

JUN 23 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

DANNY STEVEN KRAUSE
and LORI A. KRAUSE, husband
and wife

Superior Court No. 16-2-00218-3

Plaintiffs/Appellants,

COA No. 351793

and

CITY OF CLARKSTON, and
DOES I-V,

Defendants/Respondents.

APPELLANT'S BRIEF

Appeal from the Superior Court of the State of Washington
in and for the County of Asotin

Honorable Scott D. Gallina, Presiding

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I.

TABLE OF CASES AND AUTHORITIES

CASES:

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3 II.

4 INTRODUCTION

5 This Appeal involves a Judgment entered in favor of
6 Defendants/Respondents, herein (CP#54-56). Plaintiffs/Appellants
7 Danny and Lori Krause, caused to be filed a Complaint against
8 Defendant (for purposes herein) alleging that on the evening of
9 September 11, 2013, Plaintiff, Danny Krause, was operating a 2009
10 KWMC motorcycle at the intersection of Fifth Street and Fair
11 Street in Clarkston, Washington, when he was involved in a serious
12 wreck due to the design and/or maintenance of said intersection.
13 (CP#1-6) The claim against city defendant was served on August
14 30, 2016; complaint was filed on September 8, 2016, and not
15 actually served until September 2, 2016. (CP#41-47) Defendant
16 moved for Summary Judgment based upon noncompliance with
17 RCW4.96.020. (CP #16-23).

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24 III.

25 ASSIGNMENT OF ERROR

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27 Did the Superior Court err in granting summary judgment to
28 the defendant based solely upon *Application of 4.96.020*.

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3 IV.

4 STATEMENT OF THE CASE

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6 Defendant's filed a motion for summary judgment alleging
7 that failure on the part of plaintiff to wait sixty days from service of
8 their claim for damages before commencement of their action
9 against the city of Clarkston warranted dismissal of their complaint.
10
11 (CP#16-23)

12
13 Facts pertinent to said issue are as follows:

14
15 1) The claim for damages was served on the city of
16 Clarkston on August 30, 2016. (CP#41)

17
18 2) The complaint was filed in Asotin County Superior
19 Court on September 8, 2016. (CP #1-6).

20
21 3) The complaint was served on the City of Clarkston
22 on November 2, 2016. (CP#41)

23
24 4) The time between serving the claim and service of
25 the complaint was sixty-four days. (CP#41)

26
27 5) During said 64 days plaintiff's had no contact from
28 defendant or representatives therefore regarding settlement,

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3 question of damages, or liability. There simply was no
4 contact. (CP#42)
5

6 The court granted summary judgment. (CP#54-56)
7

8 V.

9 ARGUMENT

10 A.

11 Standard of Review

12
13 The above entitled matter comes before this reviewing court
14 from a grant of summary judgment against the plaintiffs. The
15 standard of review is de novo and appropriate if on the pleading
16 and affidavits and all reasonable inferences drawn therefrom in
17 favor of the non-moving party demonstrate the moving party is
18 entitled to judgment as a matter of law. Weden v. San Juan
19 County, 135 Wn.2nd 678, 958 P.2d 273, 279 (1998); CR 56(c).
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22 B.

23 RCW 4.96.020

24
25 The response to the issue must be an unequivocal yes.
26 Plaintiffs have substantially complied with RCW 4.96.020. The
27 defendants had more than sixty days to respond to the claim for
28 damages between filing of the claim and service of the complaint.

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3 RCW 4.96.020(4) requires mere substantial compliance with
4 the requirements of the claim regarding the contents (no issue has
5 been raised regarding the contents of the claim herein) and
6 procedural requirements. The case of Lee v. Metro Parks Tacoma,
7 183 Wn. App. 961, 335 P.3d 1014 1017 (2014) out of Division
8 Two states the sixty day time frame is procedural wherein the court
9
10 states:

11
12 *RCW 4.96.020(5)* states that substantial compliance
13 will be deemed satisfactory for all “procedural
14 requirements” of *RCW 4.96.020*. Because under
15 *Waples* the 60-day waiting period is a procedural
16 requirement, we hold that strict compliance is not
17 required and a claim against a governmental entity
18 is not barred if a tort claimant substantially complies
19 with that waiting period.

20 2. Standard for Substantial Compliance

21 *RCW 4.96.020(5)* states that procedural
22 requirements like the 60-day waiting period must be
23 liberally construed so that substantial compliance
24 will be deemed satisfactory. We must apply this
25 liberal construction directive and substantial
26 compliance standard “in a manner that promotes the
27 purpose of the claim-filing statutes.” *Medina, 147*
28 *Wn.2d at 310*. Substantial compliance of a statutory
requirement means that the “statute has been
followed sufficiently so as to carry out the intent for
which the statute was adopted.” *Banner Realty, Inc.*
v. Dep't of Revenue, 48 Wn. App. 274, 278, 738 P.2d
279 (1987) (quoting *In re Habeas Corpus of*

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Santore, 28 Wn. App. 319, 327, 623 P.2d 702 (1981)).

The purpose of claim filing statutes is to “allow government entities time to investigate, evaluate, and settle claims.” Medina, 147 Wn.2d at 310. Allowing time for investigation and evaluation also provides an opportunity for governmental entities to assess the potential costs and benefits of litigation. See Williams v. State, 76 Wn. App. 237, 248, 885 P.2d 845 (1994). Accordingly, we analyze whether Lee substantially complied with the 60-day waiting period under RCW 4.96.020(4) by considering the status of Metro Parks' claim investigation, claim evaluation, and pursuit of settlement negotiations.

The defendant was provided more than the requisite time in order to accomplish the goals of RCW4.96.020 to investigate and pursue settlement. Further the declaration in support of Defendant’s motion for summary judgement fails to set forth any purported prejudice whatsoever.

It should also be noted that “commencement of an action” is defined in CR 3 by one of two methods. The rule states commencement of a civil action is by “service of a copy of a summons together with a copy of a complaint. Which did not occur for more than the requisite sixty days. Arguably the rule also provides for commencement of an action by filing a complaint.

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3 Given the substantial compliance language coupled with
4 commencement of an action by service the plaintiffs herein have
5 technically as well as substantially complied with the requisites of
6 RCW 4.96.020.
7

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9 VI.

10 CONCLUSION

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12 Therefore, based upon foregoing Mr. Krause respectfully
13 requests this reviewing Court to reverse the grant of summary
14 judgment and order the matter remanded.
15

16 DATED this 22 day of June, 2017.

17
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I HEREBY CERTIFY that
a true and correct copy
of the foregoing was on
this 22 day of June, 2017,

- Mailed
- Hand Delivered
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