

Circuit Court for Prince George's County
Case No. CAL19-29700

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1102

September Term, 2020

RONALD J. BROOKING

v.

PRINCE GEORGE'S COUNTY

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 5, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In September 2016, the daughter of Ronald J. Brooking, appellant, was killed after she was struck by a vehicle on Maryland Route 214 near the entrance to the Capitol Heights Metro Station. In 2019, Mr. Brooking filed a wrongful death action in the Circuit Court for Prince George’s County, naming Prince George’s County, appellee, as the defendant. In that complaint, Mr. Brooking alleged that appellee had negligently failed “to place appropriate signals, stop signs, and speed bumps” at the location of the accident, despite knowing that there had been “numerous accidents and deaths at the exact location” prior to his daughter’s death.

Appellee filed a motion to dismiss, or in the alternative for summary judgment, asserting that: (1) Mr. Brooking had failed to comply with the notice requirements of the Local Government Torts Claim Act (LGTCA); (2) Mr. Brooking’s claims were barred by the statute of limitations; and (3) Mr. Brooking had failed to state a claim upon which relief could be granted because he could not establish that appellee owed a duty of care to appellant’s daughter.¹ Following a hearing, the court granted the motion, finding that the complaint was subject to dismissal for all three reasons asserted by appellees. This appeal followed.

On appeal, appellant contends that the court erred in finding that his complaint was barred by the statute of limitations. His opening brief, however, does not address the alternative grounds that the court relied on to dismiss his complaint, specifically that he

¹ Specifically, appellee asserted that the State of Maryland was responsible for maintaining Maryland Route 214.

had failed to comply with the notice provisions of the LGTCA, and that he had failed to establish that appellee had a duty to maintain the roadway where the accident occurred.²

In *Baliff v. Woolman*, 169 Md. App. 646 (2006), this Court held that when the appellant failed to challenge one of the two grounds for the circuit court’s decision in his brief, he waived any claim of error with respect to that issue. *Id.* at 653. We further held that, having waived the issue, affirmance was required if the unraised ground “provided an adequate and independent basis for the circuit court’s decision.” *Id.* at 654. Here, Mr. Brooking’s brief does not challenge the court’s alternative grounds for dismissing his complaint. And because a complaint may be dismissed for either failing to provide notice under the LGTCA or for failing to state a claim upon which relief can be granted, the court’s reliance on those grounds to dismiss the complaint served as an adequate and independent basis for its ruling. Consequently, we shall affirm the judgment of the circuit court.

Even if Mr. Brooking’s brief had challenged all the grounds that the circuit court relied on to dismiss his complaint, we would still affirm because he failed to comply with the notice provisions of the LGTCA. *See* Cts. & Jud. Proc. Art. § 5-304(b) (providing that an action for unliquidated damages may not be brought against a local government unless notice of the claim is given within one year after the injury). Mr. Brooking concedes that he did not file the required notice. And he has never claimed to have

² Although Mr. Brooking discusses these issues in his reply brief, “an appellate court ordinarily will not consider an issue raised for the first time in a reply brief.” *Jones v. State*, 379 Md. 704, 713 (2004).

substantially complied with the notice provision. Rather, he contends that he established good cause to waive the notice requirements of the LGTCA because he hired an attorney shortly after his daughter’s death, he relied on that attorney to take all the necessary actions to pursue his case, and that attorney did not file the required notice on his behalf. However, we have previously held that ignorance regarding the notice requirements of the LGTCA does not demonstrate good cause where an appellant is represented by counsel. *See Ransom v. Leopold*, 183 Md. App. 570, 586 (2008) (holding that the trial court did not abuse its discretion in denying the appellants’ waiver request when their counsel failed to timely file the required notice under the LGTCA, despite their claims that they had “relied upon counsel to take the steps necessary to pursue the claim” and that “they should not be made to pay for the mistake of their lawyers”); *Williams v. Montgomery County*, 123 Md. App. 119, 134 (1998), *aff’d on other grounds*, 359 Md 379 (2000) (holding that the trial court did “not abuse its discretion when it found, in effect, that ignorance of the law is no excuse when a party, represented by counsel, fails to give notice because he was unaware that notice was required”). Consequently, the trial court did not abuse its discretion in declining to find good cause in this case to excuse Mr. Brooking’s lack of compliance with the LGTCA.

Mr. Brooking alternatively asserts that the notice requirements did not apply to him because appellee had actual or constructive notice of the injury. *See* Cts. & Jud. Proc. Art. § 5-304(e). However, he did not raise this claim in the circuit court prior the circuit court granting the motion to dismiss. Moreover, that section of the LGTCA did

not take effect until after the death of Mr. Brooking’s daughter and does not apply to any cause of action that arose before its effective date.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**