpose to be "preserved and not eroded through excessive or inappropriate exceptions." See D.D. v. University of Medicine and Dentistry of New Jersey, 213 N.J. 130, 148 (2013).

This is not unlike the factors that the Court in Vitti v. Brown, 359 N.J. Super. 40, 49 (Law Div. 2003), created in order to provide guidance in determining whether

exceptional circumstances apply to extend discovery. Similarly, factors for the lower courts to consider can be seen in other contexts, such as in criminal proceedings in which aggravating and mitigating factors are considered.

As it stands presently, the state of case law defining what constitutes extraordinary circumstances is unduly restrictive. This Court is uniquely positioned to reaffirm a functional, real-world standard, reject overly narrow interpretations and provide clear guidance to lower courts. Without clarification, similarly situated plaintiffs will continue to receive inconsistent and inequitable outcomes. This case presents an ideal vehicle for clarification, as the facts here present severe, documented injuries of the Appellant, prolonged hospitalization and rehabilitation, clear diligence once recovery allowed, and no demonstrated prejudice.

**CONCLUSION**

It is clear that the Appellant had severe and debilitating injuries that prevented him from filing timely Tort Claim Notices during the “relevant period.” Further, Appellant operated within the proper diligent framework when he met with counsel a year and a half before the expiration of the statute of limitations for a traditional personal injury claim. Therefore, it is respectfully requested this Court enter an Order reversing the Appellate Division’s decision.

Respectfully Submitted,

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