

**PREPARED BY THE COURT**

CINQUE SMITH,

Plaintiff,

v.

GALLOWAY TOWNSHIP POLICE,

Defendants.

**SUPERIOR COURT OF NEW JERSEY  
ATLANTIC COUNTY  
LAW DIVISION**

Docket No. ATL-L-003073-23

Civil Action

**ORDER**

**THIS MATTER** having been opened to the Court by Plaintiff Cinque Smith, *pro se*, for an Order for leave of Court to file a late notice of tort claim, and the Court having considered the moving papers, opposition papers and the arguments of the parties; and other good cause having been shown for the reasons set forth in the memorandum of decision and on the record;

**IT IS** on this 15<sup>th</sup> day of March 2024, **ORDERED** that:

1. Plaintiff's motion to file a late notice of tort claim is hereby **DENIED**;
2. Plaintiff's Complaint is hereby **DISMISSED with prejudice**; and

**IT IS HEREBY FURTHER ORDERED** that a copy of this Order shall be deemed served on all attorneys of record via e-filing on the date set forth herein. Pursuant to Rule 1:5-1 (a), movant shall serve a copy of this Order on all parties not served electronically, nor served personally in court this date, within seven (7) days of the date of this Order.



HON. RALPH A. PAOLONE, J.S.C.



Opposed



Unopposed



**NOT FOR PUBLICATION WITHOUT THE APPROVAL  
OF THE COMMITTEE ON OPINIONS**

RALPH A. PAOLONE, J.S.C.

1201 Bacharach Boulevard  
Atlantic City, N.J. 08401-4527  
(609) 402-0100 ext. 47908

**MEMORANDUM OF DECISION ON MOTION  
Pursuant to Rule 1:6-2(f)**

**TO:** Cinque Smith  
*Pro Se Plaintiff*

Thomas B. Reynolds, Esq.  
REYNOLDS & HORN, P.C.  
*Attorneys for Defendant*  
*Galloway Township Police*

**RE:** Cinque Smith vs. Galloway Township **DOCKET NO.** ATL-L-003073-23  
New Jersey Police

**NATURE OF MOTION:** Plaintiff's motion to file a late tort claims notice.

**HAVING CAREFULLY REVIEWED THE MOVING PAPERS AND ANY RESPONSE FILED, I HAVE RULED  
ON THE ABOVE CAPTIONED MOTION AS FOLLOWS:**

**NATURE OF MOTION AND PROCEDURAL HISTORY**

On October 26, 2023, Cinque Smith ("Plaintiff") filed a Complaint in the Superior Court of New Jersey, Atlantic County, Law Division, Civil Part against Galloway Township Police, ("Galloway" or "Defendant"). The Complaint was originally filed on the wrong docket and was subsequently uploaded to this docket on December 1, 2023. An application for indigency was granted by Judge Porto on December 1, 2023.

Plaintiff claims his rights were violated by Defendant Galloway during their investigation of a domestic violence situation that occurred on July 30, 2023. Plaintiff alleges Defendant Galloway kidnapped him and otherwise violated his rights through negligence and misconduct. The incident resulted in missed business opportunities, for which Plaintiff seeks damages of three hundred fifty million dollars (\$350,000,000.00).

On December 5, 2023, Defendant filed a Motion to dismiss for failure to state a claim, in lieu of an Answer. Defendant contends Plaintiff failed to file a notice of tort claim within the ninety (90) days as prescribed by N.J.S.A. 59:8-8. On December 14, 2023, Plaintiff filed opposition. On December 17, 2023, Defendant filed a reply brief. The Court held oral argument on January 5, 2024. At oral argument, Plaintiff alleged **for the first time** that he had served Defendant with a tort claims notice by way of certified mail. The Court subsequently adjourned the motion two weeks to allow Plaintiff to provide the Court with proof of service.

After the January 5, 2024, oral argument, the Court mistakenly uploaded an Order and Memorandum of Decision dated January 5, 2024, which Granted Defendant's Motion to Dismiss Plaintiff's Complaint without prejudice. On January 25, 2024, the Court submitted an Order vacating the January 5, 2024, Order of Dismissal.

The motion to dismiss was subsequently rescheduled for February 2, 2024. On January 17, 2024, and January 22, 2024, Plaintiff uploaded proof of service documents which included the Atlantic County Sheriff Department's Affidavit of Service. This affidavit of service established the Summons and Complaint and Notice of Tort Claim was served upon the Galloway Police Department on January 19, 2024, at 9:05 am. Plaintiff was unavailable for oral argument on February 2, 2024, and the motion was carried to February 15, 2024. As Plaintiff failed to file a notice of tort claim within the required ninety (90) days, the Court granted Defendant's motion to dismiss. The Court dismissed Plaintiff's Complaint without prejudice as the one-year time frame for filing a late notice of claim has not yet expired.

In the Court's February 15, 2024, Memorandum of Decision, the Court explained filing a late notice of claim with an entity without leave of court is a nullity and does not constitute substantial compliance with the terms of N.J.S.A. 59: 8-9. Rogers v Cape May County, 208 N.J.

414, 427 (2011); Priore v State 190 N.J. Super. 127, 130 (App. Div. 1983). Accordingly, the Court found Plaintiff's notice of claim served on Galloway on January 19, 2024, by the Atlantic County Sheriff Department was null and void. On February 16, 2024, Plaintiff filed the instant motion for leave to file a late notice of tort claim with the Galloway Township Police Department. Defendant filed opposition on March 5, 2024.

#### **PARTIES' CONTENTIONS**

##### **Plaintiff's Motion**

Plaintiff contends he was not able to serve the required tort claims notice because: (1) he was going through a divorce; (2) there were two deaths in Plaintiff's family which required him to travel out of town; (3) he had to wait for his application for indigency to be granted as he did not have the funds to properly have Galloway served; and (4) Plaintiff's Uncle was in hospice and subsequently passed away.

##### **Defendant's Opposition**

Defendant contends Plaintiff's Complaint has already been dismissed and Plaintiff has not moved to reconsider, vacate, or appeal the Court's Order. Accordingly, Defendant argues there is no pending case, and no basis upon which the Court should rule on this instant motion. Defendant further contends Plaintiff has not proffered any facts or supporting legal authority to justify the granting of this application. Defendant asserts while it is generally known that an Order may be entered as a retroactive correction of an earlier Order, there is no such prior error or mistake which requires correction under these circumstances. Further, none of the factors Plaintiff proffers, either individually or in combination, constitutes "extraordinary circumstances" under the applicable case law.

### DISCUSSION

It is uncontradicted Plaintiff's complaint is against a public entity. Thus, Plaintiff's cause of action must comply with the New Jersey Tort Claims Act. Plaintiff has failed to file a tort claims notice as prescribed by N.J.S.A. 59:8-8. Pursuant to N.J.S.A. 59:8-9, Plaintiff now seeks to file a late tort claims notice. N.J.S.A. 59:8-9 states:

A claimant who fails to file notice of his claim within 90 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. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits based upon personal knowledge of the affiant **showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act** or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter; provided that in no event may any suit against a public entity or a public employee arising under this act be filed later than two years from the time of the accrual of the claim. (Emphasis added).

The granting or denial of permission to file a late claim within the one-year period is a matter left to the sound discretion of the trial judge which will be sustained on appeal in the absence of a showing of an abuse thereof. O'Donnell v. New Jersey Tpk Auth., 236 N.J. 335, 344 (2019); McDade v. Siazon, 208 N.J. 463, 476-477 (2011); Lamb v. Global Landfill Reclaiming, 111 N.J. 134, 136 (1988). A determination that the public entity or employee will not be substantially prejudiced by a late claim is not enough under this section. See D.D. v. UMDNJ, 213 N.J. 130, 147-149 (2013) (holding in a 3-2 decision that neither claimant's medical and emotional state, nor her inattentive attorney, constituted extraordinary circumstances, even though there was no prejudice since plaintiff gave oral notice fully apprising defendant of the facts within a month of

the incident). Further, mere ignorance of the statutory requirements absent other factors is no longer a reasonable excuse given the passage of time since the adoption of the Act. Escalante v. Tp. of Cinnaminson, 283 N.J. Super. 244, 252 (App. Div. 1995).

In Mendez v. South Jersey Transp., 416 N.J. Super. 525 (App. Div. 2010), our Appellate Division found the failure of a public entity to provide requested videotapes that provided the basis for a claim arising out of an automobile accident constituted extraordinary circumstances. In Mendez, the plaintiffs were hospitalized for weeks after the accident and suffered memory deficits. Their attorneys served initial Tort Claims notices within time and requested the videotapes, which were not provided until over four months after the deadline for filing notice. The Appellate Division affirmed the grant of permission to file a late notice because the videotapes provided the evidential support for plaintiffs' claims, as the plaintiffs had no memory of the accident and there were no eyewitnesses.

In the matter *sub judice*, Plaintiff proffers multiple reasons as to why he was unable to file a tort claims notice within the required ninety (90) day time frame: (1) Plaintiff was going through a divorce; (2) there were two deaths in Plaintiff's family which required him to travel out of town; (3) he had to wait for his application for indigency to be granted as he did not have the funds to properly have Galloway served; and (4) Plaintiff's Uncle was in hospice and subsequently passed away. The Court finds none of these factors, either in whole or in part, rise to the level of "extraordinary circumstances" as prescribed by the Tort Claims Act, N.J.S.A. 59:8-9.

Unlike Mendez, Plaintiff's memory of the factual circumstances regarding his claims was not at all diminished. The deadline for filing the tort claims notice on Defendant Galloway was October 29, 2023. **Plaintiff filed his Complaint on October 26, 2023.** In his Complaint, Plaintiff alleges the incident took place on July 30, 2023. Plaintiff knew it was members of the Galloway

Township Police Department that allegedly violated his rights. Therefore, Plaintiff knew before the deadline to file the notice of tort claim: (1) the date of the incident, (2) who was allegedly responsible, and (3) who needed to be notified. Instead of filing the notice of tort claim, Plaintiff decided to file his Complaint.

The Court is sympathetic to Plaintiff's personal plight. Although Mr. Smith does not provide any verification of the two deaths in his family, (which required him to travel out of town), the Court accepts his representations for the purposes of this motion. Plaintiff provides his family members passing and his divorce as reasons he could not file a tort claims notice within 90 days of the incident. He also offers the fact that he was indigent. The Court cannot accept these circumstances as "extraordinary" in light of the fact that Plaintiff filed his Complaint within the 90-day timeframe. Plaintiff's motion is devoid of an explanation as to how his difficult personal problems prevented him from serving a Notice of Intent to File a Claim yet did not prevent him from filing his Complaint to initiate a lawsuit within the same timeframe.

Furthermore, the serving the Notice of Intent to file a claim did not require a filing fee. Instead of serving the required Notice of Intent, Plaintiff filed his complaint and an application of indigency for the waiver of the filing fee. If Plaintiff was capable of filing his complaint and application of indigency within 90-days of the alleged incident, he certainly was capable of filing the mandatory Notice of Claim within the same time period. Thus, the Court cannot find Plaintiff's personal difficulties are extortory circumstances justifying a relaxation of the 90-day Notice requirement.

The filing of Plaintiff's Complaint, with all the required information needed to properly file a notice of tort claim, violates the purposes of N.J.S.A. 59:8-8 and 59:8-9. The purposes of 59:8-8 are: (1) to allow the public entity at least six months for administrative review with the

opportunity to settle meritorious claims prior to the bringing of suit; (2) to provide the public entity with prompt notification of a claim in order to adequately investigate the facts and prepare a defense; (3) to afford the entity a chance to correct the conditions or practices which gave rise to the claim; and (4) to inform the State in advance as to the indebtedness or liability that it may be expected to meet. H.C. Equities v. County of Union, 247 N.J. 366, 383-384 (2021). The Court finds if Plaintiff were allowed to file a late notice of tort claim under these circumstances, these purposes would be frustrated. Further, the court in Escalante found that negligence of the statutory provision is no longer a reasonable excuse.

Accordingly, the Court finds Plaintiff has not demonstration "extraordinary circumstances" to file a late notice of tort claim pursuant to N.J.S.A. 58:8-9. Plaintiff's motion is hereby **Denied**. Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE**. An appropriate Order has been entered. Conformed copies will accompany this Memorandum of Decision. A copy of the Order and a copy of this Memorandum of Decision shall be served on all counsel of record within the next seven (7) days.

Dated: 03-15-2024

  
HON. RALPH A. PAOLONE, J.S.C.