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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ANTHONY E. WEST,

Plaintiff and Appellant,

v.

CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION,

Defendant and Respondent.

B280202

(Los Angeles County  
Super. Ct. No. BS162794)

APPEAL from an order of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Anthony E. West, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, William C. Kwong,  
Acting Senior Assistant Attorney General, Misha D. Igra and

Cassandra J. Shryock, Deputy Attorneys General, for Defendant and Respondent.

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Plaintiff Anthony E. West appeals from an order denying his petition for relief from the government claim filing statute. (Gov. Code, § 946.6.) (Statutory citations are to the Government Code.) We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

West is an inmate in the California State Prison, Los Angeles County. He had surgery in December 2011. West alleges medical malpractice and use of excessive force in the removal of surgical staples on December 21, 2011.

The procedural setting for this appeal is as follows.

West filed grievances on December 25, 2011 and June 21, 2012.

Then West commenced a lawsuit in federal district court. This federal litigation began in 2013 and ended in 2016. West filed this case on June 24, 2013, alleging violations of his civil rights through December 21, 2011 by doctors employed by defendant California Department of Corrections and Rehabilitation, which we will call the Department for short. The district court dismissed this action with prejudice on July 21, 2015. (*West v. Finander* (C.D.Cal. Jul. 21, 2015, No. CV13-4547-DOC).) West appealed on August 31, 2015. The Ninth Circuit Court of Appeals ruled the appeal was frivolous. It denied West's

request to proceed in forma pauperis and dismissed the appeal on January 4, 2016.

On March 10, 2016, West filed an application for leave to present a late claim with the California Victim Compensation and Government Claims Board. West claimed medical negligence and assault and listed the date of the incident as December 21, 2011 through December 14, 2015, stating, “It was ongoing.” He later explained that his claim “is based on a [continual] and ongoing cause of action, that first accrued on December 16, 2011, and December 21, 2011, and has been continued until December 14, 2015.” The claims board denied West’s claim on April 6, 2016. The basis for the denial was that West’s cause of action accrued on December 16, 2011 and West filed his application more than a year later, thus depriving the claims board of jurisdiction to consider his claim.

In the superior court, West then filed this petition for relief from the government claim filing statutes on July 5, 2016. The Department opposed his petition.

The trial court denied the petition on the following analysis. West’s cause of action for personal injuries accrued on December 16 and 21, 2011. An application for leave to file a late claim must be presented within a year, but West waited more than four years. The claims board thus properly denied his application. West argued the time for filing a claim should be tolled from August 3, 2012 to December 14, 2015, during which time West was filing grievances and seeking a writ of mandate to compel the Department to respond to his grievances. But the trial court observed that it was aware of no relevant tolling provision for this situation. Neither had West cited authority for his tolling claim. The trial court denied West’s application

because West failed to file a late claim application within one year of the accrual of his claim.

The trial court also rejected West's argument that physical and mental incapacity excused his failure to comply with the claim filing statutes. The court based this ruling on three independent grounds. First, West's claimed incapacity had no bearing on his failure to present an application for leave to file a late claim within a year. Second, West failed to present evidence of incapacity. Third, West had filed two grievances within the six-month time period, which showed West in fact was not incapacitated.

The trial court additionally rejected West's estoppel argument, finding the Department's delay in investigating his grievances did not mislead West about the need to file a timely claim or an application to file a late claim. "West did not present his claim within six months of accrual, and did not seek leave to present a late claim within one year of accrual. His arguments for excuse from both requirements fail. The petition for relief from claim presentation requirements is denied."

## **DISCUSSION**

The claim-filing statute sets out basic rules about suing a public entity. First, one suing for money or damages must present a written claim to the public entity. (§ 945.4.) For personal injury claims, the presentation must be within six months of the claim's accrual. (§ 911.2.) If there is no claim within six months, a claimant must apply in writing for leave to present a late claim. This application must be within a reasonable time, not to exceed one year from the claim's accrual.

(§ 911.4.) If the public entity denies this application, the claimant may file a petition for relief from the provisions of section 945.4. (§ 946.6, subd. (a).) Petitioners must show that they applied to the public entity for leave to present a late claim under section 911.4 and that the entity denied their petition. The petition must also give the reason for the petitioner's failure to present a claim within the time limits specified in section 911.2. (§ 946.6, subd. (b).) The petitioner is entitled to the requested relief if the court finds the application to the board under section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of section 911.4. The petitioner must also show the board denied the application or deemed it denied pursuant to section 911.6 and that one or more of the enumerated circumstances was present. (§ 946.6, subd. (c).)

Under section 946.6, filing a late-claim application within one year after the accrual of a cause of action is a jurisdictional prerequisite to a claim-relief petition. When the claimant files the underlying application to file a late claim more than one year after the accrual of the cause of action, the court has no jurisdiction to grant relief under section 946.6. (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1221; *County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303, 1313-1314.)

West's cause of action accrued on December 16 and 21, 2011. He filed his late-claim application more than a year after that. The trial court thus lacked jurisdiction to grant him relief under section 946.6.

West incorrectly argues his pursuit of administrative remedies tolled the claim-filing statutes. A petitioner's obligation to exhaust the administrative remedies concerning the medical

treatment is independent of the obligation to comply with the claim-filing statute. (*Parthemore v. Col* (2013) 221 Cal.App.4th 1372, 1382.) The petitioner must comply with the claim-filing statutes irrespective of exhaustion requirements. (*Ibid.*; *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1155.) Thus, West’s claim was not “ongoing” while he pursued his administrative remedies. West’s pursuit of administrative remedies did not toll the claim-filing clock.

West also argues he was incapacitated, and this excused his delay. A failure to file a claim within six months indeed may be excused where the person who sustained the alleged injury was physically or mentally incapacitated during all of the time specified in section 911.2 for the presentation of the claim and because of that disability failed to present a claim during that time. (§ 946.6, subd. (c)(3).) But, as the trial court noted, this provision applies only to the six-month claim-filing period, not to the one-year period in which to file an application to present a late claim. The one-year period may be tolled for the time in which the petitioner “is mentally incapacitated and does not have a guardian or conservator of his or her person.” (§ 911.4, subd. (c)(1).)

The petitioner has the burden of establishing incapacity by a preponderance of the evidence. (*Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 717.) A mental incapacity is one that prevents the petitioner from appreciating or communicating the nature of his injury. (See *Favorite v. County of Los Angeles* (1998) 68 Cal.App.4th 835, 839-841; cf. *Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373, 1384 [six-month claim-filing period tolled on ground of incapacity where claimant suffers “an all-encompassing disability which

prevents the claimant from even authorizing another to file a claim for the claimant”].)

The trial court correctly observed West failed to establish incapacity. West filed grievances, a writ petition, and an action in federal court during the time of his supposed incapacity. These actions showed he was capable of appreciating and communicating the nature of his injury. His alleged incapacity thus is not a basis for tolling the one-year period for filing his application to present a late claim.

Finally, West argues estoppel. Where its agents or employees have deterred the filing of a timely claim by some affirmative act, a public entity may be estopped from asserting noncompliance with the claims statutes. Estoppel as a bar to a public entity’s assertion of the defense of noncompliance arises when the plaintiff establishes these four factors: (1) the public entity was apprised of the facts; (2) it intended its conduct to be acted upon; (3) the plaintiff was ignorant of the true state of facts; and (4) the plaintiff relied upon the conduct to his detriment. (*Castaneda v. Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1064; *Christopher P. v. Mojave Unified School Dist.* (1993) 19 Cal.App.4th 165, 170.)

Estoppel most commonly results from misleading statements about the need for or advisability of a claim. In typical cases, the public entity or one of its agents engaged in some calculated conduct or made some representation or concealed facts that induced a plaintiff not to file a claim or bring an action within the statutory time. (*Castaneda v. Department of Corrections & Rehabilitation, supra*, 212 Cal.App.4th at p. 1064.)

West’s estoppel argument is based on the Department’s delay in resolving his grievances. As stated above, the

grievance/administrative procedure is separate from the claim-filing procedure. West presents no evidence of any affirmative acts on the part of the Department that misled him as to the need to file a timely claim or an application for leave to file a late claim. There is no basis for estoppel.

Inasmuch as this appeal may be resolved on its merits despite West's failure to provide us with a complete record, we need not address the Department's claim that this failure forfeits West's claims of error on appeal. (*Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860 [appellant "must provide an adequate appellate record demonstrating the alleged error," and the "[f]ailure to provide an adequate record on an issue requires that the issue be resolved against the appellant"].)



## DISPOSITION

The order is affirmed.

WILEY, J.\*

We concur:

PERLUSS, P. J.

ZELON, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.