

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.

BRIEF OF RESPONDENT

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A. Statement of the Case

Appellant Ralland Wallace (“Wallace”) fell on the bleachers during a boys basketball game at WF West High School gymnasium on December 11, 2012 (the “incident”). CP 37 (15:23-25), 39-40 (59:14-61:4), 56-57.

According to Wallace, in the days or “week or two or so” following the incident, while attending the next basketball game, the District’s then Athletic Director “came up to Wallace and told him something to the effect of ‘we have insurance to cover this type of thing.’” CP 70, 74-75. “Afterwards, Mr. Wallace thought paperwork was being processed” and went to the “district office several times to get the paperwork, but no one could find it,” although he ultimately “received a copy of an accident report form.” *Id.* Based on the District’s informational statement and completion of its standard accident report form, it was Wallace’s impression that “a claim for [his] injuries was being processed and that the District was working with [him] on getting something done about it.” CP 74-75.

More than three years after the incident, on December 22, 2015, Wallace served on the District a Claim for Damages in relation to the incident. CP 2, 58-59. And on February 24, 2016, Wallace filed a

Complaint for Damages against Chehalis School District (the “District”) in Lewis County Superior Court. CP 1-4. The District filed a motion for summary judgment based on Wallace’s Claim for Damages and Complaint being time-barred. CP 12-17. The Court agreed and granted the District’s motion for summary judgment, dismissing Wallace’s Complaint with prejudice. CP 78-79; VRP 2-8. Wallace appeals the trial court’s order. CP 80.

B. Summary of Argument

The trial court’s decision granting summary judgment and dismissing Wallace’s Complaint was proper because the District’s conduct (stating that the District had insurance “to cover that type of thing” and completing its standard accident report form) did not create a genuine issue of material fact as to equitable estoppel thereby precluding the statute of limitations from barring Wallace’s untimely Claim for Damages and Complaint.

C. Argument

As a preliminary matter, Wallace does not dispute that his Claim for Damages was filed more than three years after the incident. CP 2, 37 (15:23-25), 39-40 (59:14-61:4), 58-59, 74-75; RP 2; *see also* CP 69-75 and Opening Brief, generally. Rather, Wallace contends that equitable estoppel precludes the application of the statute of limitations. But as

discussed below, the trial court properly found no issue of material fact precluding summary judgment on Wallace's claim of negligence.

Washington courts do not favor equitable estoppel, and a party asserting it must prove each of its elements by clear, cogent, and convincing evidence: (1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) an action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission. *Peterson v. Groves*, 111 Wn. App. 306, 310, 44 P.3d 894 (2002). "The gravamen of equitable estoppel with respect to the statute of limitations is that the defendant made representations or promises to perform which lulled the plaintiff into delaying timely action." *Id.* at 311; *Del Guzzi Const. Co. v. Glob. Nw., Ltd., Inc.*, 105 Wn.2d 878, 885, 719 P.2d 120 (1986) ("Estoppel will preclude a defendant from asserting the statute of limitation [] when his actions have *fraudulently* or *inequitably* invited a plaintiff to delay commencing suit until the applicable statute of limitation has expired."). Wallace cannot establish a genuine issue of material fact as to whether equitable estoppel barred the trial court from imposing the applicable statute of limitations and the trial court's ruling should be affirmed as a result.

1. There is no genuine issue of material fact as to whether the District's statement reasonably induced Wallace to forbear action to his detriment

Wallace offers a single statement in support of his theory of equitable estoppel: a statement made by the District's former Athletic Director in the days or "week or two or so" following the incident **that the District had insurance "to cover that type of thing."** CP 74-75 (emphasis added); *see also* CP 69-73 and Opening Brief, generally. But Wallace fails to offer any evidence that the statement fraudulently or inequitably invited him to delay commencing suit until the applicable statute of limitations had expired. CP 74-75. Nor does Wallace offer any evidence that the District's statement was inconsistent with a claim afterward asserted. *Id.* Instead, Wallace simply states that the facts are similar to the case of *Marsh v. General Adjustment Bureau*, 22 Wn. App. 933, 592 P.2d 676 (1979).

In *Marsh*, the plaintiff fell and suffered injuries while on Whitman College campus. *Id.* at 934-35. She reported the incident and the school undertook an investigation which ultimately determined that the condition of the stairs had not contributed to the accident. *Id.* at 935. When Plaintiff's injuries persisted, she again contacted the school who referred her to Whitman's insurance broker. *Id.* Whitman's insurance broker then employed the services of General Adjustment Bureau to investigate the

claim. *Id.* A representative met with the plaintiff at her house, two years and five months after the on-campus fall. *Id.* During the meeting, the Bureau representative told Plaintiff that he “saw no liability on the part of the college for her fall, but would submit her claim to the insurance company.” *Id.* He also told Plaintiff that “it often took 6 months to 1 year to process a claim, and that she was not to be alarmed if she did not hear from him.” *Id.* The *Marsh* court found issues of material fact to exist with respect to whether the representative made the statement to Plaintiff and whether it was reasonable for Plaintiff to rely on the statement. *Id.* at 936.

But the District’s statement to Wallace was different from the representative’s statement in *Marsh* in several significant ways. First, unlike the representative’s statement in *Marsh*, the District does not deny that its then Athletic Director told Wallace that the District had “insurance to cover that type of thing.” CP 74-75, 84-88. In other words, there is no issue of material fact with respect to whether the District made the statement. Second, the statement by the District’s then Athletic Director was made in the days or “week or two or so” following the incident and simply provided information: the District has insurance “to cover that type of thing.” CP 74-75. Unlike the statement in *Marsh*, the District’s informational statement did not include any representation or misrepresentation about liability, an indication that a claim was being

processed, or the time-frame for processing the same. *Id.* And nothing about the District's informative statement reasonably induced Wallace to forbear action to his detriment. *Id.*

Wallace nonetheless contends that the facts of his case "are stronger than those in *Marsh*" because he was "given no indication that his claim was being questioned nor disputed." Opening Brief at 7. But Wallace did not file a Claim for Damages with the District until after the expiration of the statute of limitation – on December 22, 2015. CP 2, 58-59. And prior to that, there was no reason for the District to give Wallace any indication about a claim that did not yet exist.

2. There is no genuine issue of material fact as to whether the completion of the District's standard accident report form induced Wallace to forbear action to his detriment

The only other alleged conduct on which Wallace relies is the District's completion of its standard accident report form – a form entitled, "CHEHALIS SCHOOL DISTRICT ACCIDENT REPORT FORM." CP 76. For some reason, Wallace's Opening Brief repeatedly refers to this accident report form as a "Claim Form," capitalizing the word "Claim" and "Form" four times in his brief, implying that this is the true title and use of the form. *See* Opening Brief at pp. 2-3, 7. Yet, as CP 76 shows, the form that Wallace repeatedly and incorrectly labels a "Claim Form" is no such thing; it is simply an "Accident Report Form." CP 76.

Also, while Wallace contends that the District was “filling out forms,” Wallace identifies only one form - the District’s standard accident report form. CP 71, 74-76. And that one form is simply a “report” of an accident, bearing the indication: “TO BE USED FOR ALL ACCIDENTS.” *Id.* at 74-76. The form does not contain any information to suggest that it is a claim form. *Id.* at 76. And the completed accident report form does not in any way convey that the District was “processing a claim” on Wallace’s behalf nor does it give any indication that “the situation was being addressed,” such that Wallace would reasonably be induced not to act. *Id.*

Finally, Wallace’s Opening Brief states – without citation – that, “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.” Opening Brief at p. 6. But as discussed above, the form to which Wallace refers (CP 76), is simply an “Accident Report Form.” CP 76. And the fact that the District did not advise Wallace of the time limit for pursuing a claim does not help his cause, particularly because the District has no duty to inform an injured party of the statute of limitations. *See e.g., Marsh*, 22 Wash. App. at 935–36 (Absent circumstances which support estoppel, “no [] duty to notify a claimant of the impending

expiration of a statute of limitations or to inform a claimant of the denial of his claim.”). And Wallace’s claim that the District failed to give him any “indication that the claim was disputed” is similarly unavailing. Wallace admittedly filed his Claim for Damages on December 22, 2015, after the expiration of the statute of limitations and, prior to that, there was no reason for the District to give Wallace any indication about a claim that did not yet exist. CP 2, 58-59.

D. Conclusion

Wallace served a Claim for Damages on the District after the statute of limitations elapsed. A statement by the District that it had insurance “to cover this sort of thing” in the days or weeks following the incident and completion of the District’s standard accident report form are insufficient to create a genuine issue of material fact as to whether equitable estoppel bars the imposition of the 3-year statute of limitations. Wallace’s Complaint is therefore time-barred and the trial court’s dismissal should be affirmed.

DATED this 8th day of June, 2017.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on the date stated below, I did the following:

Served a true and correct copy of the following document(s), to the following party(ies):

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