

9-10-2009

Driggers v. Grafe Respondent's Brief Dckt. 35618

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Driggers v. Grafe Respondent's Brief Dckt. 35618" (2009). *Idaho Supreme Court Records & Briefs*. 2224.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2224

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PAUL WILLIAM DRIGGERS,

Plaintiff-Appellant,

and

DESARAE J. DRIGGERS, CSARENA M.
DRIGGERS
AND MILINDA K. DRIGGERS,

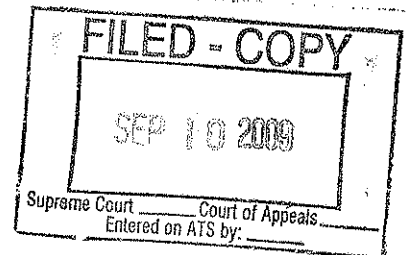
Plaintiffs-Appellants,

v.

AMANDA GRAFE, The IDAHO DEPARTMENT
OF HEALTH AND WELFARE, RICHARD
ARMSTRONG, KAREN R. VASSALLO, DAVID
BECK, THE POST FALLS POLICE
DEPARTMENT, CERTAIN UNKNOWN POST
FALLS POLICE OFFICERS, EUGENE MARANO,
ROBERT BURTON, THE KOOTENAI COUNTY
COURT, LINDA GREEN, CASA, DANIEL
COOPER, AND THE KOOTENAI COUNTY
PUBLIC DEFENDERS' OFFICE,

Defendants-Respondents.

SUPREME COURT NO. 35618



RESPONDENTS' BRIEF

Appeal from the District Court of the
Fourth Judicial District for the County of Ada

The Honorable Ronald J. Wilper, District Judge

PAUL WILLIAM DRIGGERS
Reg. 00922-287
Federal Corr. Institution
P.O. Box 23811
Tucson, Arizona 85734-3811

Pro Se Plaintiff-Appellant

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STEVEN L. OLSEN, ISB # 3586
Chief, Civil Litigation Division
MELISSA MOODY, ISB # 6027
Deputy Attorneys General
Office of the Attorney General
954 W. Jefferson St., 2nd Floor
P. O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
E-mail: melissa.moody@ag.idaho.gov

*Attorneys for Defendant-Respondent, Idaho
Department of Health and Welfare*

TABLE OF CONTENTS

I.	NATURE OF THE CASE	1
II.	FACTS AND PROCEDURAL HISTORY	1
III.	ISSUE ON APPEAL	2
IV.	STANDARD OF REVIEW	2
V.	ARGUMENT	2
	A. Introduction	2
	B. The District Court Correctly Dismissed Driggers' Complaint for Failure to Comply with the Idaho Tort Claims Act because Driggers Did Not File his Notice of Tort Claim with the Secretary of State within 180 Days, as Required by I.C. § 6-905	3
	C. Equitable Tolling Does Not Apply to Driggers' Case	6
VI.	CONCLUSION	6

TABLE OF CASES AND AUTHORITIES

Cases

<i>Anderson v. Spalding</i> , 137 Idaho 509, 518, 50 P.3d 1004, 1013 (2002)	3
<i>Greenwade v. Idaho State Tax Comm'n</i> , 119 Idaho 501, 503, 808 P.2d 420, 422 (Ct. App. 1991).....	3
<i>Madsen v. Idaho Dept. of Health and Welfare</i> , 116 Idaho 758, 761, 779 P.2d 433, 436 (Ct. App. 1989)	3
<i>McCabe v. Craven</i> , 145 Idaho 954, 957, 188 P.3d 896, 899 (2008)	2
<i>Newlan v. State</i> , 96 Idaho 711, 535 P.2d 1348 (1975)	5

Statutes

Idaho Code § 6-905.....	1, 2, 3
Idaho Code § 6-908.....	3
Idaho Code § 6-916.....	1

I.

NATURE OF THE CASE

Mr. Paul William Driggers appeals from the District Court's Order granting the State Defendants' motion to dismiss Mr. Driggers' complaint for failure to comply with the Idaho Tort Claims Act.

II.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history were set forth by the District Court as follows:

The Plaintiff filed a motion and affidavit for fee waiver on October 26, 2007, which the Court denied. The Plaintiff filed the complaint on March 4, 2008, seeking damages for alleged wrongful seizure of his children by the Idaho Health and Welfare Department prior to December 12, 2005 and denial of contact with those children since January 6, 2006. On August 2, 2006, the Plaintiff was arrested and alleges that all of his paperwork and documentation was seized. On May 22, 2006, the Plaintiff was convicted and sentenced to ten years for violation of 18 USC 1958, use of interstate commerce facilities in the commission of murder for hire.

The Defendant moved the Court to dismiss this case because the Plaintiff did not file a tort complaint with the Secretary of State within 180 days from the date his claim arose. Idaho Code § 6-905. Further the Defendant asserted that the service of process was insufficient because the Plaintiff did not serve the Secretary of State with a copy of the complaint and summons as required by Idaho Code § 6-916.¹

In his Memorandum and at oral argument, the Plaintiff stated that he served a copy of the summons and complaint on the Secretary of State on May 27, 2008 and that the 180 day requirement should be tolled due to his

¹ A copy of an affidavit from a Deputy Secretary of State, Miren Artiach, sets forth the fact that, as of May 22, 2008, Driggers had not filed a tort claim with the Secretary of State. R., pp. 108-110.

incarceration and lack of available legal materials. The Plaintiff also argued that the Court has jurisdiction because the claim did not ripen until he became aware of the fraudulent accusations behind the seizure of his children.

R., Vol. 1, p.121.

III.

ISSUE ON APPEAL

Where Appellant Driggers failed to file his Notice of Tort Claim within the required 180 days provided for in I.C. § 6-905, did the District Court correctly dismiss Driggers' complaint?

IV.

STANDARD OF REVIEW

An appellate court "freely reviews the legal issues related to the statute of limitations." *McCabe v. Craven*, 145 Idaho 954, 957, 188 P.3d 896, 899 (2008).

V.

ARGUMENT

A. Introduction

The District Court correctly dismissed Driggers' complaint in the District Court for failure to comply with the Idaho Tort Claims Act because Driggers did not file his Notice of Tort Claim with the Secretary of State within 180 days from the date the claim

arose or reasonably should have been discovered, as required by I.C. § 6-905. For the reasons explained below, equitable tolling does not apply to Driggers' case.

B. The District Court Correctly Dismissed Driggers' Complaint for Failure to Comply with the Idaho Tort Claims Act because Driggers Did Not File his Notice of Tort Claim with the Secretary of State within 180 Days, as Required by I.C. § 6-905

Idaho Code § 6-905 states:

FILING CLAIMS AGAINST STATE OR EMPLOYEE -- TIME. All claims against the state arising under the provisions of this act and all claims against an employee of the state for any act or omission of the employee within the course or scope of his employment shall be presented to and filed with the secretary of state within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later.

Idaho Code § 6-908 states:

RESTRICTION ON ALLOWANCE OF CLAIMS. No claim or action shall be allowed against a governmental entity or its employee unless the claim has been presented and filed within the time limits prescribed by this act.

The language of these sections is mandatory; failure to comply with the notice requirement bars suit. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 503, 808 P.2d 420, 422 (Ct. App. 1991) (before an action can be brought against the state or its officials, a claimant is required to file a notice of tort claim under I.C. § 6-905). *See also Anderson v. Spalding*, 137 Idaho 509, 518, 50 P.3d 1004, 1013 (2002) (trial court did not err in granting summary judgment to the defendant where plaintiff failed to give the necessary notice to Secretary of State under the Tort Claims Act); *Madsen v. Idaho Dept.*

of Health and Welfare, 116 Idaho 758, 761, 779 P.2d 433, 436 (Ct. App. 1989) (“compliance with the notice requirement of the Tort Claims Act is a mandatory condition precedent to bringing an action under the Act”; “because the action was not preceded by the filing of a notice of claim . . . the court lacked subject matter jurisdiction and properly dismissed the action”).

Eight hundred thirteen (813) days after the alleged tort occurred, Driggers filed his complaint in district court on March 4, 2008, seeking damages for the alleged wrongful seizure of his children by the Idaho Department of Health and Welfare prior to or on December 12, 2005. R., Vol. 1, p. 121. Driggers had never filed a Notice of Tort Claim with the Secretary of State, let alone with 180 days of the alleged tortious conduct in December 2005. R., pp. 108-110. Thus, the District Court properly dismissed the complaint in the District Court for lack of subject matter jurisdiction because Driggers did not file a Notice of Tort Claim within 180 days of the alleged tort.²

In his brief, Driggers argues that the District Court erroneously “assumed precisely what must be proved,” (Appellant’s brief, p. 12); namely, that Driggers had knowledge of the tort by December 12, 2005, the date on which Driggers claims Health and Welfare wrongfully seized his children. However, a review of the District Court’s decision shows that the District Court did not “assume” that Driggers had knowledge; rather, the District

² The District Court’s Order Granting Motion to Dismiss appears to have treated the Complaint filed in District Court as the document that needed to be filed within 180 days, rather than the Notice of Tort Claim. R., p. 123. Regardless, the District Court’s judgment of dismissal should be affirmed.

Court found as a factual matter that Driggers “reasonably should have known [of the tort] because he alleges that his damages began to accrue on the date that they [his children] were taken.” R., Vol. 1, p.122. Driggers did not present any evidence to the District Court that would contradict this factual finding.

Driggers’ argument is, in some ways, similar to the unsuccessful argument of the plaintiff in *Newlan v. State*, 96 Idaho 711, 535 P.2d 1348 (1975). In *Newlan*, the parents of a boy who died in a car accident were not aware that they had a cause of action against the State for the State’s use of inappropriate paving materials until they consulted with their lawyer. Their ignorance of a possible cause of action did not excuse their failure to comply with the time limit in the Tort Claims Act.

Driggers also offers excuses as to why he did not file a Notice of Tort Claim in a timely manner. He alleges that he could not know that he had a cause of action against the State until he saw how the “promises of the parties, their actions, and cases ongoing would ‘shake out’.” (Appellant’s brief, p. 8). According to Driggers brief on appeal, he made the conscious decision to wait to file his complaint. The reasons behind his decision (to see how things would “shake out”) do not constitute an adequate excuse under the law for his failure to comply with the Tort Claims Act. The District Court properly dismissed his complaint.

C. Equitable Tolling Does Not Apply to Driggers' Case

Driggers argues on appeal, as he argued to the District Court below, that equitable tolling should apply to suspend the statute of limitations during the time that he was incarcerated because he did not have access to law books. Appellant's brief, p. 15. Even if the doctrine of equitable tolling might apply to suspend the statute of limitations during the time that Driggers was incarcerated, which State defendants do not concede, it would not apply on the facts of this case.

The evidence presented to the District Court showed, and the District Court correctly found, that more than six months passed between the time that Driggers asserts that Health and Welfare fraudulently seized his children (December 12, 2005) and the time of Driggers' incarceration on August 2, 2006 (R., Vol.1, p.122). During these months, Driggers filed no Notice of Tort Claim with the Secretary of State. Thus, the doctrine of equitable tolling does not apply to Driggers' case.

VI.

CONCLUSION

The District Court correctly dismissed Driggers' complaint for *failure to comply* with the Idaho Tort Claims Act. The State Defendants respectfully request that this Court affirm the District Court's Order dismissing Driggers' complaint.

DATED this 10th day of September 2009.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

BY 
MELISSA MOODY
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September 2009, I caused to be served a true and correct copy of the foregoing Respondents' Brief by the following method to:

Paul William Driggers
Reg. 00922-287
Federal Corr. Institution
P.O. Box 23811
Tucson, Arizona 85734-3811

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail



MELISSA MOODY
DEPUTY ATTORNEY GENERAL