

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2000

September Term, 2016

MASSOUD HEIDARY

V.

PARADISE POINT LLC, ET AL.

Berger,
Reed,
Eyler, James R.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Reed, J.

Filed: March 15, 2018

*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.

Massoud Heidary, the appellant, failed to pay his taxes to Montgomery County for a number of years. As a result, his home was put up for a tax sale. After failing to pay his outstanding payments by the date specified by the future buyers, the Circuit Court for Montgomery County ordered the appellant’s right of redemption be foreclosed. The appellant alleged that Montgomery County played a role in him losing his property. Over a year later, the appellant informed Montgomery County of his intent to sue, due to the County’s negligence. The Local Government Tort Claims Act requires that a claimant provide notice of his complaint against a local government within 180 days of his injury. On appeal, the appellant presents one question for our review,

1. Whether the circuit court abused its discretion by not finding good cause for waiving the Local Government Tort Claims Act notice requirement?

For the following reasons, we answer this question in the negative and affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant, Massoud Heidary, owned the property located at 303 South Frederick Avenue in Gaithersburg, MD. Having fallen behind on property tax payments, tax liens were imposed upon his property. On June 11, 2012, Paradise Point, LLC¹ (Paradise)

¹ The appellant sued Paradise Point, LLC in an earlier proceeding on the same tax issue. *See Heidary v. Paradise Point, LLC*, No. 2522 Sept. Term 2014, 2015 WL 9394121. The Court of Special Appeals ruled in favor of Paradise Point on appeal. Paradise and Dansie were dismissed from the present case. Paradise filed a Motion to Dismiss Appeal as to Paradise Point, LLC on the basis that it was improperly joined. This Court denies the motion, as it is unnecessary. The circuit court dismissed Paradise in its ruling on the basis of res judicata and for failure to state a claim upon which relief can be granted. The

purchased the appellant’s property at a foreclosure sale for \$113,000. The appellant was notified of the sale, in compliance with MD. CODE ANN., TAX-PROP. § 14-843. On June 13, 2014, the Circuit Court for Montgomery County’s Clerk’s Office issued an Order of Publication indicating that the appellant could exercise his right of redemption by satisfying all outstanding tax liens on the property and established a deadline of August 12, 2014.

On June 24, 2014, Dansie, counsel for Paradise Point, sent the appellant a letter notifying him that its client, Paradise, was owed \$2,225.58 in fees for the property. The letter indicated payment made by July 8, 2014 would result in Dansie submitting a release letter to the Montgomery County Tax Office, as well as a copy to the appellant. Upon receiving the appellant’s payment, Dansie submitted a release letter to the Montgomery County Tax Sale Unit and sent a copy to the appellant. The letter set the release expiration date for July 31, 2014. The appellant then learned that in order to redeem the property, he would need to pay his additional outstanding real property taxes for 2011, 2013, and 2014. As far as the appellant knew, his 2011 debt had been paid. Accordingly, he sought verification of his 2011 payment from the Montgomery County Department of Finance. The appellant was instructed to contact the Maryland Department of Assessment and Taxation (SDAT) to verify his payment. On July 25, 2014, the appellant went to SDAT but was told he would be contacted by telephone or letter after the Department investigated his matter. The appellant contacted SDAT again and was directed to return to the County

appellant also clearly states in his brief that “[q]uestions relating to Appellee Dansie and Dansie, LLP, and Paradise Point, LLC, are not addressed in this brief.”

because his tax verification was sent there. The appellant returned to the County Tax Office on August 1, 2014 and spoke to a specialist regarding the July 31, 2014 release date. The specialist informed the appellant that his release letter was expired and therefore, he could not make any more payments without an updated release letter. The specialist and the appellant never spoke again about the letter, nor did appellant ever obtain or present an updated release letter. Consequently, appellant was unable to make any more tax payments.

The Circuit Court for Montgomery County issued orders of publication and posting. These orders established a deadline of August 12, 2014 for the appellant to be able to redeem his property. The appellant did not contact the court prior to the expiration of the deadline. On August 29, 2014, the circuit court directed foreclosure on the appellant's right of redemption. The order was entered on October 16, 2014. The appellant unsuccessfully appealed the foreclosure in January, 2015. *See Heidary v. Paradise Point, LLC*, No. 2522 Sept. Term 2014, 2015 WL 9394121. In January, of 2016, the appellant verbally notified the Montgomery County Attorney's Office of his intent to sue, asserting negligence for the County's misinformation, which caused him to lose his property.

The appellant filed his first amended complaint, *pro se*, against Montgomery County, MD, Paradise Point, LLC, and Dansie and Dansie, LLP on March 25, 2016, alleging negligence against all appellees and fraudulent misrepresentation against appellees Dansie and Dansie, LLP, and Paradise Point, LLP. At a motions hearing² to

² The appellee, Paradise, and Dansie all filed motions to dismiss the appellant's first amended complaint in the Circuit Court for Montgomery County, pursuant to MD. Rule 2-322(b) for failure to state a claim and requested a hearing. The appellant's first amended complaint was dismissed without a hearing on July 14, 2016, while appellant litigated *pro*

dismiss the appellant’s first amended complaint held on October 6, 2016, the circuit court ordered the appellant’s first amended complaint be dismissed with prejudice against the appellee, Paradise, and Dansie.

DISCUSSION

Parties’ Contentions

The appellant argues that the circuit court abused its discretion when it granted Montgomery County’s motion to dismiss and dismissed his complaint for failure to comply with the notice requirement of the Local Government Tort Claims Act (“LGTCa” or “the Act”). The appellant argues that as required by the Act, he established good cause to prosecute his claim because of his good faith efforts in pursuing all legal avenues, while having limited means. The appellant contends that after paying his 2011 taxes, the appellee told him that he had to pay them again—which resulted in him being unable to save his home. The appellant continues that he provided the County with more than enough notice of his claim because of the regular communication he engaged in with County Officials at the County Attorney’s and Tax offices, as well as the then-pending lawsuit to save his home. The appellant asserts that his age, poor English, low income, and suffering a heart attack, all play a role in his lacking an understanding of “the strict requirements of the notice statute” and belief that “he had given adequate notice as far back as 2014.” The appellant also argues that Montgomery County made misleading statements during his

se. The appellant obtained outside counsel on July 22, 2016 and filed a Motion to Amend dismissal on August 31, 2016, which the circuit court granted. Although the appellant filed no response to the appellee, Paradise, or Dansie’s motions, the court granted a hearing on October 6, 2016 and heard the appellant’s argument.

attempt to resolve his tax issues. Accordingly, appellant maintains that having established good faith, the trial court erred in failing to require Montgomery County to show prejudice upon his good faith showing.

The County argues that the appellant failed to comply with the LGTCA when he provided notice to the County of his intent to sue in January 2016, well beyond the Act’s 180 day notice rule, upon the foreclosure of his property in October 2014. The County also asserts that the appellant did not demonstrate good cause to waive the notice requirement. The County continues that the appellant’s communication with the County’s Office all occurred in August 2014 and January 2016, but not in between those dates. Additionally, the County asserts that the appellant’s August 2014 communication occurred prior to the foreclosure of his right of redemption, and therefore not within the 180-day window. The County also asserts that the appellant’s claims are barred under the theory of governmental immunity, as it was exercising a governmental function when it permitted the tax sale of the appellant’s property.

I. Motion to Dismiss

A. Standard of Review

“The standard of review of the grant of a motion to dismiss for failure to state a claim for which relief can be granted is *de novo*.” *Fioretti v. Maryland State Bd. Of Dental Exam’rs*, 351 Md. 66, 71-72 (1998).

Under Maryland Rule 2–322(b)(2), a defendant may seek dismissal of a complaint if the complaint fails “to state a claim upon which relief can be granted.” The standard for reviewing the grant of a motion to dismiss is whether the trial court was

legally correct. *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998) (citations omitted). In reviewing the grant of a motion to dismiss, “we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” *Id.* at 72 (citations omitted). In reviewing the complaint, we must “presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” *Id.*

Schisler v. State, 177 Md.App. 731, 742-43 (internal citations omitted).

B. Analysis

The circuit court found that the appellant’s case should be dismissed for his failure to comply with the LGTCA. The Court of Appeals has “expressly held that the LGTCA notice requirements are a condition precedent to maintaining an action against a local government or its employees to the extent otherwise not entitled to immunity under the LGTCA. *Rios v. Montgomery Cnty*, 386 Md. 104, 126-27 (2005). “[T]he LGTCA creates a procedural obligation that a plaintiff must meet in filing a tort action. A plaintiff must not only satisfy the notice requirement strictly or substantially, but also plead such satisfaction in his/her complaint. If a plaintiff omits this step, he or she is subject to a motion to dismiss, for instance, based on a failure to state a claim upon which relief can be granted.” *Hansen v. City of Laurel*, 420 Md. 670, 694 (2011). The purpose of the LGTCA’s notice requirement is to apprise a local government. *Rios*, 386 Md. at 126. “A condition precedent cannot be waived under the common law and a failure to satisfy it can be raised at any time because the action itself is fatally flawed if the condition is not satisfied.” *Id.* at 127.

We find no error in the circuit court’s ruling. The appellant failed to establish how he substantially satisfied the notice requirement in his complaint to entitle him to relief.

Moreover, the appellant, did in fact violate, and concede to violating, the LGTCA’s notice requirement. Accordingly, the circuit court’s decision was proper.

II. Good Cause to Waive the 180-day Notice Requirement

A. Standard of Review

“The question of whether good cause for waiver exists is clearly within the discretion of the trial judge...Therefore, the trial judge's findings will not be disturbed absent a showing of abuse of discretion. The test for whether good cause exists... is ‘whether the claimant prosecuted his claim with that degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.’” *Heron v. Strader*, 361 Md. 258, 270-71 (2000) (internal citations omitted). “There is an abuse of discretion “where no reasonable person would take the view adopted by the [trial] court []” ... or when the court acts “without reference to any guiding principles.” An abuse of discretion may also be found where the ruling under consideration is “clearly against the logic and effect of facts and inferences before the court[]” ... or when the ruling is “violative of fact and logic.” Questions within the discretion of the trial court are “much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has occurred.” In sum, to be reversed “[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Rios v.*

Montgomery County, 386 Md. 104, 121 (2005) (citing *In re Adoption/Guardian No. 3598*, Md. 295, 312 (1997) (internal citations omitted).

B. Analysis

A plaintiff's failure to provide notice as required by the LGTCA is not a complete bar to the plaintiff's claim if the plaintiff shows good cause for his failure to provide the required notice. *Rounds v. Maryland Nat. Capital Park and Planning Com'n*, 441 Md. 621, 640 (2015).

Relevant sections of the Maryland Local Government Torts Claims Act (LGTCA) provide that:

(b)(1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c)(1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

...

(d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

MD. CTS. & JUD. PRO. CODE § 5-304 (2014).

The appellant contends that he established good cause worthy of waiving the LGTCA 180-day notice requirement. In the appellant’s motion to vacate/amend dismissal in the circuit court, he argued that as a *pro se* litigant, he “attempted in good-faith to comply with the Local Tort Claims Act when he informed several attorneys for Montgomery County that he intended to sue Montgomery County,” and “detrimentally relied on instruction from counsel employed by Defendant Montgomery County.” At the hearing, counsel for the appellant reiterated that:

[The appellant] exercised due diligence in trying to rectify this problem before his right of redemption was foreclosed. Concerning the notice requirement as it relates to the county, [the appellant] per everything he just testified to, [the appellant] has taken great steps, great steps to attempt to comply with the notice requirement of the Local Tort Claims Act. Again, he was acting *pro se*. English is his second language. He had gone to several of the county’s attorneys to find out what was the proper method in order to sue. He did not provide any sort of notice in writing. However, he did verbally provide notice to several county attorneys that he wanted to bring suit because he lost his business and he believed unfairly.

Ultimately, finding that the appellant had not complied with the Local Government Tort Claims Act, the circuit court ruled against the appellant and ordered that his first amended complaint be dismissed, with prejudice.

The appellant does not dispute that he failed to comply with the notice requirement enumerated in the LGTCA. The appellant’s sole argument on appeal is that he demonstrated good cause to waive the requirement and thus, meets an exception. Accordingly, this court must determine whether the lower court abused its discretion when

it dismissed the appellant’s case, even after the appellant’s arguments demonstrating his alleged good cause. “An action may proceed despite failure to comply strictly with the LGTCA notice requirement where the plaintiff has substantially complied with or, alternatively, demonstrates good cause to excuse the failure to comply with the notice requirement.” *Rounds v. Maryland Nat. Capital Park and Planning Com’n*, 441 MD. 621, 645 (2015) (citing *Housing Auth. v. Woodland*, 438 Md. 415, 428-30 (2014)). A plaintiff who fails to strictly comply with the LGTCA notice requirement substantially complies where:

- (1) the plaintiff makes some effort to provide the requisite notice;
- (2) the plaintiff does “in fact” give some kind of notice;
- (3) the notice provides ... requisite and timely notice of facts and circumstances giving rise to the claim; and
- (4) the notice fulfills the LGTCA notice requirement's purpose, which is to apprise [the] local government of its possible liability at a time when [the local government] could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it.

Ellis v. Hous. Auth. of Balt. City, 436 Md. 331, 343 (2013) (citing *Faulk v. Ewing*, 371 Md. 284, 298-99 (2002) (internal quotation marks omitted)). It is therefore the noncompliant plaintiff’s burden to demonstrate good cause for why the court should waive the notice requirement. *Rounds*, 441 Md. at 645.

Although this Court can appreciate the appellant’s alleged efforts as a *pro se* litigant with his challenges, they were not sufficient to provide notice and do not constitute good cause. The appellant claims to have “verbally provided notice to several county attorneys that he wanted to bring suit because he lost his business.” The appellant also contends that

there were “misleading statements [] made by local government, especially pertaining to resolving the tax issue.” However, the appellant has not only failed to establish what notice he provided to these county attorneys outside of this conclusory statement, the appellant provided no written notice to the County or provided details regarding his claims. The appellant also provides no names of the County Attorneys³ he references, does not expound upon the conversations had with these attorneys or the responses received, nor does he provide dates of these alleged conversations outside of those beyond the 180-day window.

Moreover, the appellant’s argument that the County provided “misleading statements” is insufficient to warrant this Court to find good cause. A plaintiff may show good cause for failure to comply with the notice requirement where he relies on “misleading” representations by a local government. *Ellis v. Hous. Auth. of Balt. City*, 436 Md. 331, 349 (2013) (internal citations omitted). However, the appellant in the present case has not explained what misleading statements the County made regarding notice of his claims. The statements provided by the appellant involved “misleading statements...pertaining to resolving the tax issue,” which do not equate to notice of an impending lawsuit. Outside of the appellant plainly saying so, he provides no detailed support for his claim that the County should have been aware of his claim against it.

Most importantly, the appellant filed suit against the County well beyond the 180-day notice requirement enumerated by the LGTCA. The appellant’s right of redemption

³ The only name the appellant provides is that of an administrative specialist. The appellant spoke with the specialist on August 1, 2014 regarding the release date of his property. However, by that date, his release had already expired.

was foreclosed on October 16, 2014, as ordered by the Circuit Court for Montgomery County.⁴ The appellant wrote in his first amended complaint, filed March 25, 2016,⁵ that he “informed Montgomery County on or about January, 2016 through its lawyers, that he intended to sue the County for its negligence regarding the misinformation he was given which caused him to lose his property.”

It is important to briefly discuss the relevant changes within the LGTCA’s notice requirement. At the time of the appellant’s filing of his first amended complaint, on March 25, 2016, the LGTCA required that notice of a claim be given within one year after injury. This change became effective on October 1, 2015. MD. CTS. & JUD. PRO. CODE § 5-304 (2015). However, Section 2 of the Act stated that the change would “apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.” MD. CTS. & JUD. PRO. CODE § 5-304 (2015). Thus the applicable rendition of the Act to be followed by the appellant was that of July 1, 2014, requiring notice be given within 180 days of injury.

The appellant filed suit over 14 months after injury and has not provided good cause regarding this delay. In fact, the appellant illuminating the fact that the County should have been on notice because of his previous lawsuit against Paradise Point begs the question—why did he not also sue the County in the previous litigation? The LGTCA is clear that the time limit in which to file notice of a claim is within 180 days of injury. Even if this court

⁴ On January 14, 2015, after the appellant filed a motion to revise, the circuit court denied the appellant’s request.

⁵ Appellant filed his original complaint on February 29, 2016.

required the circuit court to ease the Act’s deadline requirement and find good cause, a delay of over one year is too great a delay to warrant such leniency.

In two consolidated cases, *Ellis v. Hous. Auth. of Balt. City*, 436 Md. 331 (2013) and *Johnson v. Hous. Auth. of Balt. City*, 436 Md. 331 (2013), the Court of Appeals found that neither appellant substantially complied with the notice requirement of the LGTCA.

In *Ellis*, Ellis sued the Housing Authority of Baltimore City (“the HABC”) after testing positive for increased levels of lead paint she had been exposed to throughout her childhood in the various homes she lived in, all owned and operated by HABC. *Id.* at 338. In 1992, a form letter from the University of Maryland Pediatric Ambulatory Center, detailing Ellis’ results was sent to the HABC. *Id.* In 2010, about eighteen years after her first blood-lead level test, Ellis sued the HABC, alleging negligence for its role in exposing her to lead paint. *Id.* at 338-39. The Court of Appeals concluded that neither Ellis nor her mother took any action regarding a potential claim against HABC, even after the mother became aware of Ellis’ elevated blood-lead levels, as early as 1992. *Id.* at 344-45. Additionally, there was no evidence in the record that Ellis, or her mother, sued or contacted the HABC to allege that it was the source of Ellis’ injury. *Id.* at 344. Accordingly, the Court held that Ellis, regardless of her minority at the time of injury, failed to comply with the notice requirement because she did not “prosecute [] [her] claim with th[e] degree of diligence that an ordinarily prudent person would have exercised under similar circumstances.” *Ellis*, 436 Md. at 350 (citing *Rios*, 386 Md. at 141) (internal citations and quotations omitted). Consequently, Ellis, could not establish good cause to waive the notice requirement.

In *Johnson*, much like in *Ellis*, Johnson, born in 1990, had been exposed to lead paint over the course of her childhood. Johnson’s mother complained to the housing manager that the chipping paint problem needed to be fixed and threatened to sue the HABC if it did not do so. *Ellis*, 436 Md. at 340. Though acknowledging that Johnson’s mother did orally complain and threatened to sue the HABC, the Court of Appeals found that Johnson, who brought suit in 2011, had not substantially complied with the notice requirement of the LGTCA and did not establish good cause for her failure to comply. The Court reasoned that

[T]hrough her alleged oral complaint, Johnson’s mother neither explicitly nor implicitly indicated that she intended to sue HABC regarding any injury. A plaintiff does not substantially comply with the LGTCA notice requirement where the plaintiff demands that a local government fix a defect, but neither explicitly nor implicitly indicates that the plaintiff intends to sue the local government regarding an injury resulting from the defect.

Id. at 347 (internal citations omitted).

Consequently, the Court held that Johnson both failed to give timely notice and failed to articulate her intent to sue outside of highlighting a defect.

Ellis and *Johnson* provide guidance for the case at bar. Similarly to both cases, in the present case, the appellant contacted the County to discuss his tax matters but did not state that he intended to sue the County as a result of his tax issues. Moreover, the appellant exceeded the 180-day notice requirement by at least one year. The appellant contended that he was “in regular communication with County officials at the Tax Office and County Attorney’s office.” However, Appellant’s questions and complaints about his tax issues did

not adequately apprise the County of his claims against it or intent to sue. It would be unreasonable to expect the County to be on notice of a potential lawsuit each time a resident inquired about an issue. Apart from the County having some knowledge that the appellant was inquiring about his taxes, they were not aware of his intent to sue until January, 2016.

Lastly, no claim can be made that the County should have been aware that the appellant was going to file suit against the County merely because the appellant sued Paradise. The County was not named as a defendant in the Paradise suit and therefore had no duty to look up the matter. Accordingly, this court finds that the circuit court did not abuse its discretion in finding that the appellant failed to comply with the Act.

Finding that the appellant failed to comply with the notice requirement of the LGTCA, we decline to address the County's contention that it was performing a governmental function when it listed the appellant's property in the tax sale and is therefore, immune from liability under the principle of governmental immunity.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**