

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0035-16T4

J.D.,

Plaintiff-Appellant,

v.

D.R., HIGHTSTOWN HIGH
SCHOOL, EAST WINDSOR REGIONAL
SCHOOL BOARD and EAST WINDSOR
REGIONAL SCHOOL DISTRICT,

Defendants-Respondents.

Submitted September 26, 2017 — Decided October 6, 2017

Before Judges Fasciale and Sumners.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, Docket No. L-
0796-16.

Fuggi Law Firm, PC, attorneys for appellant
(Robert R. Fuggi, Jr., of counsel; Carrie Ayn
Smith, on the brief).

Mellk O'Neill, attorneys for respondent D.R.
(Arnold M. Mellk, of counsel; Edward A.
Cridge, on the brief).

Campbell Campbell Edwards & Conroy, PC,
attorneys for respondents Hightstown High
School, East Windsor Regional School Board,
and East Windsor Regional School District

(Bryan D. McElvaine and Meaghann C. Porth, of counsel and on the brief).

PER CURIAM

Plaintiff appeals from a May 20, 2016 order denying his motion to file a late notice of tort claim against D.R. (High School Teacher), Hightstown High School, East Windsor Regional School Board, and East Windsor Regional School District (collectively defendants); and a July 22, 2016 order denying reconsideration. Plaintiff failed to demonstrate extraordinary circumstances justifying the late filing. We therefore affirm the orders under review.

Plaintiff alleges that his High School Teacher sexually abused him between 1983 and 1987. In June 2013, plaintiff experienced panic attacks, which led to his hospitalization. In July 2013, plaintiff's counselor diagnosed him with depression and panic disorder. In August 2013, plaintiff's psychiatrist diagnosed him with panic disorder, and assessed the differential diagnoses between a major depressive disorder and bipolar disorder. His condition improved, but in June 2014, plaintiff's panic symptoms returned. That summer, the doctors entertained ADHD as a possible additional diagnosis. Plaintiff continued treatment for his medical condition.

Plaintiff began psychotherapy in October 2014. On May 14, 2015, his psychotherapist noted "[plaintiff] reports breakthrough this week[,] including learning of the [High School Teacher's] responsibility and feeling the anger for the first time[.]" In July and August 2015, plaintiff's psychotherapy sessions focused on his relationship with the High School Teacher. On September 11, 2015, a nurse practitioner reported that plaintiff "started talking to [his] family about [his] anxiety and [his] affair with [the High School Teacher]." The nurse practitioner added post-traumatic stress disorder to plaintiff's condition, and on December 14, 2015, she recorded in her notes that plaintiff understands that his relationship with the High School Teacher "impaired and interfered with [his] relationships in life."

On April 13, 2016, plaintiff filed his motion for leave to file a late notice of claim pursuant to N.J.S.A. 59:8-9, which states:

A claimant who fails to file notice of his claim within [ninety] days as provided in [N.J.S.A.] 59:8-8 . . . , 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 based upon personal knowledge of the affiant showing sufficient reasons

constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by [N.J.S.A.] 59:8-8 . . . or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter; provided that in no event may any suit against a public entity or a public employee arising under this act be filed later than two years from the time of the accrual of the claim.

To excuse his failure to file a notice of claim within ninety days of the action's accrual, plaintiff was required to demonstrate "sufficient reasons constituting extraordinary circumstances." Ibid. The judge found that plaintiff failed to do so.

On appeal, plaintiff argues that he demonstrated extraordinary circumstances; his psychological impairments constituted sufficient reasons to excuse the late filing; the judge erred in considering his failure to submit an affidavit to support his motion to file a late notice of claim; and the judge failed to conduct a Lopez¹ hearing.

Our standard of review of an order granting or denying a motion for leave to file a late notice of claim under the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, is abuse of discretion. McDade v. Siazon, 208 N.J. 463, 476-77 (2011) (citing Lamb v. Glob. Landfill Reclaiming, 111 N.J. 134, 146 (1988)). We see no abuse here. After reviewing the record and the briefs, we conclude

¹ Lopez v. Swyer, 62 N.J. 267 (1973).

that plaintiff's arguments are without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm substantially for the reasons expressed by Judge William Anklowitz. We add the following brief remarks.

The record reflects that plaintiff knew about the alleged connection between his medical condition and the affair by December 14, 2015. Plaintiff's expert stated that "with the introduction of psychotherapy . . . [plaintiff] was . . . able to make the connection between his abusive sexual and emotional relationship with [the High School Teacher], and his psychiatric symptomology." The expert's report acknowledged plaintiff's progress and his ability to discuss the matter with his family. The expert further noted that plaintiff recognized the connection in May 2015, when his psychotherapist recorded that recognition. Plaintiff had ninety days from May 14, 2015, or the latest, from December 14, 2015, to file the notice of tort claim, but filed the notice in April 2016, well beyond the ninety-day deadline.


When, in 1994, the Legislature added the "extraordinary circumstances" language to N.J.S.A. 59:8-9, its intent was to replace a "fairly permissive standard" with a "more demanding" one. Lowe v. Zarghami, 158 N.J. 606, 625-26 (1999); see also Beauchamp v. Amedio, 164 N.J. 111, 118 (2000). Plaintiff's reasons for not timely filing a notice of claim are insufficient to

overcome this demanding standard. The judge correctly denied the motion.

We reject plaintiff's contention that the judge erred in failing to conduct a Lopez hearing. "A Lopez hearing is only required when the facts concerning the date of the discovery are in dispute." Henry v. Dep't of Human Servs., 204 N.J. 320, 336 n.6 (2010) (citation omitted). Here, the cause of action's accrual date was not in dispute as plaintiff repeatedly held it to be May 14, 2015.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION