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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3800-21**

**KADISHA JONES RICHARDSON,
individually, and as administrator ad
prosequendum of the ESTATE OF
SAAHIR KEIRON HARTFIELD,
and TYRON HARTFIELD,**

Plaintiffs-Respondents,

v.

NEWARK HOUSING AUTHORITY,

Defendant-Appellant,

and

**CITY OF NEWARK, COUNTY OF
ESSEX, and STATE OF NEW JERSEY,**

Defendants-Respondents.

Argued June 6, 2023 – Decided July 5, 2023

Before Judges Susswein and Berdote Byrne.

**On appeal from the Superior Court of New Jersey Law
Division, Essex County, Docket No. L-2121-22.**

James G. Serritella argued the cause for appellant (Biancamano & Di Stefano PC, attorneys; Robert Arce, of counsel and on the briefs; James G. Serritella, on the briefs).

Kenyatta K. Stewart, Corporation Counsel, City of Newark, attorney for respondent City of Newark, joins in the brief of appellant Newark Housing Authority.

Matthew J. Platkin, Attorney General, attorney for respondent State of New Jersey, joins in the brief of appellant Newark Housing Authority.

Daniel R. Bevere argued the cause for respondents Kadisha Jones Richardson, Estate of Saahir Keiron Hartfield and Tyron Hartfield (Piro, Zinna, Cifelli, Paris & Genitempo, LLC, attorneys; Brian M. Frankoski, on the brief).

PER CURIAM

Defendants Newark Housing Authority (NHA), the municipality of Newark, and the State of New Jersey appeal from a July 2022, Law Division order granting plaintiffs permission to file a late notice of tort claim against them. The trial court determined extraordinary circumstances existed and allowed the late filing. We agree with the trial court and affirm for substantially the same reasons reached by Judge Jeffrey Beacham in his cogent, oral opinion.

On April 8, 2021, a fire occurred at a three-story single-family residence owned by NHA and occupied by plaintiff, Kadisha Jones Richardson, and her five children. Plaintiff Tyron Hartfield, who is the biological father of four of

the five children, was also present at the residence at the time of the incident. During the fire, plaintiffs' seven-year-old son, Saahir, passed away. Hartfield suffered a broken ankle in his attempt to rescue his son, and the entirety of the family's possessions were destroyed. Plaintiffs and their family were forced to move in with Richardson's mother. During this time, Richardson certifies she was also caring for her mother, whose physical health was declining. In July 2021, less than three months after the fire, Richardson's mother suffered a stroke and was hospitalized from August through September 22, 2021, when she passed away. In October 2021, Richardson was injured in a serious car accident.

Plaintiffs certify in the months following the fire they suffered from depression and anxiety from the loss of their son, and their stress was further compounded by attending to the mental wellbeing of their other children, who lost a brother, and Richardson's mother after she suffered a stroke. Although plaintiffs received a death certificate on April 16, 2021, they had still not received an official cause of death or cause of the fire by November 2021, when the Essex County Prosecutor's Office advised them to seek counsel.

On October 29, 2021, plaintiffs consulted a law firm for the first time. However, on December 2, 2021, the law firm informed plaintiffs it was declining

representation. The letter advised plaintiffs to seek alternate counsel because certain statutes of limitations applied.

Plaintiffs retained their current counsel in March 2022. Once plaintiffs retained counsel, they filed a motion for leave to file a late notice of tort claim on April 6, 2022, two days shy of the one-year anniversary of the fire.

On July 29, 2022, after entertaining oral argument, the trial court granted plaintiffs' motion. The trial court relaxed the statutory accrual date to December 2, 2021, the date plaintiffs received the letter from counsel declining representation and apprising them for the first time of statutes of limitation. The trial court found, although plaintiffs still did not file within ninety days of the accrual date, they demonstrated extraordinary circumstances which permitted a late filing.

Specifically, the trial court found there was excusable neglect on the part of the plaintiffs in filing a late notice of tort claim because of the extraordinary circumstances present. The court determined life-altering events and resulting psychological traumas continued well-beyond the ninety days to file following the fire on April 8, 2021.

The trial court found after Hartfield's surgery to repair his broken ankle, he required "at least three months" of recuperation, and during that time both he

and Richardson "had to focus what little physical and emotional energy they had in helping their children rebuild their lives." Moreover, the trial court determined the family suffered additional setbacks, finding although the family had a roof over their head when they moved in with Richardson's mother, they had no possessions because "they had lost everything in the fire."

The court found the family suffered an additional setback when Richardson's mother, whom they relied on for housing and support, suffered a stroke in July, hospitalizing her through September, when she passed away. The court found in October 2021, Richardson was in a car accident which resulted in physical injuries "that added to her stresses and depression." The trial court also found a lack of prejudice to defendants, which defendants conceded.

On appeal, defendants argue the trial court erred by allowing plaintiffs to file a late notice of tort claims because there were no extraordinary circumstances present. Defendants argue plaintiffs were physically capable of contacting an attorney in a timely fashion, and therefore should have done so at the earliest opportunity, irrespective of their constructive or actual knowledge of the ninety-day filing window for the notice of claim. Defendants also challenge the relaxation of the filing deadline.

On review, motions to file a late notice of tort claim are governed by an abuse of discretion standard. O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 344 (2019); McDade v. Siazon, 208 N.J. 463, 476-77 (2011); see also N.J.S.A. 59:8-9. When evaluating a trial court's exercise of discretion, "we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

"Although deference will ordinarily be given to the factual findings that undergird the trial court's decision, the court's conclusions will be overturned if they were reached under a misconception of the law." D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 147 (2013) (citing McDade, 208 N.J. at 473-74). Public policy in New Jersey favors cases being heard on their merits whenever possible and scrutiny is heightened where permission to file a late claim has been denied as opposed to cases where permission is granted. O'Donnell, 236 N.J. at 344. Thus, "any doubts" as to whether extraordinary circumstances exist "should be resolved in favor of the application." Ibid. (quoting Lowe v. Zarghami, 158 N.J. 606, 629 (1999)).

Actions brought against municipalities are governed exclusively by the Notice of Tort Claims Act (the Act), N.J.S.A. 59:1-1 to 59:13-10. Beauchamp v. Amedio, 164 N.J. 111, 115 (2000). "[I]mmunity from tort liability is the general rule and liability is the exception." O'Donnell, 236 N.J. at 345 (quoting D.D., 213 N.J. at 133); McDade, 208 N.J. at 474 (stating the Act is to be "strictly construed to permit lawsuits only where specifically delineated" (quoting Gerber ex rel. Gerber v. Springfield Bd. of Educ., 328 N.J. Super. 24, 34 (App. Div. 2000))). The Act illuminates strict procedures for claimants to follow when a tort action against a public entity is permissible. McDade, 208 N.J. at 468.

Pursuant to N.J.S.A. 59:8-8, a claimant must provide the public entity with a notice of claim "not later than the ninetieth day after accrual of the cause of action." N.J.S.A. 59:8-8. Ordinarily, the date of accrual of a cause of action in tort is the date of the incident in which the alleged negligent conduct causing the injury occurred. See N.J.S.A. 59:8-1;¹ see also Ben Elazar v. Marcietta Cleaners, Inc., 230 N.J. 123, 134 (2017); Beauchamp, 164 N.J. at 117-18. The penalty for failing to file a notice of claim within the ninety-day window is draconian; the result being the claimant is forever barred from bringing their

¹ "Accrual shall mean the date on which the claim accrued and shall not be affected by the notice provisions contained therein."

claim against the public entity. Jones v. Morey's Pier, Inc., 230 N.J. 142, 154 (2017).

However, the Act provides an exception to plaintiffs where the ninety-day period has lapsed and allows prospective claimants to move within one year from the accrual of the cause of action where they demonstrate extraordinary circumstances justified filing a late notice of tort claim. The Act provides:

A claimant who fails to file notice of his claim within [ninety] days as provided in section 59:8-8 of this act, 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.

[N.J.S.A. 59:8-9.]

We conclude the trial judge exercised appropriate discretion in determining extraordinary circumstances in the present facts. We add the following comments.

First, defendants equate extraordinary circumstances with physical incapability, despite a lack of support in the law for such a sweeping proposition. Nothing in our statute or caselaw requires a plaintiff be physically unable to contact an attorney, as defendants suggest. Although physical incapability may be sufficient to prove extraordinary circumstances, as was the case in Jeffrey v.

State, 468 N.J. Super. 52 (App. Div. 2021), those are not necessary preconditions for a finding of extraordinary circumstances. N.J.S.A. 59:8-8 and -9 affords trial judges wide latitude in determining extraordinary circumstances, with a strong public policy in favor of granting late notices. O'Donnell, 236 N.J. at 344. "Any doubts" must be resolved in favor of the application. Ibid. Moreover, irrespective of the trial judge relaxing the ninety-day filing window, the undisputed record demonstrates plaintiffs filed two days prior to the one-year filing deadline in accordance with N.J.S.A. 59:8-9.

The trial court found extraordinary circumstances, pursuant to N.J.S.A. 59:8-9. Those findings were substantiated by the record. We therefore affirm, substantially for the same conclusions reached by the trial court and adhere to the strong public policy in favor of resolving the application on the merits.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION