

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0912-20

JUAN J. BARRON,

Plaintiff-Appellant,

v.

SHELLEY GERSTEN, and
MEREDITH C. LIPPAI,

Defendants-Respondents.

APPROVED FOR PUBLICATION

June 13, 2022

APPELLATE DIVISION

Argued March 16, 2022 – Decided June 13, 2022

Before Judges Gilson, Gooden Brown, and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-2081-20.

Christopher L. Morbelli argued the cause for appellant
(Lord, Kobrin, Alvarez & Fattell, LLC, attorneys;
Michael Alvarez and Christopher L. Morbelli, on the
briefs).

Daniel J. Pomeroy argued the cause for respondents
(Pomeroy, Heller, Ley, DiGasbarro & Noonan, LLP,
attorneys; Daniel J. Pomeroy and Karen E. Heller, on
the brief).

The opinion of the court was delivered by

GUMMER, J.A.D.

In this automobile-accident case, plaintiff Juan J. Barron appeals from an order granting defendants' motion to dismiss the complaint with prejudice for failure to file it within two years pursuant to the applicable statute of limitations, N.J.S.A. 2A:14-2(a). Plaintiff asserts he filed his complaint timely, contending the Supreme Court had tolled the statute of limitations in its June 11, 2020 Fourth Omnibus Order. We disagree and affirm.

I.

The accident occurred on June 21, 2018. The complaint was filed on June 29, 2020, eight days after the expiration of the two-year statute of limitations enacted by our Legislature in N.J.S.A. 2A:14-2(a).

Defendants moved to dismiss the complaint with prejudice for failure to commence the action timely. Defendants argued plaintiff had filed the lawsuit after the two-year statute of limitations had run and had not pleaded any exceptions or justifications that would extend or toll the statute of limitations. In opposition,¹ plaintiff argued the Supreme Court had tolled the statute of limitations in its June 11, 2020 Fourth Omnibus Order, having the effect of adding to the statute of limitations fifty-five additional days to file a complaint.

¹ The record on appeal does not include plaintiff's opposition to defendants' motion. According to defendants, plaintiff's opposition consisted of a short letter brief with no certification or exhibits in support of his position. Plaintiff does not dispute that assertion.

In reply, defendants contended the Supreme Court had not expanded or extended the statute of limitations but had deemed March 16, 2020, through May 10, 2020, a holiday for purposes of calculating court filing deadlines.

After hearing oral argument, the motion judge granted defendants' motion and issued an order dismissing the complaint with prejudice. In a decision placed on the record, the judge found "there's no dispute that the cause of action began to accrue on June 21[,], 2018" and that "plaintiff filed this complaint eight days after the two-year statute of limitation[s]." The judge held "the Omnibus Orders of the Supreme Court did not add time to statutes of limitations as argued by the plaintiff" but instead "deemed the period of time from . . . March [16] through May 10[.] as being the same as a legal holiday for purposes of computing any statute of limitations." Accordingly, the judge held the two-year statute of limitations had run before plaintiff's complaint was filed, granted defendants' motion, and dismissed the complaint.

This appeal followed.

II.

We give no deference to a trial court's legal determinations when no issue of fact exists. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Accordingly, we review de novo a trial court's decision to dismiss a complaint as barred by a statute of limitations.

Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div. 2017) (finding "when analyzing pure questions of law raised in a dismissal motion, such as the application of a statute of limitations, we undertake a de novo review").

A statute of limitations is what its name indicates: a statute enacted by the Legislature to limit the time period in which a lawsuit can be filed. See Poetz v. Mix, 7 N.J. 436, 447 (1951) (referring to a statute of limitations as "the time prescribed by the Legislature in which actions may be instituted"). "Statutes of limitations, by their nature, are intended to compel plaintiffs to file their lawsuits within a prescribed time to allow defendants a fair opportunity to respond and safeguard their interests." The Palisades at Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427, 443 (2017). They also "encourage diligence and penalize dilatoriness by allowing the dismissal of stale claims." Ibid. It is well settled that "[a]ctions for personal injuries must be commenced within two years after the cause of action accrues." Smith, 451 N.J. Super. at 93; see also N.J.S.A. 2A:14-2(a).

A statute of limitations may be equitably tolled under very limited circumstances: "(1) [if] the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his [or her] rights, or (3) if the plaintiff has timely asserted his [or her] rights mistakenly in the wrong forum." F.H.U. v. A.C.U., 427 N.J. Super. 354, 379 (App. Div.

2012) (quoting Kocian v. Getty Refin. & Mktg. Co., 707 F.2d 748, 753 (3d Cir. 1983)). "Absent a showing of intentional inducement or trickery by a defendant, [equitable tolling] . . . should be applied sparingly and only in the rare situation where it is demanded by sound legal principles and in the interest of justice." Binder v. Price Waterhouse & Co., L.L.P., 393 N.J. Super. 304, 313 (App. Div. 2007) (quoting Freeman v. State, 347 N.J. Super. 11, 31 (App. Div. 2002)). "[E]quitable tolling requires plaintiffs to 'diligently pursue their claims' because although it 'affords relief from inflexible, harsh or unfair application of a statute of limitations,' [it] does not excuse claimants from exercising the reasonable insight and diligence required to pursue their claims." Ibid. (quoting Freeman, 347 N.J. Super. at 31-32).

In this appeal, plaintiff does not assert equitable tolling applies to excuse the late filing of his complaint nor does he invoke the doctrine of substantial compliance. See Negron v. Llarena, 156 N.J. 296, 305 (1998) (setting forth the required elements of a substantial-compliance claim); Est. of Vida ex rel. Kesciova v. City of Garfield, 330 N.J. Super. 225, 230 (App. Div. 2000). Instead, plaintiff argues he filed his complaint timely because the Supreme Court had tolled the statute of limitations in its June 11, 2020 Fourth Omnibus Order.

After Governor Philip D. Murphy issued Executive Order No. 103 declaring a public health emergency and state of emergency existed in New

Jersey due to the COVID-19 pandemic, the Supreme Court issued an order on March 17, 2020, in which, "pursuant to N.J. Const., Art. VI, sec. 2, par. 3," it directed "[i]n the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts, for purposes of filing deadlines, March 16 through March 27, 2020 shall be deemed the same as a legal holiday."

Article VI, section 2, paragraph 3, of our Constitution authorizes the Supreme Court to "make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts." That "constitutional provision is what it purports to be – a grant of power with respect to 'practice and procedure.' It does not purport to deal with substantive law" Busik v. Levine, 63 N.J. 351, 362 (1973). Thus, the Supreme Court in its March 17, 2020 order invoked its constitutional rule-making authority to deem March 16 through March 27, 2020, a legal holiday.

Rule 1:3-1 addresses legal holidays and the computation of time periods:

In computing any period of time fixed by rule or court order . . . [t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time less than 7 days, Saturday, Sunday and legal holidays shall be excluded.

Rule 1:3-1 makes clear when the 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. The Rule distinguishes time periods of less than seven days, excluding all holidays from the calculation of those time periods, and time periods of seven days or more, excluding a holiday from the calculation of those time periods only if the holiday falls on the last day of the time period. "The reason for this distinction is obvious. Unquestionably it was not intended to have the effect of shortening the time prescribed by the Legislature in which actions may be instituted." Poetz, 7 N.J. at 447.

The March 17, 2020 order converted every day, from March 16 to March 27, 2020, into a legal holiday. Thus, pursuant to Rule 1:3-1 and the March 17, 2020 order, if a statute of limitations ran on a claim on March 20, 2020, a plaintiff could satisfy the statute of limitations by filing a complaint on Monday, March 30, 2020, the first day after the last day of the time period that was not a Saturday, Sunday, or legal holiday. The order did not have the effect of adding days to any statute of limitations.

On March 27, 2020, the Court issued what has been described as its First Omnibus Order related to the COVID-19 pandemic. In paragraph 7(d) of that order, the Court directed:

In the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts, for purposes of filing deadlines, the additional period from March 28 through April 26, 2020 shall be deemed the same as a legal holiday, thus extending the tolling established by the March 17 Order.

The Court included a similar provision in paragraph 7(d) of its April 24, 2020 Second Omnibus Order:

In the computation of time periods under the Rules of Court and under any statute of limitations for matters in all courts, for purposes of filing deadlines, except as otherwise provided in this order, the period from March 16 through May 10, 2020 shall be deemed the same as a legal holiday.

In its May 28, 2020 Third Omnibus Order, the Court stated it was "continu[ing] some of [the] extensions and tolling provisions" of the April 24, 2020 Second Omnibus Order and "list[ing] those provisions that have concluded." Sup. Ct. of N.J., Third Omnibus Order on COVID-19 Issues, at 1 (May 28, 2020). The Court included in its list of "provisions of the April 24, 2020 Second Omnibus Order" that had concluded "7(d) – tolling in general." Id. at 4, ¶ 3.

In paragraph 6 of its June 11, 2020 Fourth Omnibus Order, the Court directed:

This Order affirms the provisions of the Court's prior orders that in the computation of time periods under the Rules of Court and under any statute of limitations for matters in all trial divisions of the Superior Court, the period from March 16, 2020 through May 10, 2020 shall not be included in calculating those trial court filing deadlines.

Plaintiff does not rely on any of the Court's prior omnibus orders but relies solely on the Fourth Omnibus Order. Plaintiff contends the Court with the language it used in its June 11, 2020 Fourth Omnibus Order ordered something different than it had ordered in its prior omnibus orders and with that order added fifty-five days to the two-year statute-of-limitations period provided by the Legislature in N.J.S.A. 2A:14-2(a), and presumably every other statute of limitations. But the Court in its Fourth Omnibus Order gave no indication that it was amending or revising its prior omnibus orders as to the computation of time. To the contrary, the Court clearly stated it was "affirm[ing] the provisions of [its] prior orders." Thus, it was not ordering anything new or different than it had ordered in its prior omnibus orders.

The Court also did not cite in its Fourth Omnibus Order any new or different authority for its directive regarding the computation of time. The only authority the Court invoked in any of its COVID-19-related orders regarding the

computation of time was its constitutional rule-making authority set forth in Article VI, section 2, paragraph 3 of the New Jersey Constitution. See Sup. Ct. of N.J., Order on COVID-19 Issues, at 1 (Mar. 17, 2020) ("pursuant to N.J. Const., Art. VI, sec. 2, par. 3,"). We see no support for plaintiff's argument that the Court intended anything different in its Fourth Omnibus Order than it had ordered in its first and subsequent COVID-19-related orders: the time period ultimately determined to be March 16, 2020, through May 10, 2020, was deemed a legal holiday pursuant to the Court's constitutional rule-making authority.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION