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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WILLIAM PERRINO,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B239760

(Los Angeles County  
Super. Ct. No. MS007761)

APPEAL from an order of the Superior Court of Los Angeles County,  
Randolph A. Rogers, Judge. Affirmed.

William Perrino, in pro. per., for Plaintiff and Appellant.

John F. Krattli, County Counsel, Roger H. Granbo, Assistant County Counsel, and  
Edward L. Hsu, Associate County Counsel, for Defendant and Respondent.

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William Perrino, acting in propria persona, appeals from an order denying his petition to be relieved of the claim filing requirement of Government Code sections 911.2 and 945.4 under the Government Claims Act (Gov. Code, § 810 et seq.).<sup>1</sup> Perrino contends that section 945.3 tolled the six-month period within which to present a timely government claim. Section 945.3 postpones the filing of lawsuits against police officers or the public entity employing the police officer until the underlying criminal proceedings are concluded in the superior court. The statute, however, states that “this section shall not extend the time within which a claim is required to be presented pursuant to Section 911.2.” We conclude, along with other courts that have decided this issue, that section 945.3 does not toll the claims presentation requirement. Thus, we affirm.

### BACKGROUND

Perrino allegedly suffered injuries following an encounter with Los Angeles County Sheriff deputies on September 13, 2009.<sup>2</sup> Perrino was arrested and subsequently pleaded nolo contendere. (*People v. Perrino* (Super. Ct. L.A. County, 2009, No. MA046844).) He was convicted on November 12, 2009 of a felony for resisting arrest in violation of Penal Code section 69. (*People v. Perrino, supra*, MA046844.)

On May 13, 2010, he presented a claim to the county. The claim was denied as untimely under the six-month claim presentation requirement. Perrino submitted a letter on July 15, 2010 to the county stating that the time to file a claim was tolled pursuant to section 945.3 while criminal charges against him were pending before the superior court. The county treated the letter as an application to present a late claim and rejected the application.

Perrino timely filed a verified petition for a court order seeking relief from the provisions of section 945.4. The trial court denied the petition, concluding section 945.3 did not toll the time to present a government claim, and Perrino had not established that

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<sup>1</sup> Unless stated, all further statutory references are to the Government Code.

<sup>2</sup> The verified petition alleges Perrino suffered injury on September 9, 2009, but that is inconsistent with the date on the claim presented.

the failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect. Perrino appeals.<sup>3</sup>

## DISCUSSION

### 1. *Overview of the Claim Filing Requirements*

Lawsuits against a public entity for money or damages may not be maintained unless a formal claim has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board. (§§ 912.4, 945.4; *Munoz v. State of California*, *supra*, 33 Cal.App.4th at p. 1776.) The failure to comply with the claim filing statute will generally bar a money or damages claim against a public entity and its employees for liability incurred in the scope of their employment. (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237, 1240-1243.)

In cases of personal injury or death, the claim must be presented to the public entity within six months of the accrual of the cause of action. (§ 911.2.) After the six-month claim filing deadline has elapsed, the claimant may apply to the public entity for permission to file a late claim provided that the application is made “within a reasonable time not to exceed one year after the accrual of the cause of action.” (§ 911.4, subd.(b).) If the public entity denies the late claim application, the claimant may petition the superior court for relief from the claim filing requirement of section 945.4. (§ 946.6, subd. (a).)

### 2. *Perrino Failed to Timely File a Tort Claim Because Section 945.3 Does Not Toll the Claims Presentation Requirement*

Perrino contends the trial court erred in concluding that section 945.3 does not toll the six-month filing deadline within which to present his claim. This is a question of statutory interpretation that we review de novo.<sup>4</sup> (*People ex rel. Lockyer v. Shamrock*

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<sup>3</sup> An order denying a petition for relief from the claims filing requirement of the Government Claims Act is an appealable order. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1772, fn. 1.)

<sup>4</sup> The trial court’s determination to grant or deny a petition for relief under section 946.6 will not be disturbed on appeal except for an abuse of discretion. “Abuse of

*Foods Co.* (2000) 24 Cal.4th 415, 432.) We conclude Perrino, not the trial court, misinterpreted the tolling provision in section 945.3.

Section 945.3 postpones the filing of lawsuits against peace officers or the public entity employing a peace officer “based upon conduct of the peace officer relating to the offense for which the accused is charged” while the underlying criminal proceedings are pending before the superior court.<sup>5</sup> Section 945.3 states, however, that this section “shall not extend the time within which a claim is required to be presented.” Section 945.3 is clear and unambiguous that the six-month filing deadline to present a claim is not tolled. Any ambiguity related to whether the tolling provision applied to the claims filing requirement was clarified by the Legislature in 1983 when it amended the statute. (*McMartin v. County of Los Angeles* (1988) 202 Cal.App.3d 848, 855 [amendment “made it clear the tolling provisions did not apply to claim filing requirements, only to prosecuting civil actions”]; *Mohlmann v. City of Burbank* (1986) 179 Cal.App.3d 1037, 1043 [amendment “ ‘allows the defendant to file a claim with the board of a public entity while the criminal action is before the trial court. Significantly, however, the statute of limitations for the presentation of these claims is not extended.’ ”].)

Perrino appears to contend that two appellate cases published after *McMartin v. County of Los Angeles*, *supra*, 202 Cal.App.3d 848 and *Mohlmann v. City of Burbank*,

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discretion is shown where uncontradicted evidence or affidavits of the plaintiff establish adequate cause for relief.” (*Munoz v. State of California*, *supra*, 33 Cal.App.4th at p. 1778.)

<sup>5</sup> Section 945.3 provides: “No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court. [¶] Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court. [¶] . . . [¶] *Nothing in this section shall prohibit the filing of a claim with the board of a public entity, and this section shall not extend the time within which a claim is required to be presented pursuant to Section 911.2.*” (Italics added.)

*supra*, 179 Cal.App.3d 1037 have reached a contrary conclusion, holding the tolling provision applies to the claims filing requirement. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728 (*Schmidlin*); *McAlpine v. Superior Court* (1989) 209 Cal.App.3d 1.) Neither of the cases calls into doubt our interpretation that the tolling provision does not apply to the claim filing requirement.

*Schmidlin, supra*, 157 Cal.App.4th 728, construed whether a “notice to appear” is an “ ‘accusatory pleading’ ” as that term is used in section 945.3, which is not at issue here. (*Schmidlin, supra*, at p. 753.) The court stated the “Legislature contemplated that . . . the statute would effect a complete bar to civil suits while criminal charges remained unresolved.” (*Id.* at p. 757.) The prohibition of a civil action was referred to in *Schmidlin* as being “disabled from filing suit.” (*Id.* at p. 745.) But, “the disability arising under the statute did *not* extend to the filing of a pre-suit claim under Government Code section 945.4 with the public entity employing the alleged officer-tortfeasors.” (*Id.* at p. 757.)

*McAlpine v. Superior Court, supra*, 209 Cal.App.3d 1, addressed the term “pending” in section 945.3 to determine whether the tolling provision applied until criminal conviction or until the date of judgment and sentence. (*McAlpine v. Superior Court, supra*, at p. 8.) Perrino cites the beginning of the *McAlpine* court’s opinion stating, “Government Code section 945.3 tolls the statute of limitations on government tort actions while related criminal charges are pending against a plaintiff.” (*Id.* at p. 3.) As used by the court, “government tort actions,” does not refer to the claims filing requirement, but to a civil action against a government entity. Whatever ambiguity presented in the opening sentence of that opinion, is made clear by the court’s holding.

In this case, Perrino’s tort claim was not timely filed. He presented the claim on May 13, 2010, and his personal injury claim accrued on September 13, 2009. Under section 911.2, Perrino had six months from the accrual date to present his claim.

Perrino's claim, filed two months late was properly rejected as untimely.<sup>6</sup> Having presented no other reason for relief from the claim filing requirement, the trial court did not abuse its discretion in denying the petition for relief under section 946.6.

**DISPOSITION**

The order is affirmed. No costs are awarded on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

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<sup>6</sup> Perrino does not contend that he was entitled to relief because his failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect. (§ 946.6, subd. (c)(1).) Therefore, Perrino has forfeited the issue on appeal. (*Los Angeles Unified School Dist. v. Casasola* (2010) 187 Cal.App.4th 189, 212.)