

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2227-19

DARRYL DAVIS, RONALD E.
SMITH, and STEVEN GROHS,

Plaintiffs-Appellants,

and

JAMAL BELTON and HAKIM
EVANS,

Plaintiffs,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,
SPECIAL TREATMENT UNIT,
SHERRY YATES, MICHAEL
RIDGEWAY, ERICA STEM, and
COLM D. FOLEY, in their
individual and official capacities,

Defendants-Respondents.

Submitted May 9, 2022 – Decided June 1, 2022

Before Judges Rothstadt and Mayer.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-4878-16.

Darryl Davis, Ronald E. Smith, Steven Grohs, appellants pro se.

Matthew J. Platkin, Acting Attorney General, attorney for respondents (Sookie Bae-Park, Assistant Attorney General, of counsel; Michael Vomacka, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiffs Darryl Davis, Ronald E. Smith, Steven Grohs, Jamal Belton, and Hakim Evans¹ appeal from an April 28, 2017 order setting aside the entry of default against defendants New Jersey Department of Corrections, Special Treatment Unit (STU), Sherry Yates, Michael Ridgeway, Erica Stem, and Colm D. Foley (collectively, defendants) and a January 10, 2020 order granting defendants' motion for summary judgment. We affirm.

I.

This matter involves the failure of air conditioning units at the Avenel STU in the summer of 2016.

¹ Plaintiffs' merits brief was signed by Davis, Smith, and Grohs. There is no information in the record regarding the disposition of the claims asserted on behalf of Belton and Evans. Plaintiffs' brief indicated Belton "voluntarily dismissed himself from the case" and Evans "refused to participate in the case before or at the close of discovery." For purposes of this opinion, plaintiffs shall refer to the five plaintiffs identified in the complaint.

The relevant facts are derived from the summary judgment motion record. According to the STU engineer in charge of maintenance at the facility, there were sporadic breakdowns of the facility's air conditioning units in June and July 2016. When the air conditioning units failed, the STU staff repaired the units immediately.

On August 1, 2016, the air conditioning system for the North, West, and South housing units malfunctioned. By August 3, the STU staff repaired the units and the air conditioning system functioned normally. About one week later, the STU experienced a major air conditioning failure. As a result, the temperature in plaintiffs' cells increased significantly.

When the STU staff learned the repair of the air conditioning units would take several days, the staff installed portable air conditioners to reduce the temperature in the facility. In the interim, the Department of Corrections purchased two new motors to repair the air conditioning units and the air conditioning system was restored to full function on August 19, 2016.

Plaintiffs agree the STU's air conditioning system failed, but plaintiffs disagree as to the specific failure dates and the frequency of the failures.

In addition to the air conditioning system failure, plaintiffs claimed the air ducts to certain cells were disconnected. In July 2016, plaintiffs reported the

temperature in the cells located on the first and second floors of the STU reached ninety degrees, while the temperature in the cells located on the third floor often exceeded one hundred degrees. Plaintiffs confirmed the STU staff placed portable cooling units in certain housing units but claimed the units failed to reduce the temperature in their cells.

Documents in defendants' appendix confirmed a series of problems with the STU's air conditioning system during the summer of 2016. According to emails dated July 18 and July 22, the STU facility was waiting for the arrival of parts to repair the air conditioning system. Based on an email dated July 27, 2016, the STU staff provided a portable cooling unit for one of the housing units. An email from August 11, 2016 documented the STU facility suffered a "major air conditioning failure." The STU staff attempted to repair the problem immediately. However, the air conditioning units required new motors which had to be ordered.

Due to the high temperature in their cells, plaintiffs claimed they were unable to sleep and experienced discomfort. Plaintiffs further asserted diminished mental capacity due to the excessive heat, preventing them from fully engaging in the STU's required treatment programs. According to

plaintiffs, their requests for exhaust fans and ice-water went unheeded by the STU's staff.

Based on the problems with the STU's air conditioning system, on August 23, 2016, plaintiffs filed a complaint in the Superior Court. Despite suing state agencies and various individuals acting in their official capacity, plaintiffs never filed a notice of tort claim.

According to plaintiffs' complaint, the lack of functioning air conditioning at the STU caused "serious deprivations of [plaintiffs'] basic human needs" and defendants willfully violated N.J.A.C. 10:36A-2.1, the Fourteenth Amendment of the United States Constitution, and Article I of the New Jersey Constitution.

Plaintiffs also requested injunctive relief. They sought to compel the Department of Corrections and STU to repair the air conditioning system, reconnect the duct work to the cells, and develop written procedures for managing future air conditioning system failures. Plaintiffs also sought compensatory and punitive damages against the individual defendants.

On November 2, 2016, defendants requested the State assign counsel to defend them against plaintiffs' claims. Two weeks later, an attorney from the Office of the Attorney General was assigned to represent defendants.

According to plaintiffs, defendants were served with the complaint on November 16, 2016.

Because defendants failed to respond to the complaint, on January 12, 2017, plaintiffs moved for the entry of default against the individually named defendants. The clerk's office entered default five days later. Plaintiffs claimed defendants received the notice of the default on January 21, 2017. However, the record indicated defendants received notice of the default on February 21, 2017.

On February 20, 2017, defendants' attorney filed a notice of appearance. Six days later, plaintiffs requested the entry of default judgment against defendants.

On March 13, 2017, defendants filed separate motions to vacate the default and to dismiss plaintiffs' complaint for failure to state a claim under Rule 4:6-2(e). Plaintiffs opposed defendants' motions. On April 28, 2017, the motion judge held a hearing on defendants' motions.²

Defense counsel told the judge he was to blame for delay in filing a responsive pleading because of administrative errors on his part. Counsel also had several personal reasons attributing to the delay in filing a response to the

² The judge could not reach plaintiffs during the hearing after several unsuccessful efforts to contact them at the designated telephone number.

complaint. In an April 28, 2017 order, the judge vacated the default, finding defendants presented both excusable neglect and a meritorious defense, However, the judge denied defendants' motion to dismiss the complaint, concluding plaintiffs' pleading stated a valid claim.

Thereafter, the parties exchanged discovery in anticipation of an April 29, 2019 trial date. On April 18, 2019, defense counsel moved to adjourn the trial.³ Plaintiffs opposed any adjournment of the trial, contending defense counsel made the request solely to file a summary judgment motion. Despite plaintiffs' objection, the trial court granted the adjournment.

On June 12, 2019, defendants moved for summary judgment. Plaintiffs filed opposition on November 20, 2019.⁴ In a January 10, 2020 order and written decision, the judge granted defendants' motion. The judge found defendants acted in their capacity as state officials, not private individuals, and were thus immune from suit under the New Jersey Civil Rights Act and 42 U.S.C. § 1983.

On appeal, plaintiffs argue the motion judge abused his discretion in setting aside default. Additionally, plaintiffs contend the motion judge erred in

³ Plaintiffs failed to provide a copy of the adjournment motion papers and the judge's reasons in support of his ruling on that motion.

⁴ There is nothing in the record explaining the delay in plaintiffs' submission of opposition to defendants' summary judgment motion.

granting summary judgment "because [defendants] breached their duty for satisfying basic human needs such as reasonable safety of care to appellants." We reject plaintiffs' arguments and affirm for the following reasons.⁵

II.

We review a trial judge's decision on a motion to vacate default for abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). A motion to vacate default is reviewed under a more liberal standard than a motion to vacate default judgment. N.J. Mfrs. Ins. Co. v. Prestige Health Grp., LLC, 406 N.J. Super. 354, 360 (App. Div. 2009). Pursuant to Rule 4:43-3, a court may vacate the entry of default upon "good cause shown." "[G]ood cause . . . requires the exercise of sound discretion by the court in light of the facts and circumstances of the particular case." O'Connor v. Altus, 67 N.J. 106, 129 (1975) (citing Elias v. Pitucci, 13 F.R.D. 13 (E.D. Pa. 1952)). In considering whether good cause exists, a judge generally considers the movant's "absence of any contumacious conduct" and the presence of a meritorious defense. Ibid.

We are satisfied the judge properly determined defendants established good cause to vacate the default. Defense counsel explained the administrative

⁵ We review appeals from orders, not the legal reasoning of the trial court. See Hayes v. Delamotte, 231 N.J. 373, 387 (2018).

and personal reasons contributing to the delay in filing a responsive pleading. Counsel also presented meritorious defenses to plaintiffs' action with the simultaneously filed motion to dismiss plaintiffs' complaint. Moreover, plaintiffs failed to identify any prejudice associated with vacating the default. Given our deferential standard of review, we discern no basis to disturb the granting of defendants' motion to vacate default.

III.

A motion to adjourn a trial is left to the discretion of the trial court and will not be reversed unless the non-moving party suffers a manifest wrong or injury. Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020).

Plaintiffs contend defense counsel requested the trial adjournment to allow additional time to move for summary judgment. Contrary to plaintiffs' claim, defense counsel explained he required additional time to prepare for a trial in a different case listed for the week after plaintiffs' scheduled trial.

There is no information in the record on appeal regarding the judge's reasons for granting the adjournment of trial. Nor did plaintiffs include defendants' motion to adjourn the trial despite raising the issue in their merits brief. Based on our disposition of plaintiffs' arguments on the merits, we are satisfied the judge did not abuse his discretion in granting the trial adjournment.

IV.

We review a trial judge's grant or denial of a summary judgment motion de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). A motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

"To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (quoting Globe Motor Co. v. Igdaley, 225 N.J. 469, 480 (2016)). "Summary judgment should be granted, in particular, 'after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Ibid. (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

Plaintiffs raise several arguments why the judge erred in granting summary judgment. We reject plaintiffs' contentions and amplify why summary judgment was appropriate.

A.

Plaintiffs first argue the Fourteenth Amendment "mandates that civilly committed individuals may not be subjected to conditions that amount to punishment." Plaintiffs argue a right to ventilation and to be free from extreme heat and extreme cold. Plaintiffs assert defendants violated these rights, constituting the improper imposition of punishment.

In a civil context, an STU resident's rights arise under the substantive due process provisions of the Fourteenth Amendment. R.R. v. N.J. Dep't of Corr., 404 N.J. Super. 468, 479 (App. Div. 2009); see also Youngberg v. Romeo, 457 U.S. 307, 314-15 (1982). To determine whether the conditions of confinement amount to unconstitutional punishment, courts determine whether the condition is imposed for the purpose of inflicting punishment. E.D. v. Sharkey, 928 F.3d 299, 307 (3d Cir. 2019).

Unconstitutional punishment has both an objective and a subjective component. Stevenson v. Carroll, 495 F.3d 62, 68 (3d Cir. 2007). The subjective component reviews whether the official acted with a sufficiently

culpable state of mind and the objective component requires a determination whether the deprivation was sufficiently serious. Ibid.

Here, plaintiffs failed to demonstrate the subjective and objective components demonstrating the STU's air conditioning system failures were designed to impose punishment. Under the subjective component, the STU staff acted in good faith to repair the air conditioning system during each breakdown. The STU staff acted quickly, ordered new parts when necessary to repair the system, and implemented temporary cooling measures until a more permanent resolution was achieved. During depositions, two plaintiffs conceded the air conditioning malfunctions at the STU were not designed to impose punishment and a third plaintiff had no opinion on the issue. Thus, plaintiffs failed to demonstrate defendants had the required culpable state of mind in creating the air conditioning problems to inflict punishment.

Nor did plaintiffs satisfy the objective component by demonstrating the deprivation of air conditioning was sufficiently serious to constitute punishment. The STU sought to repair the air conditioning problems immediately. When new parts were required to complete the repair, the Department of Corrections promptly ordered the necessary parts. When air conditioning malfunctioned for several days in a row, the STU staff installed portable cooling units to reduce

the temperature in the facility. Significantly, plaintiffs offered no evidence of any illnesses resulting from the elevated temperatures due to the lack of functioning air conditioning. On these facts, plaintiffs failed to demonstrate deprivation of any constitutional right and the judge appropriately granted summary judgment to defendants.

B.

Further, we are satisfied plaintiffs are unable to prevail on the claims against the state agencies because the State is immune from suits for damages under the New Jersey Civil Rights Act (NJCR), N.J.S.A. 10:6-1 to -2. See Brown v. State, 442 N.J. Super. 406, 426 (App. Div. 2015), rev'd on other grounds, 230 N.J. 84 (2017); Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (holding "neither a State nor its officials acting in their official capacities are 'persons' under § 1983").

Nevertheless, "a state official in his or her official capacity, when sued for injunctive [or declaratory] relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" Will, 491 U.S. at 71 n.10 (quoting Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985)). Thus, plaintiffs were not barred from seeking declaratory relief against Yates, Ridgeway, Stem, and Foley under the NJCRA.

The NJCRA authorizes a private right of action for civil rights claims against "a person acting under color of law." N.J.S.A. 10:6-2(c). A statute does not give rise to a right under 42 U.S.C. § 1983 unless a plaintiff can show that (1) Congress intended the statute to "benefit the plaintiff"; (2) "the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence"; and (3) "the statute must unambiguously impose a binding obligation on the States." Blessing v. Freestone, 520 U.S. 329, 340-41 (1997). The New Jersey Supreme Court adopted the Blessing test to determine whether the "State Constitution or state law confers a substantive right on a class of individuals in any particular case." Tumpson v. Farina, 218 N.J. 450, 476 (2014).

Absent a more particularized pleading, plaintiffs have not met the three-factor Blessing test demonstrating a violation of any substantive rights. Their claimed substantive rights are simply too "vague and amorphous" to prevail on their constitutional claims. Blessing, 520 U.S. at 340.

We note plaintiffs cite N.J.A.C. 8:131-2.1 in asserting a right to a "safe, secure facility." However, N.J.A.C. 8:131-2.1 does not accord any substantive rights. Rather, the regulation provides a "resident shall not be deprived of a civil right solely by reason of receiving treatment under the provisions of the SVPA."

The enumerated civil rights noted in this regulation include "the right to register for and to vote in elections, or rights relating to the granting, forfeiture, or denial of a license, permit, privilege, or benefit pursuant to any law, except those rights related to providing a safe, secure facility or any appropriate concern." Ibid. Plaintiffs do not identify any specific right protected by the regulation.

C.

Plaintiffs also contend the judge erred in granting summary judgment because defendants were not entitled to qualified immunity. We disagree.

Qualified immunity protects public officials "from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Brown v. State, 230 N.J. 84, 97-98 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015)). Qualified immunity shields government officials from civil liability unless a plaintiff pleads facts showing: "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Radiation Data, Inc. v. N.J. Dep't of Env't Prot., 456 N.J. Super. 550, 558 (App. Div. 2018) (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011)).

Defendants are entitled to qualified immunity because, as previously addressed in this opinion, they violated no constitutional or statutory rights.

D.

Additionally, the judge properly granted summary judgment because plaintiffs failed to provide notice of their claim pursuant to the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 14-4. Under N.J.S.A. 59:8-8, prior to filing suit against a public entity, "not later than the ninetieth day after accrual of the cause of action," a plaintiff must file a notice of claim with the public entity. A lawsuit under the TCA may only be filed after "the expiration of six months from the date notice of claim is received." Ibid.

Here, plaintiff never served the required notice of claim under N.J.S.A. 59:8-8. Additionally, the air conditioning system failures at the STU facility occurred during the summer of 2016. Even assuming plaintiffs had filed the required notice of claim, plaintiffs filed their complaint on August 23, 2016, prior to the expiration of the six-month period for pursuing their common law tort claims.

To the extent we have not addressed any of the arguments raised by plaintiffs, we determine the arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the text 'file in my office.' and partially over the title 'CLERK OF THE APPELLATE DIVISION'.

CLERK OF THE APPELLATE DIVISION