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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ANITA GARCIA, Plaintiff and Appellant, v. CITY OF GLENDALE et al., Defendants and Respondents.	B284985 (Los Angeles County Super. Ct. No. BC659961)

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

Jahrmarkt & Associates and John Jarhmarkt, for Plaintiff and Appellant.

Michael J. Garcia, City Attorney, Ann M. Maurer, Chief Assistant City Attorney, and David Ligtenberg, Deputy City Attorney, for Defendants and Respondents.

Anita Garcia appeals the denial of leave to bring a personal injury claim against the City of Glendale and Glendale Water and Power (collectively, "Glendale") beyond the presumptive six-month time limit set forth in Government Code section 911.2, subdivision (a).[1] The trial court found Garcia did not demonstrate reasonable diligence excusing her lateness in bringing the claim, and denied her leave to pursue it. We conclude the trial court did not abuse its discretion in finding a lack of reasonable diligence, and affirm.

BACKGROUND

The Government Code provides a framework for the timely submission of claims to a public entity for a personal injury cause of action—namely, no more than six months after the claim accrues. (§ 911.2, subd. (a).) If an application is made more than six months after the claim accrues, the application can still be considered if it is presented within a reasonable time not to exceed one year from accrual, and the reason for the delay is satisfactorily explained. (§ 911.4, subd. (b).)

Where the public entity denies an application made more than six months after the claim accrues, a party may petition the superior court for relief. (§ 946.6, subd. (a).) In particular, as pertinent to the facts here, to obtain relief in superior court the plaintiff must show (1) her application to the public entity was made within a reasonable time not to exceed one year after accrual of the cause of action, and (2) her failure to present the claim within six months "was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes

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1 All statutory references are to the Government Code.

that it would be prejudiced in the defense of the claim . . . ." (§ 946.6, subd. (c)(1).)

Garcia alleges that on August 8, 2016, she suffered a slip and fall accident on a sidewalk at the southwest corner of an intersection in Glendale. The accident resulted in damage to her teeth, as well as bruising and abrasions. Alleging a private entity constructing a project on the northwest corner of the intersection was responsible for her injuries, she made a prelitigation demand to the private entity's insurer. On February 17, 2017, more than six months (but less than one year) after her cause of action accrued, Garcia submitted an application to Glendale pursuant to section 911.4 for leave to file a personal injury claim against the city and Glendale Water and Power. On March 27, 2017, Glendale denied Garcia's request for leave to bring a late claim.

On April 28, 2017, Garcia filed suit against the private entity. That same day, Garcia also filed a petition in superior court pursuant to section 946.6 seeking permission to pursue her claim against Glendale. The trial court found the petition timely on the first prong of section 946.6, subdivision (c), as it was made within a reasonable time less than one year from accrual of the claim. Glendale does not take issue with that finding on appeal.

To make the required showing of diligence on the second prong of section 946.6, subdivision (c), Garcia's counsel submitted a declaration. The declaration stated that counsel reviewed photographs taken by Garcia on the day of the accident as well as on days after the accident. Those photographs showed construction workers and vehicles from the private entity near the sidewalk where Garcia fell (including some equipment

blocking the street), and not workers or vehicles from other entities. Counsel also looked at Google Maps, which showed pictures of a construction project near the accident site with signage for the private entity, and the website for the private entity which showed it had a construction project on the northwest corner of the intersection.[2]

Counsel's declaration stated that he learned for the first time there was a separate, contemporaneous street construction project near the accident site when speaking on February 15, 2017 with an adjuster handling the insurance claim against the private entity. Lacking any indication of Glendale's involvement other than the adjuster's comment, two days after this conversation Garcia's counsel submitted a claim to Glendale "[i]n an abundance of caution" and in the event that Glendale somehow participated in the construction and allowed a dangerous condition to exist that led to the accident.

The trial court found counsel's initial conclusion that only the private entity was responsible for Garcia's injuries based solely on looking at photographs from Garcia and Google Maps was not reasonable diligence. The trial court noted that attorneys representing clients in personal injury matters routinely try to locate as many potential tortfeasors as possible to ensure their clients receive adequate compensation, and it is common knowledge that sidewalks, crosswalks, and streets (where the accident allegedly occurred) are typically owned and maintained by public entities. Concluding the declaration did not meet Garcia's burden to show reasonable diligence such that her

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[2] The date of the street view(s) reviewed in Google Maps was not set forth in counsel's declaration or elsewhere in the record.

failure to present her claim within six months was the result of mistake, inadvertence, surprise or excusable neglect, the court denied Garcia leave to file her proposed claim against Glendale.

DISCUSSION

Courts are to construe liberally remedial statutes such as section 946.6. (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1783 (*Munoz*).) "However, this does not mean relief in such cases should be granted casually." (*Id.* at pp. 1783–1784.) "Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant's failure to timely present a claim was reasonable when tested by the objective 'reasonably prudent person' standard." (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1293 (*DWP*).) In other words, the court inquires whether a reasonably prudent person might have made the same error under the same or similar circumstances. (*Munoz*, *supra*, 33 Cal.App.4th at p. 1783.)

A trial court's determination in granting or denying a petition for relief under section 946.6 will not be disturbed on appeal except for an abuse of discretion. (*Munoz*, *supra*, 33 Cal.App.4th at p. 1778.) Under this standard, a trial court's ruling will be upheld " 'unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 919.) A denial of relief under section 946.6 "is examined more rigorously than where relief is granted and any doubts which may exist should be resolved in favor of [relief]." (*Drummond v. County of Fresno* (1987) 193 Cal.App.3d 1406, 1411, citing *Viles v.*

State of California (1967) 66 Cal.2d 24, 29.) That being said, " 'we cannot arbitrarily substitute our judgment for that of the trial court.' " (*Greene v. State of California* (1990) 222 Cal.App.3d 117, 121.)

The trial court did not abuse its discretion. As the court observed, attorneys representing clients in personal injury matters "routinely try to locate as many potential tortfeasors as possible to ensure his or her client receives adequate compensation." (*DWP*, *supra*, 82 Cal.App.4th at p. 1295.) For more than six months after the accident, no investigation was undertaken other than looking at preexisting photographs and a limited Google search focused on the private entity despite common knowledge that sidewalks and streets are typically owned by public entities, and despite Garcia and her counsel's awareness that the accident took place across the street from the private entity's construction site. The trial court's finding that this was not reasonable diligence was within its discretion. (See, e.g., *Black v. County of Los Angeles* (1970) 12 Cal.App.3d 670, 676–677 (*Black*).)

Garcia urges us to consider the lack of prejudice to Glendale from allowing the late claim to help excuse her untimely application. However, the plain language of section 946.6, subdivision (c)(1) indicates that prejudice to the public entity is to be considered only after the plaintiff establishes mistake, inadvertence, surprise, or excusable neglect. (See also *Powell v. City of Long Beach* (1985) 172 Cal.App.3d 105, 108, fn. 1 [if court finds mistake, inadvertence, surprise, or excusable neglect it must then determine prejudice]; *Black*, *supra*, 12 Cal.App.3d at pp. 677–678 ["unnecessary to discuss the issue of prejudice" where plaintiff does not make showing of reasonable

diligence].) Here, the trial court found that Garcia had not demonstrated reasonable diligence, and therefore it was not required to consider the issue of prejudice.

DISPOSITION

The trial court's denial of the petition to file a late claim is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

CHANEY, Acting P. J.

BENDIX, 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.