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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL W. BRADBURY,

Plaintiff and Appellant,

v.

COUNTY OF SAN BERNARDINO et al.,

Defendants and Respondents.

G050867

(Super. Ct. No. CIVDS1110909)

O P I N I O N

Appeal from a judgment of the Superior Court of San Bernardino County,
John M. Pacheco, Judge. Affirmed.

Steven C. Smith, Derrick C. Hughes, and Jason K. Smith for Plaintiff and
Appellant.

Jean-Rene Basle, County Counsel, and Teresa M. McGowan, Deputy
County Counsel for Defendants and Respondents.

In 1984, Michael W. Bradbury experienced a parent's worst nightmare when his three-year-old daughter Laura disappeared in Joshua Tree National Park, never to be seen again. In 1986, a portion of a small skull (the skullcap), eventually identified through DNA testing as Laura's, was found in the area where she was last seen. Bradbury was aware of the discovery of the skullcap, and had viewed it in 1987 but never obtained the remains for burial. Some additional small bone fragments—that were too small to be DNA tested—were also found in the vicinity of the skullcap. Bradbury maintains he never knew about these additional bone fragments prior to 2010 when he began making inquiries of the County of San Bernardino (the County) and its Sheriff-Coroner's Department (the Coroner) about his daughter's remains so he could bury them, only to learn the bone fragments had been destroyed in 1991.

In his action for negligence, negligent infliction of emotional distress, and conversion filed in 2012 against the County and the Coroner (sometimes referred to collectively in the singular as the County), Bradbury alleged the County improperly destroyed the additional bone fragments. The trial court granted the County's motion for summary judgment because the action was barred by Bradbury's failure to timely file a claim under the Government Claims Act (Gov. Code, § 810 et seq.).¹ The court concluded Bradbury had reason to believe, and had acknowledged, in April 2010 that the additional bone fragments had been destroyed. He did not file his claim with the County until June 2011, more than one year later. On appeal, Bradbury challenges various evidentiary rulings and contends there were triable issues of fact as to when his cause of action accrued. We reject his contentions and affirm the judgment.

¹ All further statutory references are to the Government Code, unless otherwise indicated.

FACTS & PROCEDURE

The Complaint

Bradbury's complaint, filed January 9, 2012, alleged that when Laura disappeared in Joshua Tree National Park in 1984, law enforcement presumed her to have been kidnapped. In March 1986, hikers found a portion of a small skull—the skullcap—and 38 small fragments of bone in the area where Laura was last seen. The skullcap and bone fragments were given to an anthropologist, Dr. Judy Suchey, for analysis, and then returned to the County of San Bernardino Sheriff-Coroner Department Crime Lab (the Crime Lab). Bradbury alleged that in 1991 DNA tests confirmed the skullcap and bone fragments were Laura's.

Bradbury alleged that in May 1991, the skullcap was released back to the Coroner's office, but the additional bone fragments remained in the Crime Lab. Bradbury was allowed to view the skullcap. Bradbury alleged he was aware from a newspaper article there were also "a small number of [bone] fragments," but he never learned any specific details about them. Bradbury did not see any additional bone fragments when he viewed the skullcap, and he believed at the time the skullcap was the only remains of his daughter.

Bradbury alleged that in April 2010, he learned from Suchey that in addition to the skullcap, numerous small bone fragments had also been found in 1986. Bradbury began communicating with the Coroner to locate the bone fragments "so that Laura could have a proper burial." Bradbury alleged that on September 20, 2010, he learned from Deputy Coroner David Van Norman the bone fragments that remained in the Crime Lab were destroyed in 1991.

Based on the foregoing, Bradbury's complaint alleged causes of action for negligence and negligent infliction of emotional distress based on the County's "handling, disposition, processing, identification, release, and safeguarding of Laura's remains." He also alleged a cause of action for conversion of his daughter's remains.

Bradbury's Tort Claim

Prior to filing his complaint, Bradbury filed a claim with the County on June 27, 2011, for damages due to emotional distress he suffered when he learned on September 20, 2010, the additional bone fragments had been destroyed. The County rejected the claim because it was not filed within the six months required by the Government Claims Act (§ 911.2). Bradbury filed an application with the County for leave to present a late claim on the ground his failure to file a claim within six months of September 20, 2010, was due to excusable neglect because of his inability to find legal counsel willing to take his case. The County denied the application. Bradbury filed a petition for relief from his failure to timely file a claim (§ 946.6), which the trial court granted finding excusable neglect for Bradbury's "[three]-month tardy filing" of the claim.

The Summary Judgment Motion

The County filed a motion for summary judgment asserting the complaint was barred by the one-year statute of limitations applicable to actions against a public entity. In the alternative, the County sought "partial summary judgment" (i.e., summary adjudication) on Bradbury's negligence causes of action because he could not establish a duty or that destruction of the bone fragments was not a substantial factor in causing Bradbury's emotional distress, and on his conversion cause of action asserting Bradbury had no property rights in his daughter's remains for conversion purposes.

The County's separate statement set forth the following facts. In a letter to the Coroner dated December 16, 1986, on the letterhead "Laura Bradbury Organization" and signed by Bradbury, Bradbury acknowledged he knew about the additional bone fragments discovered with the skullcap. The letter specifically referred to discovery of several skull bone fragments belonging to a small child but questioned the conclusion the fragments were Laura's. In late 1986 or early 1987, Bradbury and his wife viewed the skullcap.

In December 1990, Bradbury learned from the Coroner the DNA from the skullcap matched his daughter. In her deposition, Suchey testified the bone fragments found with the skullcap were too small to be DNA tested, and there was no scientific certainty the small bone fragments were Laura's. In a letter to the Sheriff's Department dated March 6, 1991, Bradbury and his wife acknowledged they had come to accept the skullcap was "the last remains of our little daughter, Laura." They asked, "[a]s for disposition of [her] remains, please have the . . . Coroner notify as . . . to what to do at this time to secure her remains so that we may have a memorial service, and a proper burial."

Bradbury later wrote a book about Laura's disappearance. In the book, Bradbury wrote the Sheriff's Department contacted him in 1991 and informed him the remains that had been found were Laura's and the Sheriff asked what Bradbury and his wife wanted to do with the remains. Bradbury told the Sheriff that he and his wife would "get back to them when we felt we could handle the situation better." Bradbury wrote he did not really trust the information he got from the Sheriff, so he and his wife "just didn't get back to them. [¶] Thus, we waited, and waited, and as the years went by, we slowly forgot about the phone call, and we never heard from them again." In Bradbury's declaration submitted in conjunction with his petition for relief from filing a late claim, he explained that around 2009, Bradbury wanted to find "closure" so he began to make inquiries about his daughter's remains for burial.

On April 6, 2010, Bradbury received the following e-mail from Van Norman: "[I] checked on the small bone fragments that were described in the original reports. They are not with the skull. According to the Release for Anthropological Curation form, the remains were released to . . . Suchey on July 29, 1992 We returned all remains to the Coroner Division on June 24, 2002. . . . Any material that was on hold by the Sheriff Crime Lab was destroyed back in 1991 (per Sheriff policy). I do not know whether the skull fragments were ever released to the Crime Lab. In short . . . I

do not know where these small bone fragments are.” The next day, April 7, 2010, Bradbury sent the following e-mail to Suchey: “Judy, how dare they destroy parts of an identified (according to them) skull remains!! Whether or not I had accepted their conclusions in 1990-91 or not, how dare they destroy any parts of someone[']s child[']s remains!! There must be some legal liability here????” Bradbury did not file his claim with the County until June 27, 2011.

Bradbury's Opposition

Bradbury's opposition was accompanied by his declaration in which he denied knowing in 1986 there were any additional bone fragments found with the skullcap. He declared that although he signed the December 1986 letter referring to the additional bone fragments, the letter was “drafted by someone from the Laura Organization,” which was a common practice at the time, and he did not remember reading the letter before he signed it. Bradbury declared that when he and his wife viewed the skullcap in late 1986 or early 1987, he was not shown any additional bone fragments and he believed the skullcap to be the only remains of his daughter. Bradbury agreed he was asked by the Coroner in 1990 what he wanted to do with the skullcap, but he needed time to sort out the news that DNA testing had confirmed it was Laura's. Bradbury wrote to the Coroner in March 1991, reluctantly accepting the remains were Laura's, and asking how to secure Laura's remains, but his inquiry went unanswered. He became discouraged and decided to put it all behind him until late 2009 when he began making inquiries about Laura's remains. It was not until April 2010, that he learned from Suchey that additional small bone fragments were found that had been associated with the skullcap.

Bradbury declared that when he received Van Norman's April 6, 2010, e-mail, he forwarded it to Suchey. He recalled that she replied “and speculated, ‘So, they simply destroyed the bone fragments???? Did this really happen?????’” Bradbury responded to Suchey with the April 7, 2010, e-mail submitted with the County's separate

statement in which he stated, “how dare they destroy parts of an identified (according to them) skull remains!! . . . there must be some liability here???” Bradbury declared his response was simply an expression of frustration and speculation on his part about what *might* have happened to the bone fragments, he still hoped the additional bone fragments would be found.

Bradbury declared that after April 2010, he continued making inquiries about the bone fragments. Finally, on September 20, 2010, Van Norman again e-mailed Bradbury stating, “I really thought that I had addressed with you the results of my research[] into the fate of the additional fragments of skull bones described by . . . Suchey. But, on review of our e[-]mail messages it appears that I did not. I apologize.” The e-mail again explained the skull and assorted bone fragments were entered into the Crime Lab in 1986, and although the skull was subsequently released to the Coroner, the small bone fragments remained with other material in the Crime Lab, and “this material” was destroyed on October 29, 1991.

Bradbury declared that it was not until he received Van Norman’s September 20, 2010, e-mail that he learned the bone fragments associated with his daughter’s skull had been destroyed, which caused him emotional distress.

Objections to Bradbury’s Declaration

The County objected to Bradbury’s entire declaration because there was no statement the facts contained therein were based on his personal knowledge. The court sustained that objection. The County also objected to various specific statements contained in Bradbury’s declaration as either being in conflict with his deposition testimony, or lacking foundation. We will discuss those objections in detail anon.

Ruling

The trial court granted the County’s motion for summary judgment. It ruled that assuming Bradbury did not know in 1987 or 1991 about the additional bone fragments, his claim clearly arose in April 2010. On April 6, 2010, Bradbury received

the e-mail from Van Norman stating material held by the Crime Lab had been destroyed in 1991. The court concluded that when Bradbury then e-mailed Suchey on April 7, 2010, saying, “how dare they destroy parts of an unidentified (according to them) skull remains!! . . . There must be some legal liability here???[,]” he was acknowledging that he understood he had “been wronged, so to speak, by the County.” Bradbury’s claim was not filed until June 27, 2011, more than one year after his claim accrued. The court entered judgment for the County dismissing Bradbury’s complaint.

DISCUSSION

I. Summary Judgment Standard of Review

The standards for reviewing summary judgments are well established. “Summary judgment is appropriate only if there is no triable issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. [Citation.] . . . A defendant moving for summary judgment . . . must show that one or more elements of the plaintiff’s cause of action cannot be established or that there is a complete defense. [Citation.] The defendant can satisfy its burden by presenting evidence that negates an element of the cause of action or evidence that the plaintiff does not possess and cannot reasonably expect to obtain evidence needed to support an element of the cause of action. [Citation.] If the defendant meets this burden, the burden shifts to the plaintiff to set forth ‘specific facts’ showing that a triable issue of material fact exists. [Citation.] [¶] We review the trial court’s ruling de novo, liberally construe the evidence in favor of the party opposing the motion, and resolve all doubts concerning the evidence in favor of the opposing party. [Citation.] We will affirm an order granting summary judgment . . . if it is correct on any ground that the parties had an adequate opportunity to address in the trial court, regardless of the trial court’s stated reasons. [Citations.]” (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 119-120.) We examine the evidence submitted in connection with the summary judgment motion, with the exception of evidence to which objections have been appropriately sustained. (Code

Civ. Proc., § 437c, subd. (c); *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 711.)

II. Evidentiary Rulings

Bradbury contends the trial court erred by sustaining the County's objections to Bradbury's declaration filed in opposition to the summary judgment motion. We find no reversible error.

Bradbury and the County agree we should review the trial court's evidentiary rulings on summary judgment for abuse of discretion. Although our Supreme Court has not decided whether a trial court's ruling on evidentiary objections in connection with a summary judgment motion should be reviewed under a de novo or abuse of discretion standard (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 ["we need not decide generally whether a trial court's rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo"]), the clear weight of appellate court authority applies the abuse of discretion standard. (*Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1427; *DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679 (*DiCola*); *Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694 (*Carnes*)). As the party challenging the court's decision, it is Bradbury's burden to establish such an abuse, which we will find only if the trial court's order exceeds the bounds of reason. (*DiCola, supra*, 158 Cal.App.4th at p. 679; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1283.) Furthermore, even where an abuse of discretion is shown, Bradbury must still show any claimed error or abuse of discretion was prejudicial. (*Carnes, supra*, 126 Cal.App.4th at p. 694 [Cal. Const., art. VI, § 13 requires anyone seeking reversal of a judgment to show error was prejudicial].)

We begin by addressing the County's objections to specific portions of Bradbury's declaration that the trial court sustained. At paragraph 5, Bradbury declared, "I do not recall if I asked about any other bone fragments when I viewed the skullcap in

early 1987.” The County objected that the statement directly conflicted with Bradbury’s deposition testimony. When asked in his deposition if when he viewed the skullcap he had asked about whether there were other remains, Bradbury replied, “I’m not sure if we did. We may have. [¶] . . . [¶] We probably -- I really--I’m not--I can’t be absolutely sure.”

“It is well established that ‘a party cannot create an issue of fact by a declaration which contradicts his prior discovery responses.’ [Citations.] In determining whether any triable issue of material fact exists, the trial court may give ‘great weight’ to admissions made in discovery and ‘disregard contradictory and self-serving affidavits of the party.’ [Citation.]” (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087.) Bradbury argues the declaration statement does not clearly contradict his deposition testimony; both convey he just could not remember what he might have asked in 1987 about the existence of any other remains besides the skullcap. We cannot say the trial court’s conclusion Bradbury’s declaration contradicted his deposition testimony was beyond the bounds of reason. The deposition testimony suggested Bradbury believed he probably did ask in 1987 about additional remains; the declaration statement suggests he probably did not. But in any event, even were we to agree with Bradbury the two responses do not clearly contradict, he has made no attempt at demonstrating how he was prejudiced by the ruling. (*Carnes, supra*, 126 Cal.App.4th at p. 694.) Bradbury has offered no explanation as to how the trial court’s exclusion of statements concerning what he may have known in 1987 affects the trial court’s conclusion that by April 2010, he knew about the additional bone fragments, and was on notice they had been destroyed in 1991.

At paragraph 11 of his declaration, Bradbury stated, “I never thought during the period of 1990 to 2009 that the County would destroy my daughter’s skullcap—the only remains I thought existed during this time—because this was the remains of a child and evidence in a homicide investigation.” The County objected the

statement lacked a proper foundation that there was an ongoing homicide investigation during that time. Bradbury argues the statement was not offered to prove its truth, i.e., that there *was* an ongoing criminal investigation, but to prove his state of mind, i.e., that because he *believed* there was still an ongoing homicide investigation from 1990 to 2009, he had no reason to think the County would destroy any of his daughter's remains. (See *Love v. Wolf* (1967) 249 Cal.App.2d 822, 833 [witness may always testify to his or her own state of mind when it becomes material fact in case].) As with his prior argument, Bradbury has failed to show prejudice from the court's ruling sustaining the County's objection to this statement. Even if the statement was admissible to prove Bradbury's state of mind between 1990 and 2009, he offers no explanation as to how it affects the trial court's conclusion that by April 2010, he knew about the additional bone fragments and knew they had been lost or destroyed.

At paragraph 15 of his declaration, Bradbury set forth the April 7, 2010, e-mail he received from Suchey, which he said preceded his e-mail to her upon which the court based its finding that on April 7, 2010, Bradbury was on notice the County had destroyed the remains. Bradbury declared that in Suchey's e-mail she "speculated, 'So, they simply destroyed the bone fragments???? Did this really happen????'" The trial court sustained the County's objection to Bradbury's statement Suchey was "speculating" as lacking foundation. Bradbury has not shown any abuse of discretion. "Generally, a lay witness may not give an opinion about another's state of mind." (*People v. Chatman* (2006) 38 Cal.4th 344, 397.) Bradbury argues his declaration statement that Suchey was speculating in her April 7, 2010, e-mail was admissible under Evidence Code sections 400 and 403 as a preliminary fact supporting her deposition testimony that she did not learn until September 21, 2010, that the bone fragments had in fact been destroyed. This theory of admissibility was not raised below and cannot be raised for the first time on appeal. (*People v. Pearson* (2013) 56 Cal.4th 393, 470, fn. 10.)

At paragraph 22 of Bradbury's declaration he stated, "No one from the County notified me prior to October 29, 1991[,] that my daughter's remains (and evidence) would be destroyed on that day." The County objected the statements "remains" and "evidence" were destroyed lacked foundation, and the statement the remains were evidence was irrelevant. The trial court sustained the objection. Bradbury argues there was an adequate foundation because he can testify to what he was or was not told. As with his other arguments, Bradbury has failed to demonstrate he was prejudiced by the ruling. (*Carnes, supra*, 126 Cal.App.4th at p. 694.) He offers no explanation as to how the trial court's exclusion of statements about what he knew prior to October 1991 affects the trial court's conclusion that by April 2010, he knew about the additional bone fragments and was on notice they had been destroyed.

In addition to the above objections to specific statements in Bradbury's declaration, the County objected to the declaration in its entirety because although it was signed under penalty of perjury, it lacked a specific statement Bradbury had personal knowledge of the facts contained therein. Bradbury subsequently filed an amended declaration before the hearing on the County's summary judgment motion containing the specific statement Bradbury had personal knowledge of the facts contained in the declaration. Although the trial court indicated at the hearing that it had received that amended declaration, it nonetheless sustained the County's objection.

Bradbury contends the trial court abused its discretion because although Evidence Code section 702 requires a witness's testimony be based on "personal knowledge," it contains no requirement that declarations contain a formal specific averment of personal knowledge. He contends a declaration is admissible so long as the "the statements in the declarations make clear that the declarant[] had actual personal knowledge." (*Tutti Mangia Italian Grill, Inc. v. American Textile Maintenance Co.* (2011) 197 Cal.App.4th 733, 742.)

The County responds that because Code of Civil Procedure section 437c, subdivision (d), requires declarations in opposition to summary judgment motions be based on personal knowledge, the lack of a specific formal averment of personal knowledge is fatal to admissibility of a declaration. But Code of Civil Procedure section 437c, subdivision (d), does not require an *express* allegation of personal knowledge; it requires only the declaration *be made* on personal knowledge, which can be discerned from the nature of the allegations themselves. (See, e.g., *Johnson v. Drew* (1963) 218 Cal.App.2d 614, 616; *Maltby v. Shook* (1955) 131 Cal.App.2d 349, 353.) As observed in *Weil & Brown*, “Omission of form allegation immaterial: Since the form allegation is only a conclusion by the declarant, its omission is immaterial. It is sufficient if the *facts* stated in the declaration are matters as to which the declarant might reasonably be expected to have personal knowledge—e.g., what statements he or she made to others; what statements were made by others in his or her presence, etc. [citations].) (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) § 10:113, p. 10-49.) Moreover, as Bradbury points out, he cured the claimed defect by filing an amended declaration before the hearing on the County’s summary judgment motion containing the formal statement Bradbury had personal knowledge of the facts contained in his declaration. The County’s respondent’s brief simply ignores this point.

Thus, to the extent the trial court sustained the County’s objection to Bradbury’s declaration in its entirety simply because it lacked a formal statement that Bradbury had personal knowledge of the facts, we agree that ruling was in error. Our conclusion, however, does not aid Bradbury as he is unable to demonstrate prejudice. As already discussed above, Bradbury has failed to show the trial court’s rulings as to specific portions of his declaration were in error. And as will be explained below, assuming the general admissibility of the declaration (i.e., of those parts of the declaration to which the County did not raise specific objections that were sustained as

already discussed), the declaration does not demonstrate a material issue of fact as to when Bradbury's cause of action accrued.

III. Timeliness of Bradbury's Claim

Bradbury contends the trial court erred by concluding there was no triable issue of fact as to whether his government tort claim against the County was timely.

Bradbury contends there is a triable issue of fact as to whether his causes of action accrued in April 2010, based on Van Norman's e-mail and Bradbury's response, or in September 2010, based on Van Norman's final e-mail. We reject his contention.

A. Guiding Principles

“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.)’ [Citation.] ‘[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action. . . . The failure to timely present a claim for money or damages to a public entity bars the plaintiff from bringing suit against that entity.’ [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.]

“Claims for personal injury must be presented not later than six months after the accrual of the cause of action, and claims relating to any other cause of action must be filed within one year of the accrual of the cause of action. (§ 911.2, subd. (a).) 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.]

“The failure to timely present a claim to the public entity bars the claimant from filing a lawsuit against that public entity. [Citation.] Moreover, because the purpose of the claims is not ‘to prevent surprise [but rather] is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation . . . [citations,] . . . [i]t is well-settled that claims statutes must be satisfied even in face of the public entity’s actual knowledge of the circumstances surrounding the claim. Such knowledge—standing alone—constitutes neither substantial compliance nor basis for estoppel.’ [Citation.]” (*California Restaurant Management Systems v. City of San Diego* (2011) 195 Cal.App.4th 1581, 1591.)

Here, Bradbury filed a claim with the County on June 27, 2011, in which he sought damages for emotional distress he suffered when he learned on September 20, 2010, that the additional bone fragments had been destroyed in 1991. The County rejected the claim because it was untimely on its face as it was not filed within the requisite six-months, and it denied Bradbury’s application to file a late claim. The trial court granted Bradbury’s section 946.6 petition for relief from his failure to timely file a claim, finding excusable neglect for Bradbury’s “[three]-month tardy filing” of his claim. On the County’s summary judgment motion, the trial court agreed Bradbury’s claim in fact accrued *earlier* than September 20, 2010—it accrued in April 2010—and thus Bradbury had failed to present his claim within even the maximum one year for filing claims, which barred his action. Bradley does not argue the trial court’s ruling on his section 946.6 petition for relief from his failure to timely file a claim was determinative of the issue of *when* his cause of action actually accrued. Thus, we turn to the issue at hand—whether there was a triable issue of fact as to when the one-year period for filing a claim with the County commenced to run.

The date of accrual of Bradbury’s causes of action is the crucial inquiry before us. “The date of accrual of a cause of action marks the starting point for

calculating the claims presentation period. [Citations.]” (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 508.) ““A cause of action accrues for purposes of the filing requirements of the Government Claims Act on the same date a similar action against a nonpublic entity would be deemed to accrue for purposes of applying the relevant statute of limitations.’ [Citations.]” (*Ibid.*)

““Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. . . . ‘Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not “accrue until the party owning it is entitled to begin and prosecute an action thereon.”’ . . . In other words, ‘[a] cause of action accrues “upon the occurrence of the last element essential to the cause of action.”’” [Citations.]” (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 316-317, italics omitted.) “In tort actions, the statute of limitations commences when the last element essential to a cause of action occurs. [Citations.] The statute of limitations does not begin to run and no cause of action accrues in a tort action until damage has occurred. [Citation.] If the last element of the cause of action to occur is damage, the statute of limitations begins to run on the occurrence of ‘appreciable and actual harm, however uncertain in amount,’ that consists of more than nominal damages. [Citations.] ‘[O]nce plaintiff has suffered actual and appreciable harm, neither the speculative nor uncertain character of damages nor the difficulty of proof will toll the period of limitation.’ [Citations.]” (*San Francisco Unified School Dist. v. W.R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1326 (*San Francisco Unified*).

Here, although the alleged wrongful conduct—destruction of the additional bone fragments—occurred in 1991, Bradbury argues the delayed discovery rule applies and his causes of action did not accrue until he *learned* of the bone fragments’ destruction. “The common law delayed discovery rule is an exception to the general rule and provides that a cause of action does not accrue until a plaintiff discovers, or reasonably should discover, the cause of action. ‘A plaintiff has reason to discover a

cause of action when he or she “has reason at least to suspect a factual basis for its elements.” [Citations.]’ [Citation.] The elements that the plaintiff must suspect are the generic elements of wrongdoing, causation, and harm. [Citation.] A plaintiff who suspects that he or she has suffered an injury caused by the wrongdoing of another is charged with the knowledge that a reasonable investigation would reveal, and the limitations period begins to run at that time. [Citation.]” (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 66, fn. omitted.)

“When the issue is accrual, belated discovery is usually a question of fact, but may be decided as a matter of law when reasonable minds cannot differ. [Citation.]” (*Blanks v. Shaw* (2009) 171 Cal.App.4th 336, 375.) We agree with the trial court reasonable minds cannot differ in this case.

Preliminarily, we note the general allegations of Bradbury’s complaint carefully distinguish between the skullcap and the small bone fragments, and his causes of action appear to be premised upon destruction of the small bone fragments by the Crime Lab and not upon any alleged mishandling of the skullcap by the Coroner. Bradbury alleged he was aware of and viewed the skullcap. Bradbury admits in his declaration he was asked in 1991 what he wanted done with the skullcap, and he specifically inquired about how to obtain it for burial. However, for personal reasons, Bradbury and his wife did not pursue obtaining the skullcap for burial. Bradbury alleged he was vaguely aware small bone fragments were discovered in the vicinity of his daughter’s skullcap, but never knew the specifics about them and was not shown any additional bone fragments when he viewed the skullcap or told there were any other remains. Bradbury alleged he did not learn about the existence “of Laura’s 38 additional bone fragment[s]” until April 2010, when Suchey told him about them. Bradbury alleges the bone fragments were destroyed by the Crime Lab in 1991. There is nothing in the complaint as to what happened to the skullcap specifically (i.e., if it too was destroyed in 1991, if it was lost, or if it remains in the County’s possession). The April 6, 2010,

e-mail from Van Norman to Bradbury suggests the skullcap was still in the County’s possession (“[I] checked on the small bone fragments that were described in the original reports. They are not with the skull.”) But Bradbury’s declaration specifically refers to destruction of the skullcap (“I never thought during the period of 1990 to 2009 that the County would destroy my daughter’s skullcap—the only remains I though existed during this time”) And we note that Bradbury’s complaint, after carefully distinguishing between the skullcap and the additional small bone fragments, alleges the County breached a duty relating to the “handling, disposition, processing, identification, release, and safeguarding of Laura’s *remains*[,]” and improperly exercised dominion and control over his daughter’s “*remains*.” (Italics added.) Thus it is not entirely clear if Bradbury’s allegations of liability are premised upon the alleged mishandling of the additional bone fragments, or of the bone fragments and the skullcap. That confusion aside, we nonetheless agree with the trial court Bradbury was on notice of his damage claim in April 2010 at the latest.

“The statute of limitations begins to run when the plaintiff suspects or should suspect that his or her injury was caused by wrongdoing—when the plaintiff has notice of information or circumstances that would put a reasonable person on inquiry. The plaintiff need not be aware of the specific facts necessary to establish the claim—these facts can be determined during pretrial discovery. Once a plaintiff suspects wrongdoing and therefore has an incentive to sue, he or she must decide whether to file suit or sit on his or her rights. When a suspicion exists, the plaintiff must go find the facts; he or she cannot wait for the facts to find him or her.” (*San Francisco Unified, supra*, 37 Cal.App.4th at pp. 1326-1327.)

Viewed most favorably to Bradbury, we must accept his declaration that he did not know that bone fragments discovered in 1986 were “associated” with Laura’s skullcap until Suchey so advised him in April 2010. Bradbury then began making inquiries of the County. It is undisputed that on April 6, 2010, Bradbury received an

e-mail from Van Norman explaining that: “[I] checked on the small bone fragments that were described in the original reports. They are not with the skull. According to the Release for Anthropological Curation form, the remains were released to . . . Suchey on July 29, 1992 We returned all remains to the Coroner Division on June 24, 2002. . . . Any material that was on hold by the Sheriff Crime Lab was destroyed back in 1991 (per Sheriff policy). I do not know whether the skull fragments were ever released to the Crime Lab. In short . . . I do not know where these small bone fragments are.” Bradbury forwarded Van Norman’s e-mail to Suchey who replied to Bradbury, ““So, they simply destroyed the bone fragments???? Did this really happen?????”” Bradbury responded to Suchey on April 7, 2010, “Judy, how dare they destroy parts of an unidentified (according to them) skull remains!! Whether or not I had accepted their conclusions in 1990-91 or not, how dare they destroy any parts of someone’s child’s remains!! There must be some legal liability here????”

Bradbury argues the e-mails at best create a question of fact as to whether he was on notice of his claim. He argues it was not clear from Van Norman’s April 6, 2010, e-mail that the additional bone fragments had *in fact* been destroyed. Rather, he argues the e-mail could be read as suggesting merely that *if* the additional bone fragments had been held by the Crime Lab, they were destroyed in 1991. Van Norman stated he did not know if the “skull fragments” had in fact been released to the Crime Lab, and closed his e-mail with “In short . . . I do not know where these small bone fragments are.” Bradbury argues a reasonable trier of fact could view Suchey’s and his responses to Van Norman’s e-mail—i.e., Suchey’s ““So, they simply destroyed the bone fragments???? Did this really happen?????”” and Bradbury’s “how dare they destroy any parts of someone[’]s child[’]s remains!! There must be some legal liability here????”—as mere speculation the bone fragments *might* have been destroyed and did not put him on notice that they *had* been destroyed. Bradbury asserts it was not until the September 20, 2010, e-mail from Van Norman stating “I really thought that I had addressed with you the

results of my research[] into the fate of the additional fragments of skull bones described by . . . Suchey. But, on review of our e[-]mail messages it appears that I did not. I apologize.” That e-mail again explained the skull and assorted bone fragments were entered into the Crime Lab in 1986, and although the skull was subsequently released to the Coroner, the small bone fragments remained with other material in the Crime Lab, and “this material” was destroyed on October 29, 1991. Bradbury argues a trier of fact could conclude he did not know with finality the additional bone fragments were destroyed until September 20, 2010, and his claim filed June 27, 2011, was timely.

Bradbury’s argument ignores that his causes of action were based on allegations of breach of duties pertaining to the “handling, disposition, processing, identification, release, and safeguarding of Laura’s remains[,]” and improper exercise of dominion and control over her remains. Even if the April 6, 2010, e-mail did not give Bradbury a definitive confirmation the bone fragments were in fact destroyed, they clearly placed him on notice of the wrongdoing he alleges pertaining to their handling and disposition. Van Norman’s e-mail plainly gave Bradbury reason to suspect the bone fragments were nowhere to be found and most probably had been destroyed.

“A plaintiff is charged with “presumptive” knowledge so as to commence the running of the statute once he or she has “notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation. . . .” [Citations.]’ [Citation.]” (*Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 980.) Furthermore, even if Van Norman’s April 6, 2010, e-mail was equivocal, Bradbury’s response to it was not—he clearly interpreted Van Norman’s e-mail as a representation that the bone fragments *had been destroyed* (“how dare they destroy any parts of someone[’]s child[’]s remains!!). And he clearly contemplated that whatever had happened to the bone fragments he had been “wronged”—“There must be some legal liability here???”

In short, there was no triable issue of fact as to when Bradbury was on notice of his claim against the County for mishandling and/or destruction of the additional bone fragments. Therefore, his causes of action had accrued by April 7, 2010, and his claim was filed more than a year later in June 2011. Accordingly, Bradbury's claim was not timely and the trial court properly granted the County's motion for summary judgment. In view of this conclusion, we need not address Bradbury's arguments pertaining to the trial court's ruling on the alternative grounds for summary adjudication of specific causes of action.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.