E-FILED
May 09, 2017 1:56 PM
Court of Appeals
Division II
State of Washington

No. 49838-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RALLAND LEROY WALLACE and DARLENE WALLACE
and the Marital Community composed thereof,

Appellants,

vs.

CHEHALIS SCHOOL DISTRICT, a local government entity,

Respondent.

Lewis County Superior Court Cause No. 16-2-00219-21

Honorable Judge James W. Lawler

Appellants' Opening Brief

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RULES

Washington Superior Court Civil Rule 56(c) 4

I. ASSIGNMENT OF ERROR

1. The trial court erred in entering the order granting Defendant's Motion for Summary Judgement (December 2, 2016).

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did Defendant School District's actions in telling Mr. Wallace they had insurance to cover his fall, in telling him in his subsequent visits to the office that they could not find the paperwork, and in eventually sending Mr. Wallace a completed claim form (two years and ten or eleven months after his injury), raise issues of material fact whether Plaintiff was induced, in reasonable reliance, to not pursue his lawsuit earlier, to his prejudice?

III. STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Plaintiff, Ralland Wallace, was injured when he fell in the bleachers while attending a basketball game at W F West High School in Chehalis; he believes it happened in December, 2012, or January, 2013. (Declaration of Ralland Leroy Wallace, hereafter "Wallace Dec.", CP 74; App 2). The most likely date is December 12, 2012. (see Defendant's Motion for Summary Judgement, Facts,CP 12 - 14). The night that Mr. Wallace fell, he talked to school official Jeff Johnson about it, who is now the Assistant Principal and Athletic Director at W F West High

School. Mr. Wallace also talked to one of the people who worked the games, Tino Sanchez (Wallace Dec; CP 74; App 2).

The next time Mr. Wallace attended a game, a few days or a week or so later, the athletic director at the time, Scott Chamberlain, came up to Mr. Wallace and told him something to the effect of 'we have insurance to cover this type of thing' (Wallace Dec.; CP 74; App 2). Mr. Wallace's impression was that a claim for his injuries was being processed and that the School District was working with him on getting something done about it. (Wallace Dec.; CP 75; App 3). According to Mr. Wallace, he went to the School District office several times to get the paperwork for the injury, but no one could find it. (Wallace Dec.; CP 75; App 3). Eventually, he got a copy of an accident report (Chehalis School District Accident Report Form, (hereafter referred to as "Claim Form"; CP 76; App 3, 4). He was not advised there was a time limit for pursuing a claim, that any further information was needed, whether his claim was accepted or denied, nor that it could be affected by any statute of limitations. (Wallace Dec.; CP 75; App 3).

The Claim Form bears a date of November 10, 2015 (just under three years after the event; CP 76; App 4). It is not clear who filled it out, but from the context, it was not Mr. Wallace.

The description of the "School Activity" on the form is:

> "Mr. Wallace was in gym watching Grandson and fell in the bleachers. Tino Sanchez witnessed and then I provided ice."

Under a heading for possible "machine or equipment failure" the form provides:

> "Mr. Wallace feels the bleachers shifted which caused him to fall."

The "date and time of accident" is listed as "January 2013 or 2014?".

There is an entry on the form under "Specify Action Taken", which provides:

> "Gave Mr. Wallace ice and told him to get it looked at. Mr. Wallace joked and said he was tough and he'd be OK. Every time after I would check on him."

Under "Description of Accident" the Claim Form states:

> "Mr. Wallace was standing towards the top of our bleachers when he lost balance and took a horrible fall down a few rows of bleachers. He got up and shook it off but we knew he must be sore."

Plaintiff filed this lawsuit on February 24, 2016. (CP 1). Defendant filed a Motion for Summary Judgement based on the statute of limitations. (CP 12).

Defendant's Motion was heard on December 2, 2016 and

was allowed. (CP 77, 78 - 79)

Judgment was entered on December 2, 2016. (CP 78).

Plaintiff filed this appeal on December 28, 2016. (CP 80).

A. STANDARD OF REVIEW

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Atherton Condo. Apartment-Owners Ass'n Bd. of Directors v. Blume Dev. Co.*, 115 Wash.2d 506, 515-16, 799 P.2d 250 (1990). All facts are considered in the light most favorable to the nonmoving party, *Atherton*, 115 Wash.2d at 516, 799 P.2d 250, and summary judgment is granted only if, from all of the evidence, reasonable persons could reach but one conclusion. *Wilson v. Steinbach*, 98 Wash.2d 434, 437, 656 P.2d 1030 (1982). The burden is on the moving party to show that there is no genuine issue as to any material fact. *Atherton*, 115 Wash.2d at 516, 799 P.2d 250. "If the moving party satisfies its burden, the nonmoving party must present evidence that demonstrates that material facts are in dispute." *Id.* If the nonmoving party fails to do so, then summary judgment is proper. *Id.*

SUMMARY OF ARGUMENT

Summary judgement should have been denied because there remain questions of material fact whether Plaintiff was induced to delay pursuing his lawsuit in reliance on the School District's actions, and whether his reliance was reasonable.

V. ARGUMENT

The school district should be estopped from raising the statute of limitations as a defense, or, at least, there are factual issues regarding whether that should occur. Estoppel by operation of law arises when the acts or statements of the Defendant induce the Plaintiff, in reasonable reliance, to act or forbear to act to his prejudice. *Marsh v. General Adjustment Bureau*, 22 Wn. App. 933, 592 P.2d 676 (1979), *Buchanan v. Switzerland Gen. Ins. Co.*, 76 Wn.2d 100, 108, 455 P.2d 344 (1969).

The facts in the *Marsh* case are strikingly similar to ours. In May of 1972 Mrs. Marsh fell on a stairway at Whitman College. She reported it to the Whitman treasurer. Two years later (the summer of 1974) she contacted the treasurer again. A claim adjuster for the college's insurance company met with Mrs. Marsh on October 22, 1974 (two years and five months after the event). He told her he did not see any liability but would submit her claim to the insurance company. Mrs. Marsh

claimed the adjuster also said it often took six months to a year to process a claim, and that she should not be alarmed is she did not hear from him. The statute of limitations ran seven months after that. The trial court granted summary judgment to the defendants. In reversing the decision of the trial court on the equitable estoppel claim, the Court in *Marsh* stated:

> "Here, Mr. Towner [the claim adjuster] allegedly advised Mrs. Marsh that she should not be alarmed if she did not hear from him in the next 6 months to 1 year concerning the status of her claim. In light of this statement we cannot say as a matter of law that it was unreasonable for Mrs. Marsh to delay the filing of her suit in the expectation that Mr. Towner would get back to her. Thus, on the estoppel question, issues of material fact exist with respect to whether Mr. Towner made the statement and whether it was reasonable for Mrs. Marsh to rely on it."
>
> *id.*, 22 Wn. App. 933 at page 936 (bracketed material inserted).

In our case, Mr. Wallace asserts he had been advised by the School District that they had 'insurance to cover this sort of thing' and as late as two years and ten or eleven months later the school district was processing the claim by filling out a form with accurate information and without indication that the claim was disputed nor that time limits were involved. He was acting

reasonably in concluding that the situation was being addressed. This is particularly apparent from the tone in the Claim Form, in which the event and the potential seriousness of it were accurately described without any suggestion that it was disputed. Mr. Wallace was reasonably under the impression that there was 'insurance to cover it' and that it was being processed.

As in the *Marsh* case, there are issues of material fact regarding the statements that were made and whether Mr. Wallace reasonably delayed taking action in reliance on them.

In one respect the facts of our case are stronger than those in *Marsh*, as Mr. Wallace was given no indication that his claim was being questioned nor disputed whereas Mrs. Marsh was told that the adjuster did not see any liability. Mr. Wallace had less reason to be concerned about whether he needed to do something than Mrs. Marsh did.

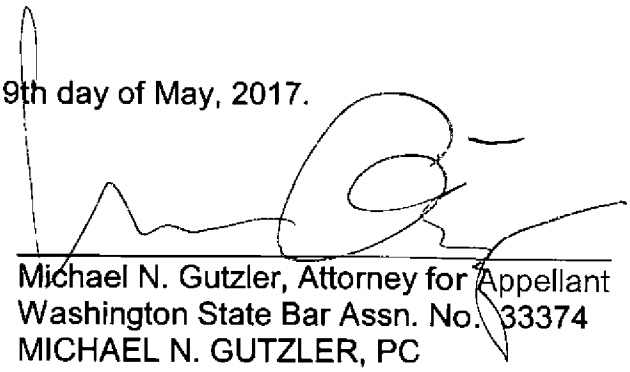
Mr. Wallace submits that under these circumstances it cannot be said as a matter of law that it was unreasonable for Mr. Wallace to delay the filing of his suit in the expectation that the School District would get back to him. Issues of material fact exist with respect to whether it was reasonable for Mr. Wallace to interpret the school district's actions to mean his claim was being processed and to delay pursing legal action

because of that.

VI. CONCLUSION

Summary Judgment was not appropriate. The decision of the trial court should be reversed and the case should be remanded for trial.

DATED this 9th day of May, 2017.



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APPENDIX

Declaration of Ralland Leroy Wallace (with attached claim form) . . . . . App 2-4

SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS

RALLAND LEROY WALLACE and DARLENE WALLACE and the marital Community composed thereof, Plaintiff, v. CHEHALIS SCHOOL DISTRICT, a local government entity, Defendant.	No. 16-2-00219-21 DECLARATION OF RALLAND LEROY WALLACE

I, Ralland Leroy Wallace, declare under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

1. In December of 2012 or January of 2013 I attended a basketball game at W F West High School in Chehalis, Washington. I fell in the bleachers.

2. The night I fell I talked to Jeff Johnson, who is now the Assistant Principal and Athletic Director.

3. Tino Sanchez, who helped at the games, was also aware I had fallen.

4. The next time I attended a game at the school, which would have been a few days or a week or two or so, I was approached by the athletic director at the time, Scott Chamberlain, who told me they have insurance to cover that type of thing.

COPY

DAGGY & ANAGNOSTOU, P.S.
1801 First Avenue, Suite 4-A
Post Office Box 1793
Longview, Washington 98632
Telephone: (360) 425-6500

5. Later, I went to the school district office several times to get the paperwork, but no one could find it. Finally, I received a copy of an accident report form, a copy of which is attached as "Exhibit A."

6. My impression was that a claim for my injuries was being processed and that the district was working with me on getting something done about it.

7. At no time did anyone tell me there was any type time limit for pursuing a claim, no one from the district told me they needed any further information from me, they did not tell me whether my claim was accepted or denied, and they did not tell me my claim might be affected by any statute of limitations.

Dated this 17 day of November, 2016, at Longview Washington.

Ralland LeRoy Wallace

Ralland Leroy Wallace

DAGGY & ANAGNOSTOU, P.S.
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Telephone: (360) 425-6500

CHEHALIS SCHOOL DISTRICT ACCIDENT REPORT FORM

11/10/15
DATE FORM COMPLETED

TO BE USED FOR ALL ACCIDENTS

NAME Rowland Wallace
ME ADDRESS Toledo
NDER ✓M _F AGE___ GRADE___ Adult

PHONE (360) 751-1360
SCHOOL___
TEACHER N/A

POSITION OF PERSON INVOLVED: STUDENT S/D EMPLOYEE (VISITOR)
OTHER___

NATURE OF INJURY (CHECK ALL THAT APPLY)		BODY PART INJURED	R	L	LOCATION	
(ACCIDENTAL)		ANKLE			AUDITORIUM	
ACCIDENTAL CONTACT		ARM			BUS/BUS STOP	
ANIMAL BITE/STING		BACK			CAFETERIA	
ASSAULT		EAR			CLASSROOM	
ASSAULT W/ WEAPON		ELBOW			(GYMNASIUM)	
ATHLETIC INJURY (AFTER SCHOOL)		EYE			HALLWAY	
ATHLETIC INJURY (DURING SCHOOL)		FACE			LIBRARY	
BIO-HAZARD EXPOSURE		FINGER			LOCKER ROOM	
BURN/SCALD		FOOT			OFF CAMPUS	
CHEMICAL EXPOSURE		(HAND)			PARKING LOT	
CHIPPED TOOTH		HEAD			PLAYGROUND	
CHOKING		HIP			RESTROOM	
ELECTRICAL INJURY		KNEE			SCHOOL GROUNDS	
EYE INJURY		LEG			___SHOP	
FALL FROM ELEVATED SURFACE		MOUTH			___FIELD	
FRACTURE		NOSE				
HIT BY FOREIGN OBJECT		WRIST			OTHER___	
HORSEPLAY		OTHER___				
HUMAN BITE						
ILLNESS						
LACERATION						
MEDICAL CONDITION						
PUNCTURE WOUND						
SMASHED						
STRUCK STATIONARY OBJECT						
(TRIP/SLIP)						
VOCATIONAL						

SPECIFY SCHOOL ACTIVITY
Mr Wallace was in gym watching Brandson & fell in the bleachers. Tino Sanchez witnessed & then I provided ice.

IF ACCIDENT WAS THE RESULT OF A MACHINE OR EQUIPMENT FAILURE SPECIFY THE FAILURE IN DETAIL Mr Wallace feels the bleachers shifted which caused him to fall.

DOES THE STUDENT CARRY SCHOOL ACCIDENT INSURANCE
_YES _NO NA

NUMBER OF DAYS MISSED FROM SCHOOL ___ NA

DATE AND TIME OF ACCIDENT January 2013 or 2014 ?

NAME OF SUPERVISOR IN CHARGE WHEN ACCIDENT OCCURRED
Scott Chamberlain
Jeff Johnson / Tino Sanchez PHONE NUMBER (360) 807-7240

WAS SUPERVISOR PRESENT AT TIME OF ACCIDENT? ✓YES _NO

ACTION TAKEN		BY WHOM	SPECIFY ACTION TAKEN
FIRST AID TREATMENT	✓	Jeff Johnson	Gave Mr Wallace
SENT TO SCHOOL NURSE		Tino Sanchez	ice & told him to get it
AMBULANCE CALLED			Looked at Mr. Wallace
SENT TO HOSPITAL			Joked and said he was
NO TREATMENT			tough & he'd be ok. Every
CALLED PARENT/GUARDIAN			time after I would check on him
SENT HOME			
OTHER			

WITNESSES

NAME Tino Sanchez ADDRESS WF West High PHONE (360) 807-7240

NAME___ ADDRESS___ PHONE___

DESCRIPTION OF ACCIDENT
USE REVERSE SIDE IF NECESSARY

Mr. Wallace was standing towards the top of our bleachers when he lost balance and took a horrible fall down a few rows of bleachers. He got up and shook it off but we know he must be sore.

PLEASE SEND ORIGINAL TO DISTRICT OFFICE

ADDITIONAL INFORMATION ON BACK OF FORM

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Allellants' Opening Brief, postage prepaid to:

Brett S. Simmons
Elena C. Bundy
Roy, Simmons, Smith & Parsons, PS
1223 Commercial Street
Bellingham, WA 98225

With the permission of the recipients, I delivered an electronic version of the Brief, using the Court's filing portal, to:

Elena @royandsimmons.com
Bret@royandsimmons.com

I filed the Appellants' Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed in Portland, Oregon on May 9, 2017.

Michael N. Gutzler, WSBA No. 33374
Attorney for Appellants

MICHAEL N. GUTZLER, PC

May 09, 2017 - 1:56 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
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Appellate Court Case Title:	Ralland Wallace, Appellant v. Chehalis School District, Respondent
Superior Court Case Number:	16-2-00219-4

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