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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0008-22**

**SIMON KING and
THOMAS KING,**

Plaintiffs-Appellants,

v.

RENAY TRIPP,

Defendant-Respondent,

and

STONEWOOD TAVERN,

Defendant.

Argued June 7, 2023 – Decided June 28, 2023

Before Judges Accurso and Natali.

**On appeal from the Superior Court of New Jersey, Law
Division, Sussex County, Docket No. L-0378-21.**

**Gary A. Kraemer argued the cause for appellant Simon
King.**

Peter J. Dahl argued the cause for respondent (Law Offices of James H. Rohlfing, attorneys; Peter J. Dahl, on the brief).

PER CURIAM

In this appeal, we consider the timeliness of plaintiff Simon King's complaint for personal injuries stemming from a motor vehicle accident on August 12, 2019.¹ The trial court initially denied defendant Renay Tripp's motion to dismiss the complaint but, on reconsideration, vacated its order, granted defendant's application, and dismissed plaintiff's complaint with prejudice because plaintiff failed to file a complaint within two years of the accident, N.J.S.A. 2A:14-2, and failed to demonstrate substantial compliance with the statute of limitations. We affirm.

I.

On August 13, 2021, plaintiff filed a complaint against defendant and Stonewood Tavern alleging he sustained severe personal injuries when defendant negligently collided into his vehicle "shortly after leaving" Stonewood Tavern on August 12, 2019. Defendant moved to dismiss the

¹ Plaintiff Thomas King allegedly owned the car driven by Simon King on August 12, 2019. He has not participated in this appeal.

complaint based on the two-year statute of limitations and Stonewood Tavern cross-moved on similar grounds.

Plaintiff opposed both motions and argued he timely filed his complaint because "the day of the event from which the designated period begins to run is not included when computing time." After receiving the parties' submissions, the court directed "additional briefing from counsel on the issue . . . as to whether the Supreme Court of New Jersey's C[OVID-19] Orders . . . issued through June 11, 2020, [were] in any way implicated in this case."

In his supplemental brief, plaintiff again maintained he timely filed his complaint and, in the alternative, contended "the doctrine of substantial compliance should allow [his] complaint to proceed." He specifically argued he took reasonable steps to comply with the statute of limitations and any delay in filing was due solely to his counsel's legal secretary incorrectly recording the statute of limitations expiration date as August 15, 2021, in the firm's calendaring system.

Additionally, plaintiff relied on an October 5, 2020 email from defendant's insurance company to Barbara Bounty, a legal secretary at plaintiff's counsel's law firm, in which an adjuster thanked Bounty "for taking the time to speak to [her] about [plaintiff]" and requested plaintiff's "social security number as well

as any medical records [Bounty] may have [s]o [she] [could] begin an evaluation of his injuries." Based on that email, plaintiff asserted defendant was on notice of his potential claims because "the insurance adjuster on [defendant]'s insurance policy was in touch with [plaintiff's counsel] at least as early as October 5, 2020" and defendant's carrier "had obviously opened a file on the matter."

After considering the parties' submissions and oral arguments, the court granted Stonewood Tavern's motion and dismissed plaintiff's complaint against it but denied defendant's application.² In an oral opinion, the court determined plaintiff failed to file his complaint within two-years of the accident and the Supreme Court's COVID-19 orders did not otherwise toll the statute of limitations period.

Relying on Negron v. Llarena, 156 N.J. 296, 305 (1998), the court concluded the substantial compliance doctrine was inapplicable to plaintiff's claims against Stonewood Tavern. The court found Stonewood Tavern "never received any notice or communication of a[] []pending action" and there was

² Plaintiff has not appealed the court's dismissal of his complaint against Stonewood Tavern.

thus "no basis to keep, under equitable principals or otherwise, [Stonewood Tavern] in the case as a direct defendant."

With respect to defendant, however, the court found the October 5, 2020 email demonstrated plaintiff's counsel communicated with a representative from defendant's insurance company within the statutory period. Based on that communication, the court concluded defendant "cannot claim prejudice due to . . . plaintiff's failure to file . . . the complaint" and also noted plaintiff "quickly and timely served" the summons and complaint. The court determined plaintiff therefore substantially complied with the statute of limitations.

Defendant filed a motion for reconsideration, which the court granted after considering the parties' submissions and oral arguments. In an oral opinion, the court again considered the substantial compliance doctrine and reaffirmed its conclusion that defendant was not prejudiced by plaintiff's belated filing. After further consideration, however, the court determined plaintiff failed to satisfy the remaining Negron prongs or establish any equitable exceptions to the statute of limitations recognized by our case law. Accordingly, the court dismissed plaintiff's complaint with prejudice. This appeal followed.

II.

Before us, plaintiff argues the court "erred by failing to invoke the doctrine of substantial compliance . . . to avoid the dismissal" of his complaint against defendant. Relying on Negron, he specifically contends he substantially complied with the statute because his counsel "utilized a tickler system as part of office procedure to prevent inadvertently missing a deadline" and his belated filing resulted only from human error in employing that system. Plaintiff further asserts defendant cannot establish undue prejudice and the October 5, 2020 email from defendant's insurance company to plaintiff's counsel "demonstrates most assuredly that there was reasonable notice of a pending claim for personal injuries." Alternatively, plaintiff maintains he timely filed his complaint because "the day of the event from which the designated period begins to run is not included when computing" the statute of limitations period.

Defendant contends "plaintiff failed to properly raise substantial compliance in the court below" because plaintiff asserted that argument for the first time in response to the court's request for supplemental briefing. She further maintains plaintiff failed to establish "the elements needed to invoke the equitable doctrine of substantial compliance" in any event. Inasmuch as the trial

court rejected plaintiff's substantial compliance defense on the merits, we similarly address plaintiff's substantive arguments and reject them.

III.

"We give no deference to a trial court's legal determinations when no issue of fact exists." Barron v. Gersten, 472 N.J. Super. 572, 576 (App. Div. 2022).

"Accordingly, we review de novo a trial court's decision to dismiss a complaint as barred by a statute of limitations." Ibid.

Statutes of limitations are created by the legislature and serve the laudable goal that "eventual repose creates desirable security and stability in human affairs." Galligan v. Westfield Centre Serv., Inc., 82 N.J. 188, 191-92 (1980). The "primary purpose" of a statute of limitations "is to eliminate stale claims and to compel the exercise of a right of action so that an opposing party has a fair opportunity to defend." Czepas v. Schenk, 362 N.J. Super. 216, 225 (App. Div. 2003).

Courts invoke the substantial compliance doctrine "to 'avoid technical defeats of valid claims.'" Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 239-40 (1998) (quoting Zamel v. Port of N.Y. Auth., 56 N.J. 1, 6 (1970)). To establish substantial compliance, the defaulting party must prove:

- (1) the lack of prejudice to the defending party;

- (2) a series of steps taken to comply with the statute involved;
- (3) a general compliance with the purpose of the statute;
- (4) a reasonable notice of petitioner's claim[;] and
- (5) a reasonable explanation why there was not a strict compliance with the statute.

[Negron, 156 N.J. at 305 (quoting Bernstein v. Bd. of Trs., Teachers' Pension & Annuity Fund, 151 N.J. Super. 71, 76-77 (App. Div. 1977)).]

Our courts have generally extended the substantial compliance doctrine in cases where litigants have mistakenly filed a pleading in the wrong forum. For example, in Negron, the Court applied the doctrine because the plaintiff timely filed in federal court, the belated filing in state court took place shortly after the dismissal in federal court, and the defendant was not prejudiced because it had been actively defending the matter in federal court. 156 N.J. at 305-06. According to the Court, "in filing both her complaints diligently, [the plaintiff] generally complied with the purpose of the statute of limitations." Id. at 305. See also Galligan, 82 N.J. at 193-95 (applying the substantial compliance doctrine because the complaint was timely filed incorrectly in federal court then dismissed for lack of jurisdiction); Mitzner v. West Ridgelawn Cemetery, Inc., 311 N.J. Super. 233, 239-40 (App. Div. 1998) (holding the timely filing of a

complaint in New York tolled the statute of limitations where the untimely New Jersey action was filed after the New York action "ha[d] been dismissed for lack of personal jurisdiction but before the time to appeal from the order of dismissal ha[d] expired").

In Estate of Vida v. City of Garfield, 330 N.J. Super. 225, 230-31 (App. Div. 2000), we applied Negron and allowed a wrongful death action to proceed against a substituted defendant even though the plaintiff filed its amended complaint after the statute of limitations expired. In that case, the plaintiff's attorney learned the identity of a fictitious defendant twelve days before the statute of limitations' expiration date. Id. at 227. That same day, the attorney forwarded a summons and complaint to the substituted defendant by certified mail and advised that defendant it was being sued in connection with the victim's death and the plaintiff would shortly amend its complaint. Id. at 227-28. As noted, however, the plaintiff did not move to amend the complaint until after the statutory period. Id. at 228.

Considering the Negron elements, we concluded "the circumstances in th[at] case warrant[ed] application of the doctrine of substantial compliance and require[d] a reversal of the order dismissing the complaint." Id. at 230. We explained the defendant knew of the plaintiff's claim within the statutory period,

the plaintiff's efforts to identify the defendant "[were] not altogether unreasonable," and the plaintiff "immediately took action to notify [the defendant] of the existence of the claim." Id. at 230-31. Under those circumstances, we "hesitate[d] to bar an action based on a technical defect." Ibid.

Here, we are not persuaded plaintiff has satisfied all five elements of the substantial compliance doctrine. Even were we to accept plaintiff's arguments he established the first, second, fourth, and fifth Negron prongs, he has failed to prove "general compliance with the purpose of the statute," as the record is devoid of any evidence that plaintiff initiated legal proceedings within the statutory time frame. Rather, the only evidence of communication between the parties during the statutory period is the October 5, 2020 email from defendant's insurance company to plaintiff's counsel. Although probative of defendant's notice of potential claims against her, that email cannot reasonably be interpreted as a formal notice of pending litigation, nor can it serve to toll the statute of limitations. Unlike the plaintiffs in Negron and Estate of Vida, plaintiff did not generally comply with the purpose of the statute of limitations by initiating legal proceedings or providing formal notice of his intent to file a complaint within the statutory period.

We also reject plaintiff's contention that he timely filed his complaint on August 13, 2021. "It was early established in this State, in accordance with the prevailing view elsewhere, that in computing time under the statute of limitations the day on which the cause of action accrued is not to be counted." Poetz v. Mix, 7 N.J. 436, 445 (1951); see also Patterson v. Monmouth Reg'l High Sch. Bd. of Educ., 222 N.J. Super. 448, 451 (App. Div. 1987) ("Under the uniform method of calculation applicable to legal matters in New Jersey the date of the act or event from which a designated period begins to run is not included in determining a time limitation."). Applying that uniform method to plaintiff's case, we exclude the date of the accident, August 12, 2019, from the computation of the two-year statute of limitation, N.J.S.A. 2A:14-2, and include the first day after that date. Therefore, the requisite period "within two years" encompasses August 13, 2019, through and including August 12, 2021. Under that measurement, a complaint filed on August 13, 2021, would be outside the applicable limitations window by one day.

Plaintiff's reliance on Hein v. GM Const. Co., Inc., 330 N.J. Super. 282 (App. Div. 2000), is unavailing. In that case, the plaintiff filed a complaint on July 23, 1997, alleging construction and design defects in a new residence for which the plaintiff received a certificate of occupancy on July 23, 1987. Id. at

283. We concluded "in the computation of the time prescribed by a statute of repose the day of the 'event' shall not be included" and, applying that rule, we held the plaintiff's complaint was timely filed under N.J.S.A. 2A:14-1.1, as that ten-year statutory period commenced on July 24, 1987. Hein, 330 N.J. Super. at 284, 287. Here, our computation of the statutory period is consistent with Hein because, as noted, even excluding the date of the accident, plaintiff failed to file his complaint within the two-year statutory period.

We are mindful that plaintiff may view our result as harsh inasmuch as he is time-barred from asserting his claims against defendant through no fault of his own. We simply cannot, however, ignore a clear, statutorily-imposed limitations period, or apply equitable principles absent support in the record, as "equity follows the law." West Pleasant-CPGT, Inc. v. U.S. Home Corp., 243 N.J. 92, 108 (2020) (quoting Berg v. Christie, 225 N.J. 245, 280 (2016)).

To the extent we have not specifically addressed any of plaintiff's remaining arguments, it is because we have concluded they are without sufficient merit to warrant further 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.



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