(14)

CITY OF SACRAMENTO

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
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DEPUTY CITY ATTORNEYS

DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

September 3, 1982

CITY MANAGER'S OFFICE
RECEIVED
SEP 8 ....

APPROVED
BY THE CITY COUNCIL
SEP 21 1982
OFFICE OF THE
CITY CLERK

Denied

Honorable City Council
Council Chamber
City Hall
Sacramento, California 98514

RE: LATE CLAIM APPLICATION OF BARRETT LEON STREET

Members in Session:

SUMMARY

Barrett Leon Street has applied for leave to present a late claim. We are of the opinion that the application does not fall within those circumstances under which relief must be granted.

BACKGROUND

Barrett Leon Street has applied for leave to present a late claim. His claim seeks damages for personal injury resulting from alleged tortious conduct of the Sacramento Police Department.

Government Code Section 911.2 provides that a claim for personal injury shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued no later than February 9, 1982, and the 100-day filing period expired no later than May 20, 1982. The late claim application was filed on August 19, 1982.

The application states that applicant's attorney intended to file an application with the City of Sacramento within the 100-day period but he does not know if he mailed a copy to the City within that time period.

ANALYSIS

A person seeking to file a late claim must show that the failure to file a timely claim was due to mistake, inadvertence, surprise, or excusable neglect (§911.6(b)(1)). In order to obtain relief on any of these grounds, it must appear that the applicant acted with reasonable diligence under the circumstances (Roberts vs. State (1974) 39 Cal.App. 3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear that these standards have been met in the instant case. The inexcusable neglect of a party's attorney does not justify

SEP 21 1982

the failure to file a timely claim. "It is not the purpose of the remedial statutes to grant relief from defaults which are the result of inexcusable neglect of parties or their attorneys in the performance of the latter's obligations to their clients." Tammen vs. County of San Diego (1966) 66 Cal.2d 468, 478. Applicant has presented no facts which indicate that his attorney's failure to file a claim with the City was due to excusable neglect. Under the circumstances, we cannot agree that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably prudent person (Roberts vs. State, supra; Tsingaris vs. State (1979) 91 Cal. App.3d 312.

RECOMMENDATION

For the foregoing reasons it is recommended that the application of Barrett Leon Street for leave to present a late claim be denied.

Very truly yours,

JAMES P. JACKSON
City Attorney

DIANE B. BALTER
Deputy City Attorney

RECOMMENDATION APPROVED:

CITY MANAGER

DBB:gd

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FHFH

Nick A. Travis
814 19th Street
Sacramento, Ca 95814

Attorney for Claimant

446-0689

In the Matter of the application for presentation of a late claim of BARRETT LEON STREET

vs.

APPLICATION FOR LATE CLAIM

SACRAMENTO COUNTY, a political subdivision of the State of California; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT; SACRAMENTO CITY POLICE; SACRAMENTO CITY, and DOES I through XX.

FH Claimant, BARRETT LEON STREET, hereby presents this application for late claim and the proposed claim to the Sacramento City Clerk, through his attorney, NICK A. TRAVIS. This claim was presented to the Sacramento County Board of Supervisor on April 22, 1982. A copy of the claim was also to be mailed to the Sacramento City Clerk on or about April 22, 1982, as the SACRAMENTO CITY POLICE were named in the claim. Whether or not such mailing occurred I am not certain. However, my investigation reveals there is no such claim on file with the City.

I declare under penalty of perjury that the foregoing is

true and correct. Executed this 19th day of August 1982.

NICK A. TRAVIS,

Attorney for Claimant.

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APR 24 1982
BOARD OF SUPERVISORS

NICK A. TRAVIS
814 19th Street
Sacramento, CA 95814
Attorney for Claimant
446-0689

Proposed Claim

In the Matter of the Claim
of BARRETT LEON STREET

vs

SACRAMENTO COUNTY, a political subdivision of the State of California; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT: SACRAMENTO CITY POLICE; and DOES I through XX.

/

BARRETT LEON STREET hereby presents this claim to the + city 8/19/82
Sacramento Board of Supervisors pursuant to Government Code Section 910

1. The name and post office address of claimant's attorney is Nick A. Travis, 814 19th Street, Sacramento, California 95814

3. The post office address to which claimant desires notice of this claim to be sent is as follows: 814 19th Street, Sacramento, Ca 95814.

4. On February 6, 1982 claimant received injuries under the following circumstances:

Claimant was arrested by two Sacramento City Police officers on the belief that Claimant was the person wanted on a fugitive from justice warrant issued by a law enforcement agency in the State of Oregon. This arrest occurred on February 6, 1982 at approximately 5:30 P.M. At that time Claimant was walking north on 34th street near the cross street of Truckee Court. His intentions were to shop at a nearby market. While walking he observed a speeding Sacramento City Police car. This patrol car speeded past Claimant but immediately thereafter turned back and stopped close to where Claimant was then located. At this time two city police officers exited the vehicle and began questioning Claimant. The officers stated to Claimant that he resembled a suspect they were in search of.

Thereupon, the officers obtained identification from Claimant and continued to detain him. After approximately 20 minutes had passed a message came over the police radio causing the officers to take sudden alarrm. Claimant was thereafter made to place himself on his knees and bodily searched. Claimant was then taken into custody, booked and finally incarcerated in the Sacramento County Jail on the charge that he was in fact a Mr. Eddie Hilliard, a person wanted on a fugitive from justice warrant issued in the State of Oregon.

After confinment in jail for two days Claimant was presented before a magistrate on the morning of February 8,

1982, whereupon all charges against him were dismissed on motion from the District Attorney's Office. Nonetheless, Claimant was not thereafter released, but for some unknown reason was re-booked for the same charges that were dismissed against him on the morning of February 8, 1982.

After this re-booking Claimant was granted access to a telephone and he called his attorney, Nick A. Travis, who had appeared and represented Claimant at the morning arraignment hearing of February 8, 1982. Claimant's attorney was unable to understand why Claimant was not released and therefore made telephone calls that next morning of February 9, 1982, to personnel at the District Attorney's Office , the City Police Department and the County Jail. Consequently, Claimant was released during the morning of February 9, 1982. However, jail personnel was unable to return an expensive Stenson hat which had been taken from Claimant by them for safe keeping at the time Claimant was booked.

This false imprisonment of Claimant was particularly serious in view of the fact that he was wrongly incarcerated for 29 days due to the same error by local Sacramento government personel in October of 1981. A claim was presented to the County for this previous incident on November 30, 1982, a copy of which is attached as Exhibit "A" and incorporated by reference as part of this present claim. Futher, reliable information has been received indicating that the person mistakenly believed to be Claimant, a Mr. Eddie Hillard, is and

was at all times herein mentioned incarcerated in a California prison institution. Accordinly, the errors of local law enforcement personnel were therefore particularly unreasonable.

4. So far as it is known to Claimant at date of filing this claim, Claimant has incurred damages in the amount of $600,000.00 from the acts of Sacramento City and County employees Does I through XX. These damages are in addition to those damages alleged in Claimant's November 30, 1981 claim.

5. The above mentioned claim for damages is computed on the basis of the following:

MENTAL AND EMOTIONAL DISTRESS: $300,000.00

FALSE IMPRISONMENT: $300,000.00

DATED 4-12-82

NICK A. TRAVIS
Attorney for Claimant

CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET
CITY HALL ROOM 203
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

September 24, 1982

Nick A. Travis
814 19th Street
Sacramento, CA 95814

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF BARRETT LEON STREET.
DATE OF ALLEGED INCIDENT: February 6, 1982

Dear Mr. Travis:

You are hereby notified that your application for Leave to Present a Late Claim on behalf of the above named claimant was denied by the Sacramento City Council on September 21, 1982.

The application was reviewed and duly considered. The reasons given for the failure to file a claim within the time period provided by the California Government Code were determined to be insufficient, and did not meet the requirements of the Code for relief from the claim filing requirements.

Accordingly, I must inform you your application is rejected.

Sincerely,

Anne Mason
Assistant City Clerk

AM/mlt/14
cc: City Attorney
Risk Management (2)

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.5 (Claims Presentation Requirement). See Goverment Code Section 946.6. Such a petition must be filed with the court within six (6) months of the date your Application for Leave to Present a Late Claim was denied.

You may seek the advice of any attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.