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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1571-21**

SAVAN DESAI,

Plaintiff-Appellant,

v.

WEST WINDSOR-PLAINSBORO
REGIONAL SCHOOL DISTRICT
BOARD OF EDUCATION,¹

Defendant-Respondent.

Submitted November 10, 2022 – Decided December 16, 2022

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Mercer County, Docket No. L-0500-21.

Hach Rose Schirripa & Cheverie, LLP, attorneys for
appellant (Hillary Mara Nappi, on the briefs).

Hill Wallack, LLP, attorneys for respondent (Jeffrey L.
Shanaberger and Cherylee O. Melcher, on the brief).

¹ Improperly pled as West Windsor-Plainsboro Regional School District.

Rebenack, Aronow & Mascolo, LLP, attorneys for amicus curiae Child USA (J. Silvio Mascolo, of counsel and on the brief; Marci A. Hamilton, Alice Bohn, Alice Nasar Hanan, and Carina Nixon, on the brief).

PER CURIAM

Plaintiff Savan Desai, who was born in 1989, claims he was sexually assaulted by a substitute teacher in 2005 while a high school student at defendant West Windsor-Plainsboro Regional High School. He filed a complaint in the Law Division in 2021, under N.J.S.A. 2A:14-2a(a)(1) and/or 2A:14-2b, alleging negligence, gross negligence, negligent hiring, and intentional infliction of emotional distress against defendant, after the New Jersey Legislature passed L. 2019, c. 120 (Chapter 120) and L. 2019, c. 239 (Chapter 239). These statutes extended the statute of limitations for child sexual assault claims and eliminated the requirement of a Tort Claims Act (TCA) notice to be filed against public entities in such cases. The amendments became effective on December 1, 2019.

Defendant moved for summary judgment contending the 2019 legislative amendments did not apply retroactively to claims that accrued prior to the statute's December 1, 2019 effective date. Following oral argument on December 17, 2021, the trial court granted defendant's motion finding the TCA amendments were not retroactive to causes of action which accrued before the new legislation became effective, and plaintiff was obligated to file a timely

TCA notice, which was not done. The court entered a memorializing order and dismissed plaintiff's complaint with prejudice.

Four days later, we decided W.S. v. Derek Hildreth, Lawrence Township School District, and Myron L. Powell Elementary School, 470 N.J. Super. 57 (App. Div. 2021), which addressed the same issues. In W.S., we held the legislative amendments that became effective on December 1, 2019, resuscitated child sexual assault claims that would otherwise have been time-barred, making the now timely complaints against public entities subject to the newly enacted N.J.S.A. 59:8-3(b), which specifically eliminated the need to file a TCA notice in advance of filing a complaint. Id. at 69-70. Therefore, based on our holding in W.S., we reverse the trial court's order and reinstate plaintiff's complaint.

I.

Viewed in the light most favorable to plaintiff, Templo Fuente De Vida Corporation v. National Union Fire Insurance Company of Pittsburgh, 224 N.J. 189, 199 (2016), the pertinent facts are as follows. Plaintiff attended defendant's high school from September 2004 until June 2005, when he was between the ages of fourteen and fifteen years old. The purported abuser was a male substitute teacher for plaintiff's freshman year history class, and he also supervised study hall. Plaintiff does not recall the substitute teacher's name and

refers to him as "John Doe" in the record. Plaintiff claims Doe was aware plaintiff identified as bisexual when the alleged abuse took place because Doe supervised study hall at the school. Plaintiff claims he did not attend school "for at least two weeks" because of the trauma he experienced from Doe's abuse, prompting "Assistant Principal Dennis Leopold² [to] set up a meeting with [p]laintiff and his mother."

Plaintiff alleges Leopold spoke with him privately at the meeting, during which plaintiff revealed what Doe had done to him. In plaintiff's view, Leopold "discouraged [him] from going forward with the report of his rape" because child services would need to be called; his mother would have to be notified about the incident; and plaintiff would be disciplined for his absences from school and for drinking alcohol. Leopold also advised plaintiff that Doe was no longer working at the school. Thereafter, plaintiff transferred to another school.

In October 2021, defendant moved for summary judgment contending that section 8 of L. 2019 c. 120, which codified N.J.S.A. 59:8-3(b), did not apply retroactively to claims that accrued prior to the statute's December 1, 2019

² The principal is referred to as "Lepold" in the complaint. In plaintiff's appellate brief and response to defendant's statement of facts regarding its motion for summary judgment, it is spelled "Leopold." We do not know which spelling is correct and use Leopold in our opinion.

effective date. Defendant contended plaintiff was required to file a TCA notice of claim because defendant is a public entity.

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

A. THE PLAIN LANGUAGE OF [N.J.S.A. 59:2-1.3] OBVIATES THE NEED TO COMPLY WITH THE TCA.

B. [THE TRIAL COURT] MISTAKENLY DISREGARDED THE EFFECTIVE DATE OF THE STATUTE AND THE DATE OF PLAINTIFF'S FILING AND THAT THE TCA AMENDMENT APPLIED TO THE CURRENT CASE DID NOT REQUIRE RETROACTIVE APPLICATION.

C. [THE TRIAL COURT'S] DECISION IS INCONSISTENT WITH THIS COURT'S FINDING THAT AMENDMENTS TO SECTION EIGHT OF L. 2019, c. 120, WHICH CREATED N.J.S.A. 59:8-3(b), APPLY TO CLAIMS THAT ACCRUED PRIOR TO ITS DECEMBER 1, 2019 EFFECTIVE DATE.

II.

We review the grant of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022) (citing Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 511 (2019)). When only a question of law remains and there is no issue of fact, then we owe "no special deference to the legal determinations of the trial court."

Templo Fuente De Vida Corp., 224 N.J. at 199 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

As we detailed in W.S., Chapter 120 changed the two-year statute of limitations for filing tort actions with regard to sexual abuse claims brought by plaintiffs who allege they were abused as minors. See N.J.S.A. 2A:14-2(a) ("Except as otherwise provided by law, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued"); N.J.S.A. 2A:14-2a. This statute explicitly revives stale claims.

Every action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [L. 1992, c. 7], or sexual abuse as defined in section 1 of [L. 1992, c. 109] against a minor under the age of [eighteen] that occurred prior to, on or after the effective date of [L. 2019, c. 120], shall be commenced within [thirty-seven] years after the minor reaches the age of majority.

[N.J.S.A. 2A:14-2a(a)(1) (emphasis added).]

Moreover, in W.S., we set forth the historical chronology whereby the Legislature created a two-year window starting on December 1, 2019 for sexual abuse plaintiffs to bring old claims which would have been barred

"[n]otwithstanding the statute of limitations provisions of N.J.S.A. 2A:14-2, section 2 of [L. 2019, c. 120], section 1 of [L. 1964, c. 214], or any other statute." 470 N.J. Super. at 63-64; N.J.S.A. 2A:14-2b(a). As explained by our Legislature in a committee statement,

[s]ince the extended statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of [fifty-five] years when the bill takes effect, or who will reach [fifty-five] years of age sometime after the bill takes effect . . . could file a suit.

[S. Judiciary Comm. Statement to S. Comm. Substitute for S. 477 1-2 (Mar. 7, 2019).]

As we stated in W.S., our Legislature "enacted an entirely new statute of limitations for claims based on child sexual assault, abuse, and exploitation that occurred 'prior to, on or after' December 1, 2019." 470 N.J. Super. at 59 (quoting N.J.S.A. 2A:14-2a(a)(1) (emphasis in original)). We highlighted "[t]his legislative action intentionally resuscitated claims . . . that had accrued prior to December 1, 2019." Ibid. Here, based on our de novo review, we likewise conclude, as we did in W.S., that plaintiff's complaint falls "in the universe of lawsuits to which Chapter 120" applies. Ibid.

Finally, the bills amended the TCA. S. 477 (2019) (creating N.J.S.A. 59:2-1.3 and adding 59:8-3(b)); A. 5392 (2019) (updating N.J.S.A. 59:2-1.3).

Under the newly added N.J.S.A. 59:8-3(b),

[t]he procedural requirements of this chapter [of the TCA] shall not apply to an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of [L. 1992, c. 7], or sexual abuse as defined in section 1 of [L. 1992, c. 109].

And, under N.J.S.A. 59:2-1.3(a)(1), TCA "immunity from civil liability" for public entities was withdrawn for "sexual assault, any other crime of a sexual nature, a prohibited sexual act," or "sexual abuse . . . which was caused by a willful, wanton or grossly negligent act of the public entity or public employee." Such immunity was also withdrawn from public entities for the same forms of sexual abuse "which w[ere] caused by the negligent hiring, supervision or retention of any public employee." N.J.S.A. 59:2-1.3(a)(2).

The Legislature provided this new liability standard "shall apply to any cause of action filed on or after [December 1, 2019], as well as any cause of action filed prior to that effective date that has not yet been finally adjudicated or dismissed by a court as of that effective date." A. 5392 (2019). Moreover, under N.J.S.A. 59:2-1.3(b), "[e]very action at law involving a public entity or

public employee" involving sexual abuse claims is subject to the extended statute of limitations under N.J.S.A. 2A:14-2a.

Here, plaintiff—who is now thirty-three years old—is subject to the new statute of limitations contained in N.J.S.A. 2A:14-2a(a)(1), which permits a plaintiff to file a child sexual abuse claim before they reach the age of fifty-five, "regardless of when the events occurred, i.e., 'prior to, or after' December 1, 2019, and without regard to when the cause of action accrued." W.S., 470 N.J. Super. at 70. Furthermore, since plaintiff's complaint was timely filed under the new statute of limitations, he was not required to file a TCA notice as a prerequisite to suit. Ibid.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION