

SUPREME COURT OF NEW JERSEY

D.D. v. University of Medicine & Dentistry of New Jersey, 213 N.J. 130

61 A.3d 906 (2013) · Decided March 12, 2013

SUMMARY

The New Jersey Supreme Court addresses whether attorney inattention, together with the plaintiff's medical and emotional conditions, constitutes extraordinary circumstances permitting a late notice of tort claim under the New Jersey Tort Claims Act. The Court also considers whether an oral notification can satisfy the Act's written notice requirement through substantial compliance. The opinion concludes that attorney inattention or incompetence does not satisfy the extraordinary-circumstances standard and that substantial compliance cannot make an unwritten notice timely.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice Hoens; Chief Justice Rabner; Justice Patterson; Justice LaVecchia; Justice Albin
JURISDICTION	New Jersey
DECIDED	March 12, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff sought leave under the New Jersey Tort Claims Act to file a late notice of tort claim. The Law Division granted the motion, and a divided Appellate Division affirmed. The Supreme Court of New Jersey reviewed the matter as of right based on the Appellate Division dissent.
STANDARD OF REVIEW	A trial court's decision to permit a late notice of tort claim is reviewed for abuse of discretion, with deference ordinarily given to underlying factual findings; legal conclusions reached under a misconception of law are reviewed independently.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Jersey
PARTIES	Rutgers, The State University of New Jersey, University of Medicine and Dentistry of New Jersey v. D.D.

TOPICS

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PRACTICE AREAS

New Jersey Tort Claims Act

sovereign immunity

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QUESTIONS PRESENTED

1. Whether plaintiff's medical and emotional conditions, considered together with the inattention or incompetence of her first attorney, constituted extraordinary circumstances under N.J.S.A. 59:8-9 permitting a late notice of tort claim.
2. Whether the doctrine of substantial compliance could excuse plaintiff's failure to file a written notice of tort claim within the statutory ninety-day period when she allegedly provided information orally to defendants.

HOLDINGS

1. Plaintiff's medical and emotional complaints, together with her first attorney's inattention or incompetence, did not constitute extraordinary circumstances under N.J.S.A. 59:8-9. Attorney inattention, malpractice, ignorance of the statutory deadline, and otherwise inadequate medical proofs cannot, alone or in combination, satisfy the heightened statutory standard.
2. The doctrine of substantial compliance cannot excuse the statutory requirement that a notice of tort claim be filed in writing. Oral notice, even if it contains the information required by N.J.S.A. 59:8-4, does not constitute substantial compliance.

KEY QUOTATIONS

"immunity from tort liability is the general rule and liability is the exception." (at 134-135)

"Courts faced with applications for leave to file a late notice of claim, therefore, must proceed with their evaluation mindful of the Legislature's direction that the proofs demonstrate circumstances that are not merely sufficient, but that they instead be extraordinary." (at 148-149)

"We do not find in the statutory language an intention that the increased threshold of extraordinary circumstances can be satisfied by coupling an attorney's inattentiveness with otherwise inadequate medical proofs." (at 157-158)

"Oral notice, even where it contains the elements required by N.J.S.A. 59:8-4, does not constitute substantial compliance." (at 160)

FACTUAL BACKGROUND

D.D. met with employees of Rutgers and UMDNJ concerning a World AIDS Day program and disclosed confidential health information, allegedly instructing those present not to disclose it. She discovered a press release containing the information on November 24, 2009, sent a cease-and-desist letter, and met with

defendants' representatives in December 2009 accompanied by her first attorney. Her attorney then failed to respond to repeated calls, and new counsel sent purported notices of tort claim on April 15, 2010, outside the ninety-day statutory period. Plaintiff supported her motion for leave to file late notice with assertions of stress, anxiety, hypertension, insomnia, and related medical effects, but supplied only a doctor's note prepared approximately six months after the disclosure.

PROCEDURAL HISTORY

D.D. alleged that defendants disclosed confidential health information in connection with a World AIDS Day program. She did not file a written notice of tort claim within ninety days, and her new attorney sent purported notices approximately five months after accrual. The Law Division granted leave to file late notice, and the Appellate Division affirmed, reasoning that extraordinary circumstances existed and, alternatively, that plaintiff substantially complied through oral communications. The Supreme Court reversed and remanded for entry of judgment consistent with its opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Law Division for entry of judgment consistent with the Supreme Court's opinion.

CASES CITED

- Coyne v. State Department of Transportation, 182 N.J. 481, 867 A.2d 1159 (2005)
- Garrison v. Township of Middletown, 154 N.J. 282, 712 A.2d 1101 (1998)
- Velez v. City of Jersey City, 180 N.J. 284, 850 A.2d 1238 (2004)
- Ogborne v. Mercer Cemetery Corp., 197 N.J. 448, 963 A.2d 828 (2009)
- Smith v. Fireworks by Girone, Inc., 180 N.J. 199, 850 A.2d 456 (2004)
- Alston v. City of Camden, 168 N.J. 170, 773 A.2d 693 (2001)
- Rogers v. Cape May County Office of the Public Defender, 208 N.J. 414, 31 A.3d 934 (2011)
- Beauchamp v. Amedio, 164 N.J. 111, 751 A.2d 1047 (2000)
- Ohlweiler v. Township of Chatham, 290 N.J. Super. 399, 675 A.2d 1176 (App. Div. 1996)
- Mendez v. Southern Jersey Transportation Authority, 416 N.J. Super. 525, 6 A.3d 484 (App. Div. 2010)
- R.L. v. State-Operated School District, 387 N.J. Super. 331, 903 A.2d 1110 (App. Div. 2006)
- Maher v. County of Mercer, 384 N.J. Super. 182, 894 A.2d 100 (App. Div. 2006)
- S.P. v. Collier High School, 319 N.J. Super. 452, 725 A.2d 1142 (App. Div. 1999)
- Ventola v. New Jersey Veterans Memorial Home, 164 N.J. 74, 751 A.2d 559 (2000)
- Lowe v. Zarghami, 158 N.J. 606, 731 A.2d 14 (1999)
- Eagan v. Boyarsky, 158 N.J. 632, 731 A.2d 28 (1999)
- Allen v. Krause, 306 N.J. Super. 448, 703 A.2d 993 (App. Div. 1997)

- Blank v. City of Elizabeth, 162 N.J. 150, 742 A.2d 540 (1999)
- Leidy v. County of Ocean, 398 N.J. Super. 449, 942 A.2d 112 (App. Div. 2008)
- Zois v. New Jersey Sports & Exposition Authority, 286 N.J. Super. 670, 670 A.2d 92 (App. Div. 1996)
- Bayer v. Township of Union, 414 N.J. Super. 238, 997 A.2d 1118 (App. Div. 2010)
- McDade v. Siazon, 208 N.J. 468, 32 A.3d 1122 (2011)
- Velez v. City of Jersey City, 358 N.J. Super. 224, 817 A.2d 409 (App. Div. 2003)
- Lebron v. Sanchez, 407 N.J. Super. 204, 970 A.2d 399 (App. Div. 2009)
- Henderson v. Herman, 373 N.J. Super. 625, 862 A.2d 1217 (App. Div. 2004)
- Tuckey v. Harleysville Insurance Co., 236 N.J. Super. 221, 565 A.2d 419 (App. Div. 1989)
- Anske v. Borough of Palisades Park, 139 N.J. Super. 342, 354 A.2d 87 (App. Div. 1976)
- Hubner v. Spring Valley Equestrian Center, 203 N.J. 184, 1 A.3d 618 (2010)
- Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 964 A.2d 741 (2009)
- Lamb v. Global Landfill Reclaiming, 111 N.J. 134, 543 A.2d 443 (1988)
- Lutz v. Township of Gloucester, 153 N.J. Super. 461, 380 A.2d 280 (App. Div. 1977)
- In re Roy, 142 N.J. Super. 594, 362 A.2d 589 (App. Div. 1976)
- Keller v. County of Somerset, 137 N.J. Super. 1, 347 A.2d 529 (App. Div. 1975)

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