

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

PERRY TURNER et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B262554

(Los Angeles County
Super. Ct. No. PC056038)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen Pfahler, Judge. Affirmed.

Perry Turner, in pro. per., for Plaintiffs and Appellants.

Michael N. Feuer, Los Angeles City Attorney, Blithe S. Bock, Assistant City Attorney, and Lisa S. Berger and Shaun Dabby Jacobs, Deputy City Attorneys, for Defendants and Respondents City of Los Angeles.

Perry Turner, individually and on behalf of his family trust, appeals from an order denying his petition under Government Code¹ section 946.6 for relief from the requirement in the Government Claims Act (§ 810 et seq.) that he timely file a claim with the City of Los Angeles (the City) prior to bringing a suit for damages. Turner argues that the trial court erred in denying his petition because, under the doctrines of delayed discovery and fraudulent concealment, his causes of action did not accrue until he discovered the wrongful acts committed by the City. Turner also asserts that he was entitled to relief under section 946.6 because any late filing of the claim was the result of mistake, inadvertence, surprise, or excusable neglect. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Alleged Crimes in Turner's Home²

Turner is the sole owner and occupant of a single-family residence in Porter Ranch, California. On the night of October 15, 2013, following a holiday weekend, Turner returned home to find that his residence had been burglarized and vandalized. In the early morning hours of October 16, 2013, Turner went to the Devonshire Division of the Los Angeles Police Department (LAPD) to report the incident; however, the officer at the desk refused to take a police report or otherwise assist Turner. Fearful of remaining alone in the residence, Turner did not

¹ All further statutory references are to the Government Code.

² The following factual summary is based on the allegations set forth in Turner's section 946.6 petition.

return until November 19, 2013, when he was accompanied by a neighbor. At that time, the neighbor told Turner that, on some prior date, he confronted at least three strangers in Turner's home and that the strangers claimed they were "doing adverse possession." The neighbor then called the police and two LAPD officers responded to the home. The officers left, however, after briefly speaking with the occupants and did not conduct any further investigation.

On November 19, 2013, while at the residence, Turner again contacted the LAPD's Devonshire Division. After some delay, two officers arrived at the residence and advised Turner that "gang rings" regularly burglarize homes in the area. The officers took a police report at that time; however, the report was full of inaccuracies and omitted pertinent facts. The case was later assigned to LAPD Officer Peter York, who was not a detective. Despite receiving numerous leads, Officer York did not take any action to investigate the case nor was he required to do so by his superiors at the LAPD.

During his November 19, 2013 visit to the residence, Turner noticed that a dumpster had been placed in the backyard and that other changes had been made to the interior of the home. He also observed that the water was "on at the meter but off in the house." According to Turner, the utilities previously had been turned off due to his failure to pay his utility bill. Turner "learned soon afterward" that the utility service for his home had been placed in the name of an unknown third party, but he did not yet know when such transfer occurred. On November 21, 2013, two days after his visit to the home, Turner went to the office of Los Angeles Department of Water and Power (DWP) to have the utilities turned off. On January 10, 2014,

Turner requested that the DWP turn the utilities back on. At that time, Turner learned that the DWP had first placed the utility service for his home in the name of a third party on July 1, 2013. Although Turner provided proof of his ownership of the home, the DWP refused to switch the utility service back to his name for several months. At all times, the DWP also has refused to disclose to Turner the identity of the third party who took over the utilities for his home between July 2013 and January 2014.

Since the burglary of Turner's home, unknown persons have continued to trespass onto his property by entering the garage, climbing over the fence, and cutting the lock off the driveway gate. Turner believes that, on one occasion, an unidentified individual also tampered with the brakes on his truck. Neither Officer Yates nor any other member of the LAPD has taken any action to investigate these incidents.

II. Turner Files a Claim for Damages with the City

On April 15, 2014, Turner filed a claim for damages with the City pursuant to the Government Claims Act. In his claim, Turner alleged that he suffered damages dating back to July 2013, when he was "subjected to takeover of utilities, forcible entry, grand theft of replaceable as well as irreplaceable personal effects and documents . . . , vandalism, trespass, attempted adverse possession, invasion of privacy, identity theft, elder abuse, and other criminal wrongs and civil torts." Turner also alleged that both the LAPD and DWP "failed, refused, and neglected . . . to prevent or mitigate" his damages.

On April 30, 2014, the City sent Turner a letter stating that his claim was "being accepted in part and rejected in part because it was not presented within six months after the loss

occurrence as required by law.” The letter explained that “claim losses commencing from 10-16-13 have been considered and denied,” and that “[a]ll other claims and causes of action have been rejected . . . because the claim was not presented within 6 months of the accrual of the cause of action.” The letter also advised Turner that, for those claims rejected as untimely, his only recourse was to apply for leave to present a late claim under section 911.4. Turner thereafter filed an application for leave to present a late claim, which the City denied on June 26, 2014.

III. Turner Files a Civil Complaint and a Section 946.6 Petition for Relief with the Trial Court

On October 30, 2014, Turner concurrently filed a civil complaint and a petition for relief from the claim presentation requirement of the Government Claims Act pursuant to section 946.6. The civil complaint was filed against the City and the holder of a reverse mortgage on Turner’s residence. Turner also named as “Doe” defendants employees of the LAPD and DWP, the “individuals who invaded . . . [Turner’s] residence,” and “members of criminally coordinated rings, enterprises, or gangs.” The complaint alleged causes of action for negligence, fraud, forcible entry, vandalism, invasion of privacy, identity theft, threat to health and safety, assault, willful destruction of property, grand theft, intentional infliction of emotional distress, uninhabitability, violation of civil rights, elder abuse, racketeering, and declaratory relief.

In his section 946.6 petition, Turner contended that his failure to timely file a claim with respect to events occurring prior to October 16, 2013 was due to mistake, inadvertence, surprise, or excusable neglect. Turner specifically asserted that he was

“prima facie elderly” when he discovered on October 15, 2013 that his home had been burglarized and vandalized, and that he had been “subject ever since then to ongoing severe problems of frustration, worry, distraction, concentration, logistics, and limited resources.” Turner also argued that, under the delayed discovery rule, his causes of action did not accrue until he discovered the wrongful conduct of the City. According to Turner, prior to October 15, 2013, he had no reason to suspect that anyone had forcibly entered his residence and taken control of the utilities because the utilities previously had been turned off due to his non-payment of his bill. It was not until January 10, 2014 that Turner first learned that the DWP transferred his utility service to an unidentified third party on July 1, 2013.

The City opposed Turner’s petition. The City conceded that Turner’s claim was timely as to events occurring in October and November 2013, but contended that the petition should be denied as to all events occurring before October 15, 2013, including the DWP’s alleged transfer of his utility service to a third party on July 1, 2013. The City argued that Turner had failed to show why he could not have discovered that his utility service had been taken over by a third party and filed a claim within six months of that occurrence. The City also asserted that Turner’s failure to timely discover events occurring at his own residence was not an omission that might be expected of a reasonably prudent person under similar circumstances.

On February 2, 2015, the trial court denied Turner’s petition. The court concluded that Turner had failed to establish any basis for relief under the Government Claims Act. According to the court, Turner had “not set forth any evidence for the court to find that his failure to present a timely claim was the result of

mistake, inadvertence, surprise or excusable neglect.” Turner also had “failed to show why he was unable to discover that the utilities for his residence were either put in someone else’s name or being stolen for a period of six months” between July 1, 2013 and January 10, 2014.

On March 4, 2015, Turner filed an appeal from the order denying his section 946.6 petition. The trial court thereafter stayed Turner’s civil action against the City pending resolution of the appeal.

DISCUSSION

On appeal, Turner contends that the trial court erred in denying his petition for relief under section 946.6. He specifically asserts that, under the doctrines of delayed discovery and fraudulent concealment, his claim was timely filed because his causes of action did not accrue until he discovered or reasonably could have discovered the City’s wrongful conduct. Turner also argues that, to the extent his claim was untimely, he was entitled to judicial relief because his late filing was the result of mistake, inadvertence, surprise, or excusable neglect. We conclude that the trial court did not abuse its discretion in denying Turner’s section 946.6 petition.

I. Overview of the Government Claims Act

The Government Claims Act (§ 810 et seq.) “establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 945.4.)” (*State of California v. Superior Court* (2004) 32

Cal.4th 1234, 1237.) “[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action. . . .’ [Citation.] ‘The policy underlying the claims presentation requirements is to afford prompt notice to public entities. This permits early investigation and evaluation of the claim and informed fiscal planning in light of prospective liabilities.’ [Citation.]” (*California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1591.)

A claim relating to a cause of action for personal injury or injury to personal property must be presented within six months after the accrual of the cause of action. (§ 911.2, subd. (a).) For purposes of the claim presentation requirement, the date of accrual is the same date on which the cause of action would accrue within the meaning of the applicable statute of limitations in an action against a nonpublic entity. (§ 901; see also *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal.App.4th 1229, 1239.) “Timely claim presentation is not merely a procedural requirement, but is a condition precedent to the claimant’s ability to maintain an action against the public entity. [Citation.] ‘Only after the public entity’s board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity.’ [Citation.]” (*California Restaurant Management Systems v. City of San Diego, supra*, 195 Cal.App.4th at p. 1591.)

A person who fails to present a timely claim may apply to the public entity for leave to present a late claim. (§ 911.4, subd. (a).) The application must be presented to the public entity “within a reasonable time not to exceed one year after the accrual of the cause of action. . . .” (§ 911.4, subd. (b).) The board of the public entity has 45 days to grant or deny the application, and if

the board fails to act within the prescribed time, the application will be deemed to have been denied. (§ 911.6, subds. (a), (c).)

If the public entity denies leave to present a late claim, the claimant may petition the court under section 946.6 for relief from the claim presentation requirement. (§ 946.6, subd. (a).) As relevant here, the court must grant the petition if it finds that (1) the petitioner applied to the public entity for leave to present a late claim within a reasonable time not exceeding one year after the cause of action accrued, (2) the application was denied by the public entity or was deemed denied by operation of law, and (3) the petitioner's failure to timely present the claim was due to mistake, inadvertence, surprise, or excusable neglect, and the public entity has not established that it would be prejudiced in its defense if the petitioner were granted relief from the claim presentation requirement. (§ 946.6, subd. (c).) In determining whether relief is warranted, the court will consider the petition, any supporting or opposing affidavits, and any other evidence received at the hearing on the petition. (§ 946.6, subd. (e).)

We review the trial court's ruling on a petition under section 946.6 for an abuse of discretion. (*J.J. v. County of San Diego* (2014) 223 Cal.App.4th 1214, 1220-1221; *DeVore v. Department of California Highway Patrol* (2013) 221 Cal.App.4th 454, 460.) "Abuse of discretion is shown where uncontradicted evidence or affidavits of the plaintiff establish adequate cause for relief. [Citation.] . . . [Citation.]" (*J.J. v. County of San Diego*, *supra*, at p. 1221.) "As it is a remedial statute, a trial or appellate court must resolve any doubts in favor of the petition [citation], but the preference for a trial on the merits does not warrant relief if based on a perfunctory recital of diligence in

support of excusable neglect. [Citations.]” (*DeVore v. Department of California Highway Patrol, supra*, at p. 459.)

II. Appealability

As a preliminary matter, we address the City’s argument that the trial court’s order denying Turner’s petition for relief under section 946.6 is not appealable. The City reasons that the trial court’s order was not a final determination of the rights of the parties in the action because the ruling solely addressed the timeliness of Turner’s claim with respect to events occurring prior to October 15, 2013, and did not consider the timeliness of his claim with respect to events occurring on or after that date.

The record reflects that, in response to Turner’s April 15, 2014 claim, the City rejected the claim with respect to any losses that occurred prior to October 16, 2013 because Turner did not present the claim within six months of the accrual of the cause of action. However, the City considered the claim with respect to any losses that occurred on or after October 16, 2013, and then denied that portion of the claim. Turner thereafter filed a section 946.6 petition for relief from the claim presentation requirement as to those causes of action that the City had rejected as untimely. Turner also filed a civil complaint against the City in which he pleaded various causes of action for alleged wrongful acts committed by the City between July 2013 and November 2013. In its opposition to Turner’s section 946.6 petition, the City “concede[d] that the claim filed by [Turner] on April 15, 2014 was timely filed for events occurring in October and November 2013,” but contended that the petition should be denied as to all events

occurring prior to October 15, 2013.³ The trial court denied Turner’s section 946.6 petition in its entirety on the ground that he had failed to establish any basis for relief under the Government Claims Act. The trial court then stayed the civil action pending the resolution of this appeal.

“A petition for relief from the claim presentation requirement under Government Code section 946.6 is a special proceeding. [Citations.] The court hearing the petition makes an independent determination on the petition. [Citation.] If the court grants relief from the claim presentation requirement, the petitioner must file a complaint on the cause of action within 30 days after the order granting relief. [Citation.] [¶] An order denying relief from the claim presentation requirement under Government Code section 946.6 is appealable. [Citation.] An order granting relief is not appealable, but may be reviewed on appeal from a judgment or appealable order on the cause of action stated in the claim. [Citations.]” (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 64.)

The City suggests that an order denying a section 946.6 petition is not appealable whenever there is a pending civil action based on the same underlying factual allegations as the claims at

³ In its April 30, 2014 notice to Turner regarding his claim, the City indicated that the claim was timely as to any cause of action that accrued on or after October 16, 2013. However, in its January 16, 2015 opposition to Turner’s section 946.6 petition, the City conceded that the claim was timely as to any cause of action that accrued on or after October 15, 2013. For purposes of this appeal, we will consider Turner’s claim to be timely as to any cause of action that accrued on or after October 15, 2013 because the record reflects that Turner submitted his claim by first class mail on April 15, 2014 in accordance with section 915.2.

issue in a section 946.6 petition. However, we are not aware of any authority, nor has the City cited any, which holds that the presence of a timely-filed claim in a pending civil action precludes a plaintiff from seeking relief under section 946.6 as to a late-filed claim or from appealing an order denying such relief until a final judgment on the civil action has been rendered. Here, because the City conceded that Turner's claim was timely presented as to causes of actions that accrued on or after October 15, 2013, the trial court did not address that portion of the claim in deciding whether to grant Turner's petition. Instead, the court's ruling was properly limited to considering whether Turner was entitled to relief under section 946.6 as to those causes of action that the City had rejected as untimely. The trial court's order denying the section 946.6 petition effectively determined Turner's right to relief from the claim presentation requirement, and as such, is an appealable order. (See *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1772, fn. 1 ["[a]n order denying a [section 946.6] petition . . . is an appealable order because it effectively determines a petitioner's right to relief from the claim presentation requirements"].)

III. The Trial Court Did Not Abuse Its Discretion in Denying Turner's Section 946.6 Petition

A. Timeliness of Turner's Claim to the City

Turner asserts that the trial court erred in denying his petition because his April 15, 2014 claim to the City was timely, including with respect to events occurring prior to October 15, 2013. Turner specifically argues that, under the doctrines of delayed discovery and fraudulent concealment, his causes of action did not accrue until he discovered the City's wrongful

conduct, and that he timely filed his claim within six months of such discovery. The timeliness of Turner's claim to the City, however, is not a proper subject of this appeal.

In a petition for relief from the claim presentation requirement, the issue of when a cause of action accrued, and thus whether a claim was timely filed, is not properly before the trial court. Rather, the issue before the court is whether the petitioner is entitled to relief under section 946.6 from the failure to file a timely claim. (§ 946.6, subd. (c)(1) ["[t]he court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that . . . [t]he failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect".]) As one appellate court has explained: "An argument that one filed a timely claim is inconsistent with a petition for relief under section 946.6, since such petition necessarily follows the denial of an application for leave to file a late claim. . . . [¶] There is a proper forum for raising the issue of substantial compliance with the claim filing requirements of sections 911.2 and 945.4. One who has a cause of action against a public entity for personal injury or property damage, and who has filed therewith a timely claim substantially complying with the requirements of section 911.2 and 945.4, should file a complaint against that public entity The complaint should allege that a timely claim for damages has been filed with the defendant. The issue of substantial compliance with the claim filing statutes, if it arises, will do so in the form of a demurrer to the complaint, a motion for summary judgment or nonsuit, a motion for judgment on the pleadings, or a motion to strike." (*Toscano v. County of Los Angeles* (1979) 92 Cal.App.3d 775, 783; see also *Ngo v. County of Los Angeles* (1989) 207 Cal.App.3d 946, 951 [section 946.6 "is not

designed to resolve the issue of actual compliance with the claim filing requirements,” and “[a] trial court’s denial of relief is not a determination of lack of compliance but only that compliance will *not* be excused”]; *Rason v. Santa Barbara City Housing Authority* (1988) 201 Cal.App.3d 817, 827 “[a] trial court hearing a section 946.6 petition cannot consider whether a claim was timely, because that issue is not within the scope of the proceeding”).⁴

In this case, Turner concurrently filed both a section 946.6 petition and a civil complaint for damages. The complaint expressly alleged that Turner had complied with the applicable claims statute. In denying the section 946.6 petition, the trial court concluded that Turner had failed to establish any basis for relief because he had not shown that his failure to present a

⁴ We recognize that there is a split of authority among the appellate courts as to whether the trial court may adjudicate the issue of the accrual of a cause of action in a proceeding on a section 946.6 petition, and if so, whether its ruling on such issue has preclusive effect. (See *DeVore v. Department of California Highway Patrol, supra*, 221 Cal.App.4th at p. 460 [summarizing split of authority].) Some courts have suggested that a trial court can properly consider the issue of accrual in ruling on the petition, but that its finding as to the date of accrual is not binding in a civil action for damages that alleges timely filing of a claim. (*Scott v. County of Los Angeles* (1977) 73 Cal.App.3d 476, 481-482.) Other courts have stated that a section 946.6 petition necessarily puts the date of accrual at issue and that the trial court’s finding on that issue is binding in a subsequent civil suit. (*Reyes v. County of Los Angeles* (1988) 197 Cal.App.3d 584, 595-596; *County of Los Angeles v. Superior Court* (1985) 169 Cal.App.3d 1095, 1100-1101.) We conclude, however, that the issue of accrual is not within the scope of a proceeding on a section 946.6 petition, and thus, the trial court should not adjudicate that issue in ruling on the petition.

timely claim was the result of mistake, inadvertence, surprise, or excusable neglect. The trial court did not, however, make a determination as to when Turner's causes of action accrued or whether his claim to the City was timely. Therefore, in reviewing the trial court's ruling, we do not consider whether Turner's claim for alleged wrongful acts occurring prior to October 15, 2013 was timely presented to the City. Rather, the issue before this court is whether the trial court abused its discretion in concluding that Turner was not entitled to relief under section 946.6 from the claim presentation requirement.

B. Right to Judicial Relief Under Section 946.6

Turner claims that the trial court erred in denying his section 946.6 petition because he presented sufficient evidence to show that he was entitled to relief under the statute. In particular, Turner contends that any failure to present a timely claim to the City with respect to events occurring prior to October 15, 2013 was due to mistake, inadvertence, surprise, or excusable neglect. We see no abuse of discretion in the trial court's ruling.

As previously noted, under section 946.6, judicial relief from the failure to timely present a claim to a public entity is available if the petitioner establishes by a preponderance of the evidence that the failure "was through mistake, inadvertence, surprise, or excusable neglect." (§ 946.6, subd. (c)(1).) However, "[t]he mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. 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.” (*Renteria v. Juvenile Justice, Department of Corrections & Rehabilitation* (2006) 135 Cal.App.4th 903, 909-910.) For instance, “[e]xcusable neglect has been defined as neglect that might have been the act or omission of a reasonably prudent person under the same or similar circumstances.’ [Citation.] It ‘is not shown by the mere failure to discover a fact until it is too late; the party seeking relief must establish that *in the exercise of reasonable diligence*, he failed to discover it.’ [Citation.]” (*Barragan v. County of Los Angeles* (2010) 184 Cal.App.4th 1373, 1382-1383.) “Where the lateness of the claim is attributable to the failure of the claimant . . . to conduct a reasonably prudent investigation . . . , relief from the claims filing statute is not available.” (*Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288, 1296.)

Turner appears to argue that his failure to present a timely claim was the result of excusable neglect. He specifically asserts that, prior to January 10, 2014, he could not reasonably have discovered that third party criminals had unlawfully entered his property and taken control of the utilities because the utilities previously had been turned off due to his failure to pay his bill, and he had no reason to suspect that there had been any change. However, according to Turner, he was the sole owner and occupant of the single-family home, and was only briefly away during the Columbus Day holiday. A reasonably prudent person in Turner’s position thus would have been put on notice that further inquiry was required when, despite having the utilities turned off for non-payment, the water and power in the home were suddenly restored. Moreover, Turner admitted that, by November 19, 2013, he was aware that the water service for his home had been restored despite his non-payment and that the

police previously had visited his home in response to a neighbor's complaint about a group of strangers inside the home. If Turner had conducted a reasonable inquiry at that time, he could have discovered the alleged wrongful conduct of the City and filed a claim based on such conduct within the limitations period. Yet Turner waited an additional five months after his alleged discovery of these facts to file his claim. On this record, Turner has failed to show that such delay was reasonable.

On appeal, Turner also appears to argue that his failure to timely present his claim should be excused because he has suffered from “ongoing severe problems of frustration, worry, distraction, concentration, logistics, and limited resources” since the October 2013 burglary of his home. It is true that excusable neglect can be the result of a physical or mental disability where the claimant can establish that the disability “so limited [his or her] ability to function and seek out counsel such that the failure to seek counsel could itself be considered the act of a reasonably prudent person under the same or similar circumstances.” (*Barragan v. County of Los Angeles*, *supra*, 184 Cal.App.4th at p. 1385.) However, as one appellate court has observed, “every claimant is likely to be suffering from some degree of emotional upset, and it takes an exceptional showing for a claimant to establish that his or her disability reasonably prevented the taking of necessary steps.” (*Ibid.*) Here, Turner's bare allegations about his emotional state were insufficient to establish excusable neglect because “no evidence was offered that these conditions substantially interfered with his ability to function in daily life, take care of his personal and business affairs, or seek out legal counsel.” (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 46.)

Because Turner has failed to demonstrate that he was entitled to relief from the claim presentation requirement, the trial court did abuse its discretion in denying his section 946.6 petition.

DISPOSITION

The order denying Turner's section 946.6 petition is affirmed. The City shall recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

MENETREZ, J.*

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