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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

ROLANDO GARZA,

Plaintiff and Appellant,

v.

A.J. GARCIA et al.,

Defendants and Respondents.

H040889

(Monterey County
Super. Ct. No. M110619)

Appellant is Rolando Garza and is an inmate at Corcoran State Prison. In 2011, appellant sued A.J. Garcia, and others, all correctional officers at Salinas Valley Prison, for damages arising out of personal injuries he suffered from a fall. The Monterey County Superior Court found that appellant failed to satisfy the Government Claims Act, and sustained defendants' demurrer to the complaint without leave to amend. Acting in propria persona, appellant brings this appeal.¹

STATEMENT OF THE FACTS AND CASE

In 2008, appellant was an inmate at Salinas Valley State Prison, and fell while he was entering the shower. As a result, appellant filed a complaint in the Monterey County Superior Court in 2011 alleging that defendants were negligent and violated his right to

¹ Defendants brought a motion to strike documents appellant included with his appeal, arguing that the documents were not part of the record below. We ordered the motion considered with the appeal. The motion is denied.

be free from cruel or unusual punishment under the California Constitution. Appellant sought \$500,000 in monetary damages and “[a]ny and all additional relief this court deems just, proper, and equitable.”

The trial court sustained defendants’ demurrer to the complaint without leave to amend on the following grounds: (1) the complaint failed to state facts sufficient to constitute a cause of action; (2) the causes of action in the complaint were barred because appellant failed to comply with the Government Claims Act; and (3) appellant had no private right of action to a claim for damages against defendants for civil rights violations.

In February 2014, the trial court dismissed the action with prejudice. Appellant brings this appeal.

DISCUSSION

We review an order sustaining a demurrer de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) Because a demurrer tests only the legal sufficiency of the pleading, the facts alleged in the pleading are deemed to be true. (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.) We do not review the validity of the trial court’s reasoning, and therefore will affirm its ruling if it was correct on any theory. (*Id.* at pp. 1034-1035.) Nor are we “limited to plaintiff[’]s theory of recovery in testing the sufficiency of [its] complaint against a demurrer, but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory.” (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

“Where a demurrer is sustained without leave to amend, [we] must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect; if so, [we] will conclude that the trial court abused its discretion by

denying the plaintiff leave to amend. [Citation.] The plaintiff bears the burden of establishing that it could have amended the complaint to cure the defect.” (*Berg & Berg Enterprises, LLC v. Boyle, supra*, 178 Cal.App.4th at p. 1035.)

Here, the trial court sustained defendants’ demurrer without leave to amend in part because it found appellant had not complied with the Government Claims Act. The Government Claims Act (Gov. Code, § 810 et seq.)² “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.)” (*State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1237.) “[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action,” subject to certain statutorily-enumerated exceptions. (*Sparks v. Kern County Bd. of Supervisors* (2009) 173 Cal.App.4th 794, 798 (*Sparks*).)

“The failure to timely present a claim for money or damages to a public entity bars the plaintiff from bringing suit against that entity.” (*Sparks, supra*, 173 Cal.App.4th at p. 798; see also § 945.4.) “A cause of action that is subject to the statutory claim procedure must allege either that the plaintiff complied with the claims presentation requirement, or that a recognized exception or excuse for noncompliance exists. . . . If the plaintiff fails to include the necessary allegations, the complaint is subject to attack by demurrer.” (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374.)

Appellant asserts the trial court erred when it found that he did not comply with the Government Claims Act. He argues he “gave adequate notice and the only notice required by a state prisoner before filing his lawsuit is pursuant to the (PLRA) Prison Litigation Reform Act 42 U.S.C. § 1997e (a).”

Contrary to appellant’s assertion, the record shows he did not comply with the claim presentation requirement of the Government Claims Act. For purposes of

² All further statutory references are to the Government Code.

defendants' demurrer, the trial court took judicial notice of a declaration from the custodian of records from the Government Claims Board wherein he stated there was no record of appellant presenting a claim regarding the August 21, 2008 incident to the Government Claims Board.

In addition, appellant's complaint contains an exhibit entitled, "Application for Leave to Present Late Claim under Government Code Section 911.4." The application was sent to the "Board of Supervisors (or other governing Body) of California Department of Corrections and Rehabilitation." Section 915, subdivision (b) requires that the application be sent to the Government Claims Board. Therefore, appellant's application was sent to the wrong state entity, and did not satisfy the claim presentation requirement of the Government Claims Act. (See, e.g., *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1780 [finding no substantial compliance with claim presentation requirement where an application for leave to file a late claim was sent to California Correctional Institution in Tehachapi rather than the State Board of Control])

Moreover, regardless of the fact that appellant submitted his application to the wrong state entity, his application was time-barred. In his application to file a late claim, appellant stated: "[t]he cause of action of [appellant] as set forth in his proposed claim attached to the application, accrued on August 21, 2008[,] a period of two years from the filing of this application." A late application must be presented to the Government Claims Board no later than one year after the accrual of the cause of action. (§ 911.4, subd. (b).) By appellant's own admission, his application to file a late claim was two years past due at the time he submitted it.

The trial court properly sustained defendants' demurrer to appellant's complaint without leave to amend. Appellant did not timely present his claim to the Government Claims Board before filing his suit, and this error cannot be cured by amendment of the complaint.

In his reply brief, appellant states, “[f]or a plaintiff who is a novice and not versed in the law I have been as diligent in this action as any paid attorney.” While we are sympathetic to the challenges facing appellant as a pro per, the fact that appellant is representing himself does not diminish his burden to establish error on appeal. The law permits a party to act as his or her own attorney, however, “ ‘[s]uch a party is to be treated like any other party and is entitled to the same, but no greater[,] consideration than other litigants and attorneys. [Citation.]’ [Citation.] Thus, as is the case with attorneys, pro[] per[] litigants must follow correct rules of procedure. [Citations.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

MÁRQUEZ, J.

GROVER, J.