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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

Jorge MONTEAGUDO, Plaintiff-Respondent,

v.

TOWN OF MORRISTOWN, and Diverse Employees, Agents and Servants of the Town of Morristown, Beginnings Counseling and Services Program, Town of Morristown Department of Human Services, David McCoy, Manager, Defendants-Appellants,

and

Terence Michael Lynch, State of New Jersey, Department of Corrections, Division of Parole, State of New Jersey, Mayor Donald Cresitello, Defendants.

Cornell **Chavis**,^{FN1} Plaintiff-Respondent,

FN1. In the complaint, **Chavis** was referred to as C.C. The trial judge ordered **Chavis** to file an amended pleading revealing his identity. **Chavis** has not challenged that order.

v.

County of Morris, Morris County Department of Probation, Probation Officer Jessica Dineen, Morristown Town Council as Comprised on 12/31/04 and 12/31/05, Terence Michael Lynch, Judith Lynch, Luyhnicah Research PLC INT, David Cresitello, Defendants,

and

Town of Morristown, The Beginnings, Town of Morristown Department of Human Services, and David McCOY, Defendants-Appellants.
Michael Marchitello, Plaintiff-Respondent,

v.

County of Morris, Morris County Department of Probation, Probation Officer Jessica Dineen, Terence Michael Lynch, Judith Lynch, Luyhnicah Research PLC INT, Defendants,

and

Town of Morristown, The Beginnings, Town of Morristown Department of Human Services, and David McCOY, Defendants-Appellants.

Argued Feb. 27, 2007.

Decided March 21, 2007.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket Nos. PAS-L-2119-06, PAS-L-2120-06, and PAS-L-2121-06.

Anthony P. Seijas argued the cause for appellants Town of Morristown, The Beginnings, Town of Morristown Department of Human Services, and David McCoy (Scarinci & Hollenbeck, attorneys; Mr. Seijas of counsel; Mr. Seijas and **Nina Vij**, on the briefs).

Mark A. Blount argued the cause for respondent Jorge Monteagudo (Coppel, Laughlin & Blount, attorneys; Mr. Blount, on the brief).

Jonathan E. Levitt argued the cause for respondents Cornell Charvis and Michael Marchitello (Frier & Levitt, attorneys; Mr. Levitt and **Michelle L. Greenberg**, on the briefs).

Karen L. Jordan, Deputy Attorney General, argued the cause for the State of New Jersey, Morris County Probation Department, Department of Corrections, Division of Parole, and Jessica Dineen (Stuart Rabner, Attorney General, attorney; **Patrick DeAlmeida**, Assistant Attorney General, of counsel; Ms. Jordan, on the briefs).

Before Judges **PARKER**, C.S. FISHER and **YANNOTTI**.

PER CURIAM.

*1 We granted motions for leave to appeal by defendants Town of Morristown (Town), Beginnings Counseling and Services Program (Beginnings), Town of Morristown Department of Human Services (Department), and David McCoy (McCoy) from orders that declare that notices of claim filed by plaintiffs pursuant to the Tort Claims Act (the Act) were filed within the time required by *N.J.S.A. 59:8-8*, and alternatively granted plaintiffs leave to file late notices of claim pursuant to *N.J.S.A. 59:8-9*. We consolidate the appeals for purposes of our decision and now affirm.

I.

Plaintiffs Jorge Monteagudo (Monteagudo), Cornell Chavis (Chavis) and Michael Marchitello (Marchitello) filed notices of claim against certain public entities and employees in respect of injuries allegedly suffered by plaintiffs as a result of treatment they received at Beginnings, a facility within the Department that was funded in part by the Town. Plaintiffs thereafter filed complaints in the Law Division, Morris County, seeking damages for their alleged injuries.

Orders were issued in each case which required that defendants show cause why plaintiffs' notices of claim should not be declared timely under *N.J.S.A. 59:8-8* or, alternatively, why plaintiffs should not be permitted to file late notices of claim pursuant to *N.J.S.A. 59:8-9*. The Town, the Department, Beginnings, and McCoy filed cross-motions to dismiss the plaintiffs' complaints. The facts relevant to the motions, and therefore to these appeals, were detailed in certifications filed by plaintiffs in support of their applications.

A. Jorge Monteagudo v. Town of Morristown, et al.

Monteagudo was released on parole in 2004 and he

was required, as a condition of parole, to participate in drug and alcohol counseling. Monteagudo's parole officer directed him to Beginnings for counseling and he attended sessions there three times a week from 2004 through the Fall of 2005. Initially, Monteagudo was counseled by McCoy, the manager of the facility; however, sometime in 2004, McCoy introduced him to Lynch, who McCoy referred to as "Dr. Mike." Monteagudo alleges that McCoy held Lynch out as a medical doctor.

Lynch counseled Monteagudo in private sessions from 2004 through the Spring of 2005. Monteagudo claims that during these sessions, Lynch asked him explicit questions about his sexual behaviors. Monteagudo says that he answered the questions in the belief that Lynch was a medical doctor and the information was necessary for his counseling. Monteagudo claims that Lynch used his position of authority to persuade him to provide "intensely personal information."

Monteagudo also asserts that Lynch compelled him to submit to physical examinations in which Lynch touched his penis and testicles and "otherwise engaged in inappropriate physical contact." According to Monteagudo, during these sessions, certain other unnamed persons entered the room "and knew or should have known about the inappropriate conduct."

*2 Monteagudo states that on a number of occasions, he told McCoy that he was "uncomfortable" with Lynch "yet no immediate changes to [his] counseling were made." He also asserts that Lynch "directly and indirectly" made it known that he had power over Monteagudo's parole and Lynch allegedly said that he could get Monteagudo "in a lot of trouble." Monteagudo states that he feared he would be returned to prison and thus had no alternative but to comply with Lynch's demands.

Sometime in August or September 2005, Monteagudo was contacted by certain unnamed law en-

forcement authorities and allegedly asked questions about Lynch and Beginnings. However, Monteagudo says that he did not understand why he was being questioned. Monteagudo asserts that, in early February 2006, he learned “for the first time” from articles published in a newspaper that Lynch was not a medical doctor, nor a licensed counselor. He also learned “for the first time” that Lynch was a convicted sex offender; that the Town and its representatives had never performed any form of background check upon Lynch before hiring him; and that Beginnings did not have a license to operate and provide counseling.

Monteagudo asserts that it was at this point in time when he first became aware of the injuries allegedly inflicted upon him by defendants, as described in his complaint. Monteagudo also states that he had been “in an inferior position and [his] freedom was in jeopardy” so he believed that he “had no alternative.” In addition, Monteagudo claims that English is his second language, and he had difficulty understanding “the ins and outs of the law and notice requirements.”

On or about March 3, 2006, Monteagudo provided the Town, Beginnings, McCoy, Morristown Mayor Donald Cresitello (Cresitello), Lynch, the Attorney General, and the State Department of Corrections (DOC) with notices of claim, in which he asserted that he had sustained certain injuries during his counseling at Beginnings in 2004 and 2005. Monteagudo filed a fifteen-count complaint in the Law Division on April 26, 2006, in which he named the Town, Cresitello, Beginnings, the Department, McCoy, Lynch, the State of New Jersey (State), the DOC, and the State Division of Parole (DOP) as defendants.

Monteagudo alleged that Lynch had sexually assaulted and physically abused him during the course of treatment at Beginnings. Monteagudo further alleged that the defendants knew or should have known that Lynch was a convicted sex offend-

er, was not a medical doctor or a licensed therapist or counselor, and was not fit to provide such counseling. Plaintiff asserted a variety of claims, including claims for negligent hiring, screening, and supervision.

B. *Cornell Chavis v. County of Morris, et al.*

Chavis was placed on probation in 2003. As a condition of his probation, Chavis was required to attend in-patient drug rehabilitation. Chavis was treated at a program called “Turning Point” for twenty-eight days. He was discharged from that program on or about January 8, 2004. Immediately thereafter, Chavis met with Dineen, who was his probation officer, and she required that he attend an “after care” program at Beginnings.

*3 Chavis attended counseling sessions at Beginnings once a week for about four to six weeks, beginning on or about January 2004. Chavis met with McCoy, who advised him to begin counseling with Lynch. Chavis says that McCoy and others referred to Lynch as “Dr. Mike.” According to Chavis, Lynch required that he complete a questionnaire that included questions about sexual matters. Lynch also questioned Chavis about “every aspect of [his] sexuality, including [his] homosexual experiences.” Chavis states that he permitted Lynch to ask these questions because he believed that Lynch was a doctor.

While he was being “treated” at Beginnings, Chavis was providing urine samples to the probation department. Even so, Lynch required that Chavis provide him with urine samples. According to Chavis, Lynch used his “position of authority” and “false credentials” to exploit his “probation status and [his] actual problems.” Chavis claims that Lynch followed him into the rest room when he was providing his urine samples. Lynch allegedly touched Chavis's penis and tried to touch his testicles but Chavis says that he “refused to let

him.” Chavis also claims that Lynch would kneel next to him and stare at Chavis's buttocks and genitals while he was providing the urine samples. Lynch allegedly told Chavis that “he had to do this to make sure [Chavis] was not faking the urine sample.”

Chavis asserts that he told his probation officer Jessica Dineen (Dineen) that Lynch was asking him “very detailed sexual questions” that made him uncomfortable. Dineen allegedly told Chavis to speak with McCoy but, according to Chavis, McCoy was unavailable. Chavis states that he informed another Beginnings employee of the genital touching. Chavis continued to attend the counseling sessions because his probation officer told him that if he did not complete the program, it would be a violation of his probation.

Chavis asserts that he tried to return to Beginnings for counseling but he “could not bring” himself to submit to Lynch's “sexual questions or his touching.” When he failed to show up, Dineen apparently concluded that Chavis had violated the conditions of his probation and he was imprisoned for thirty-five days.

Chavis alleges that in March 2006 he learned “for the first time” from newspaper accounts that Lynch was not a medical doctor or a licensed counselor. Chavis says that he later learned that: Lynch pled guilty in 1984 to molesting children at a Mendham Township boarding school; Beginnings was not a licensed facility; and Beginnings did not have State authority to operate and provide counseling. Chavis “immediately” contacted an attorney.

Chavis filed his notices of claim on or about March 22, 2006. On March 24, 2006, Chavis filed a five-count complaint in the Law Division, naming Morris County, the Morris County Probation Department (MCPD), Dineen, the Town, Beginnings, the Department, the Town Council, Lynch, McCoy and Cresitello as defendants. ^{FN2} Chavis asserted claims

for negligent hiring, negligent supervision and retention, negligent referral, battery, and unlicensed operation of a medical practice.

^{FN2}. Chavis also named as defendants Lynch's wife Judith and an entity called Luyhnicah Research PLC INT (Luyhnicah).

C. Michael Marchitello v. County of Morris, et al.

*4 In 2004, Marchitello was placed on probation. As a condition of his probation, Marchitello was required to attend about seventy-seven sessions of anger management counseling. Dineen, who also was Marchitello's probation officer, required that he seek counseling at Beginnings. Marchitello attended counseling sessions at Beginnings once a week for about fifty-two weeks, from early 2004 to early 2005.

Marchitello says that when he first arrived at Beginnings, he met with McCoy, who advised him to begin counseling with Lynch. McCoy and others referred to Lynch as “Dr. Mike.” Marchitello alleges that Lynch held himself out as a doctor. According to Marchitello, McCoy told him that Lynch was the “crème-de-la-crème” of his field and Marchitello was “lucky” to be Lynch's patient.

Marchitello began his private counseling sessions with Lynch in early 2004. Lynch allegedly required that Marchitello complete a lengthy questionnaire, which contained what Marchitello says were “explicit, intensely personal and sexual questions.” Marchitello states that at the weekly sessions, Lynch inquired about every aspect of his sexuality. When Marchitello became angry with the questioning, Lynch allegedly reminded him that he was there for anger management. Lynch also purportedly said that Marchitello's probation officer “had it in for” him. Marchitello claims that Lynch told him that he had attended Harvard Medical School, and had offices in England and St. Croix.

Lynch also required Marchitello to provide urine samples. Marchitello says that Lynch followed him into the rest room when he was providing the samples. Marchitello states that Lynch peered at his genitals and insisted on touching his penis and testicles, purportedly to prevent Marchitello from using a “fake urine bladder .”

Marchitello claims that he reported to Dineen that Lynch was requiring him to provide urine samples. According to Marchitello, Dineen “rolled her eyes, but did nothing else.” Marchitello asserts that as a result of Dineen's response, he assumed that the urine tests were required. Marchitello claims that he continued to attend the sessions because Lynch told him that his probation officer hated him and Lynch had the “power to negatively impact [his] parole.”

Marchitello states that in February 2006 and March 2006 he learned from certain newspaper articles that: Lynch was not a medical doctor or licensed counselor; Lynch was a convicted sex offender; Lynch pled guilty in 1984 to molesting children at a Mendham Township boarding school; and Lynch's parole officer “apparently” had recommended that he be given a position at Beginnings to work as a counselor/therapist.

According to Marchitello, the Town did not conduct any background check on Lynch before hiring him. Marchitello also asserts that the local police knew that Lynch was a convicted sex offender, who was registered pursuant to Megan's Law, but “apparently never thought it was a problem for him to work at Beginnings.”

*5 Marchitello states that when he learned this information, he “immediately contacted an attorney.” Notices of claim were filed on March 1, 2006 and March 6, 2006. On March 14, 2006, Marchitello filed a five-count complaint in the Law Division, naming Morris County, the MCPD, Dineen, the Town, Beginnings, the Department, Lynch, and McCoy as defendants.^{FN3} In his complaint, Marchi-

tello asserted claims for negligent hiring; negligent supervision and retention; negligent referral; battery; and unlicensed operation of a medical practice.

^{FN3}. Marchitello also named Judith Lynch and Luyhnicah as defendants.

D. Trial Court Proceedings.

The cases were transferred from Morris County to Passaic County. Judge Robert J. Passero heard the motions in all three cases on June 5, 2006, and on that date, placed his decision on the record. Judge Passero concluded that there was no basis for any claim against Morris County because the MCPD is part of the Judiciary, not the county government. The judge further concluded that the notices of claim had been timely filed as to the other public entities and employees. Alternatively, the judge granted plaintiffs additional time within which to file the notices of claim against all defendants other than Morris County.

The Town, Beginnings, the Department, and McCoy filed motions for leave to appeal in all three cases. We granted leave to appeal by orders entered on August 7, 2006.^{FN4}

^{FN4}. The State, MCPD and Dineen filed motions for leave to appeal out of time in the *Marchitello* and *Chavis* matters. The motions were denied. In addition, the State, DOC and DOP moved for leave to appeal out of time in the *Monteagudo* case. That motion also was denied.

II.

An action may not be brought pursuant to the Tort Claims Act against a public entity or public employee unless the claim upon which it is based has been presented in the manner prescribed by the Act.

N.J.S.A. 59:8-3. A claim relating to a cause of action for injury to a person must be presented “not later than the ninetieth day after accrual of the cause of action.” *N.J.S.A. 59:8-8*. A claimant is “forever barred from recovering against a public entity or public employee” when the claimant has not provided notice with the time required, “except as otherwise provided in *[N.J.S.A.] 59:8-9*.” *N.J.S.A. 59:8-8a*.

“Ordinarily, a cause of action accrues when any wrongful act or omission resulting in any injury, however slight, for which the law provides a remedy, occurs.” *Beauchamp v. Amedio*, 164 N.J. 111, 116 (2000) (citing, among other cases, *Tortorello v. Reinfeld*, 6 N.J. 58, 65 (1959)). “Generally, in the case of tortious conduct resulting in injury, the date of accrual will be the date of the incident on which the negligent act or omission took place.” *Id.* at 117 (citing *Fuller v. Rutgers, The State University*, 154 N.J.Super. 420, 423 (App.Div.1977), *certif. denied*, 75 N.J. 610 (1978)).

The discovery rule provides an exception to the “well established notion of accrual.” *Ibid.* The rule applies when an individual “either is unaware that he has been injured or, although aware of an injury, does not know that a third party is responsible.” *Ibid.* (citing *Lamb v. Global Landfill Reclaiming*, 111 N.J. 134, 144-45 (1988)).

*6 Defendants argue that Judge Passero erred in concluding that plaintiffs' notices of claims were timely filed. They contend that the causes of action accrued when Lynch engaged in the alleged wrongful conduct. According to defendants, plaintiffs knew or reasonably should have known that they were injured at the time Lynch engaged in the alleged inappropriate or unlawful sexual contact. Defendants therefore contend that each plaintiff was required to file a notice of claim no later than ninety days after the date when his “counseling” with Lynch ended.

We disagree. As their certifications state, plaintiffs were led to believe that Lynch was a doctor and he was qualified and licensed to provide the mandated counseling. Lynch allegedly held himself out as a doctor, and was referred to by McCoy and others as “Dr. Mike.” McCoy also told Marchitello that Lynch was the “crème-de-la-crème” of his field and Marchitello was “lucky” to be Lynch's patient. In the circumstances, plaintiffs could reasonably believe that Lynch's actions were a legitimate part of his counseling.

Moreover, plaintiffs did not know, nor should they have reasonably known, that they had been injured by Lynch's actions until they learned that he was not a doctor or a licensed counselor, and that he was a convicted sex offender who was required to register under Megan's Law. Until that time, plaintiffs did not have sufficient information upon which to conclude that Lynch may have engaged in the alleged wrongful acts for his own sexual gratification, rather than for legitimate counseling purposes.

Defendants insist that any reasonable person would have immediately have recognized that he had been injured by Lynch's alleged acts. However, a reasonable person, who had been referred to Lynch for treatment by public employees, who was told that Lynch was a doctor, who was led to believe that Lynch was qualified and licensed to provide counseling services, and who was told that Lynch was the “crème de la crème” of his field, would not have readily perceived that he had been injured by Lynch's alleged wrongful conduct. In addition, plaintiffs had been required to attend counseling at Beginnings as conditions of probation or parole and they faced serious consequences if they failed to do what was asked of them.

The decision in *Baird v. Am. Med. Optics*, 155 N.J. 54 (1998), does not compel a different conclusion. In that case, the plaintiff underwent cataract surgery and had an intraocular lens implanted in her left

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eye. *Id.* at 58. Following the procedure, the plaintiff experienced complications. Her eyesight worsened and she was in severe pain. She conceded that she knew “something was not right.” *Id.* at 61. The plaintiff had additional surgery but her eyesight did not improve. *Id.* at 62. About six years later, the plaintiff learned that the Food and Drug Administration (FDA) had not approved the [intraocular lens](#) for marketing to the general public. *Id.* at 63. Plaintiff filed an action against the ophthalmologist alleging that he failed to obtain her informed consent for the surgery because he had not informed her of the “investigational status” of the lens. *Id.* at 68.

*7 The Court in *Baird* held that the plaintiff’s cause of action against the ophthalmologist accrued when she first experienced complications following surgery. The plaintiff knew then that her injury was related to the doctor’s [implantation of the lens](#) and the statute of limitations began to run at that time, not when the plaintiff learned that the FDA had only approved the lens for use on an experimental basis. *Id.* at 68.

The facts here are different. In this case, plaintiffs did not immediately recognize that they had been injured by Lynch’s alleged wrongful actions. They believed that Lynch’s actions were a legitimate part of his counseling. Plaintiffs did not realize that Lynch’s actions may have been inappropriate or unlawful sexual contact until they learned that he was a convicted sex offender registered under Megan’s Law, that he was not a doctor, and that he was not licensed to provide counseling. As we stated previously, in the circumstances, plaintiffs’ assumptions were reasonable.

Defendants also cite the Child Sexual Abuse Act (CSAA), *N.J.S.A. 2A:61B-1*, as support for their contention that plaintiffs’ claims accrued at the time of Lynch’s alleged wrongful actions. The CSAA “established the first statutory cause of actions for sexual abuse in New Jersey.” *Hardwicke v. Am.*

Boychoir School, 188 *N.J.* 69, 84 (2006). The CSAA defines “sexual abuse” to mean an act of “sexual contact” or “sexual penetration” between a child and an adult. *N.J.S.A. 2A:61B-1a(1)*.

The CSAA provides that “[i]n any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse.” *N.J.S.A. 2A:61B-1b*. The CSAA additionally provides that it is not “intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff’s mental state, duress by the defendant, or any other equitable grounds.” *N.J.S.A. 2A:61B-1c*. These “liberal tolling” provisions apply to claims brought under the CSAA, as well as any common law claims based on conduct that meets the definition of “sexual abuse” in the CSAA. *Id.* at 100.

Defendants maintain that the “leniency” extended under the CSAA to persons abused when they were children is not available to persons abused as adults. Defendants assert that the CSAA supports their contention that adult victims “are expected to recognize an injury associated with sexual abuse when it occurs.” Again, we disagree. The CSAA does not specifically address sexual abuse of an adult by another adult. We decline to read the CSAA as implicitly foreclosing the application of the discovery rule in this case.

We therefore conclude that Judge Passero correctly found that plaintiffs’ claims did not accrue until plaintiffs learned that Lynch was not a doctor or licensed to provide counseling services; and that he was a convicted sex offender required to register under Megan’s Law. The judge correctly determined that plaintiffs had filed their notices of claim within the time required by *N.J.S.A. 59:8-8*.

III.

*8 As an alternative basis for his decision, the

judge found that plaintiffs had established sufficient reasons to allow them to file late notices of claim pursuant to *N.J.S.A. 59:8-9*. The statute provides:

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.

Defendants argue that plaintiffs did not establish “sufficient reasons constituting extraordinary circumstances” to allow the filing of late notices of claim. Defendants contend that they would be substantially prejudiced by late-filed notices of claim. Defendants additionally contend that the judge did not have discretion to permit Chavis to file a late notice of claim if his cause of action arose at the time of his treatment because that was more than one year before he sought leave to file a late notice. Because we are convinced that the judge correctly determined that plaintiffs' notices of claim were timely filed, we decline to address this alternative basis for the judge's decision.

Affirmed.

N.J.Super.A.D.,2007.

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History

Direct History

=> **1** [Monteagudo v. Town of Morristown](#), 2007 WL 837186 (N.J.Super.A.D. Mar 21, 2007) (NO. A-6113-05T1, A-6114-05T1, A-6115-05T1)