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Wilson v. Las Vegas Metropolitan Police Dep't, 137 Nev. Adv. Op. 70 (Nov. 18, 2021)

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Wilson v. Las Vegas Metropolitan Police Dep't, 137 Nev. Adv. Op. 70 (Nov. 18, 2021)¹

Tort Law: Proceeding before a citizen review board does not warrant tolling the statute of limitations.

Summary:

In this appeal, the Nevada Supreme Court considered whether a proceeding before a citizen review board warrants tolling the statute of limitations pursuant to *State, Department of Human Resources v. Shively*.² The Court concluded that, because participation was not mandatory, the review board proceeding does not toll the statute under *Shively*.³ Additionally, because appellant failed to demonstrate that he acted diligently and that an extraordinary circumstance prevented him from timely filing his civil complaint in district court, the Court concluded that the doctrine of equitable tolling does not apply.

Facts And Procedural History:

On August 22, 2017, appellant Curtis Wilson was stopped by two Las Vegas Metropolitan Police Department (LVMPD) Officers for an improper lane change. The officers forced Wilson to stand in front of his car in high temperatures for a significant period of time while handcuffed. Wilson alleges he was cuffed with such force that his hands and wrists were permanently injured. Wilson, an African-American, also claims the officers were motivated by racial animus and released him only after discovering that he was a retired firefighter.

In October 2017, Wilson filed a citizen complaint with the LVMPD Citizen Review Board (CRB), an advisory board to LVMPD that may refer citizen complaints against police officers to the LVMPD and make recommendations regarding discipline, as well as review LVMPD's internal investigations. The CRB referred Wilson's case to a hearing panel for review and told him that he could "contact legal counsel to pursue any other legal remedies available" if he was unsatisfied with the outcome of the hearing. The CRB ultimately found that there was no policy violation but concluded that the officers had unnecessarily escalated the situation and recommended additional officer training.

Unsatisfied with the result of the CRB hearing, Wilson filed a civil complaint in district court against LVMPD and the officers on November 13, 2019. Wilson asserted claims for battery, false imprisonment, and negligence. Respondents filed a motion to dismiss because Wilson's complaint was barred by the statute of limitations. Wilson argued that the statute of limitations was tolled while he sought administrative remedies and that equitable considerations favored tolling. The district court granted the motion to dismiss, finding that tolling the statute of limitations was not warranted.

Discussion:

The district court did not err in dismissing Wilson's complaint

Pursuant to NRS 11.190(4), there is a two-year statute of limitations an action for battery or false imprisonment, or for "an action to recover damages for injuries to a person . . . caused by the wrongful act or neglect of another."⁴ That period begins to run "when the wrong occurs and a

¹ By Tali Frey.

² *State, Department of Human Resources v. Shively*, 110 Nev. 316, 871 P.2d 355 (1994).

³ *Id.*

⁴ NEV. REV. STAT. 11.190(4)(c), (e).

party sustains injuries for which relief could be sought.”⁵ Wilson filed his complaint more than two years after the wrong occurred, after the statute of limitations had passed. Wilson argued that pursuing administrative remedies, even when elective, tolls the statute of limitations per *Shively*. LVMPD, however argued that *Shively* does not apply and Wilson was not entitled to the tolling of the statute of limitations because 1) CRB is not an administrative agency or court, 2) it is not mandatory to file a complaint with CRB before filing suit in civil court, and 3) Wilson did not state that there were extraordinary circumstances preventing him from filing his suit on time.

Distinguishing Shively

In *Shively*, The Nevada Supreme Court held that the statute of limitations was tolled during the pendency of an administrative hearing when that hearing was required before filing a civil complaint.⁶ Wilson, however, was not required to present his case to the CRB before filing a civil complaint and the Court denied expanding *Shively* to toll the statute of limitations for administrative proceedings that are not mandatory, for three reasons: 1) There is no argument to support the implication that the CRB is an administrative proceeding, 2) in a previous decision, the Court had determined that the *Shively* holding should be applied narrowly,⁷ and 3) an ad hoc exception would undermine the intent of the Legislature.

Equitable tolling does not apply

The Court then reviewed the established threshold requirements for equitable tolling of the statute’s limitations period: (1) the plaintiff was diligent in pursuing the claims, and (2) an extraordinary circumstance prevented caused untimely action.”⁸ The Court held that Wilson did not diligently pursue his claims because he waited over a year and a half after the CRB rendered its decision to file his civil complaint, without any explanation for the delay. The Court also held that there was no extraordinary circumstance, beyond his control, that caused the untimely filing.⁹ Even if Wilson was discouraged from filing a claim until the CRB hearing concluded, there is no explanation for why he waited an additional 18 months to file his claims. Additionally, even the mistaken belief that the statute of limitations was tolled, does not constitute and extraordinary circumstance.¹⁰ Therefore, no extraordinary circumstance existed.

Conclusion:

The Court concluded that per *Shively*, these circumstances did not provide grounds for tolling the statute of limitations, and that Wilson failed to establish grounds for equitable tolling. Therefore, the district court properly dismissed the complaint. Judgement affirmed.

⁵ Petersen v. Bruen, 106 Nev. 271, 274; 792 P.2d 18, 20 (1990).

⁶ *Shively*, 110 Nev. at 318, 871 P.2d at 356.

⁷ Siragusa v. Brown, 114 Nev. 1384, 1394 n.7, 971 P.2d 801, 808 n.7 (1998).

⁸ See Fausto, 137 Nev., Adv. Op. 11, 482 P.3d at 682.

⁹ See *id.* (concluding that the plaintiff did not show extraordinary circumstances where nothing prevented her from timely filing her complaint).

¹⁰ See Salloum, 137 Nev., Adv. Op. 56, 495 P.3d at 518 (rejecting the notion that this court should equitably toll "otherwise expired claims because of [the plaintiffs] ‘miscalculation of an amended statute’ while represented by counsel”).