

DeBruin v Town of Macedon
2016 NY Slip Op 30022(U)
January 4, 2016
Supreme Court, Wayne County
Docket Number: 78665
Judge: Dennis M. Kehoe
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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

ROBERT G. DeBRUIN,
Petitioner,

-vs-

TOWN OF MACEDON, The MACEDON
POLICE DEPARTMENT, OFFICER J.
COLELLA and JOHN DOE, intended to
be one or more unknown employees of
the Macedon Police Department
Respondents

Jeffrey Wicks, Esq.
Attorney for Petitioner

Webster Szanyi, LLP
Steven R. Hamlin, Esq.
Attorneys for Respondents

2015

DECISION

Index No. 78665

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WAYNE COUNTY
SUPREME COURT

The Petitioner Robert G. DeBruin has moved for an Order granting him leave to serve a late notice of claim in the above matter pursuant to General Municipal Law §50-e. The Respondents have opposed the motion.

The Petitioner's alleged claims arise from an incident which occurred at approximately 8:00 A.M. on January 26, 2015 on Route 31 in Macedon, New York. The Petitioner's vehicle was stopped by Officer John P. Collela, Chief of Police of the Town of Macedon Police Department, based upon

Chief Collela's personal observations of the Petitioner's allegedly erratic driving. The Petitioner was transported to the Macedon Police Department, where he was detained for approximately six (6) hours and subjected to various tests to determine whether he had been driving under the influence of alcohol and/or drugs. The Petitioner was ultimately arrested on the charge of Driving While Under the Influence of Drugs, in violation of Vehicle and Traffic Law §1192(4). He was released from custody, and family members immediately transported him to Rochester General Hospital, where it was determined that the Petitioner had no trace of alcohol or drugs in his system, and that he had "most likely" suffered a T.I.A. or "mini stroke".

General Municipal Law §50-e provides in part that a Notice of Claim against a municipality must be filed within ninety (90) days of the date of the incident as a condition precedent to commencement of legal action. Therefore, the time in which the Petitioner was required to file his Notice of Claim expired on April 26, 2015. The Petitioner indicated to his present attorney that he was unaware of the statutory filing requirement; consequently, he did not contact counsel until four (4) days after the ninety (90) day period expired. A Notice of Claim was signed by the Petitioner on

May 22, 2015, and this motion was filed with the Wayne County Clerk's Office on June 5, 2015.

This Court has reviewed the affidavits submitted on behalf of the respective parties, together with the Memorandum of Law submitted by counsel for the Respondents, and the Court makes the following findings:

1) The Petitioner has failed to offer a "reasonable excuse" for his failure to file a timely notice of claim as that term has been interpreted by the courts. Case law has established that ignorance of the existence of the statutory time periods does not constitute a reasonable excuse for noncompliance (see, e.g. Cardino v Starpoint Cent. School Dist., 115 AD3d 1170 (4th Dept, 2014), *aff'd* 24 NY3d 925 (2014)).

2) Therefore, in the absence of a reasonable excuse, the Petitioner must demonstrate that the Respondent had actual knowledge of the essential facts constituting the claim, and that the delay in filing will not substantially prejudice the Respondent in maintaining its defense on the merits.

3) Given the relatively minimal delay in submitting the Petitioner's notice of claim, the Court cannot find that the municipality has suffered any serious prejudice to its defense. Moreover, the municipality acquired first

hand knowledge of the underlying facts of the case by virtue of the direct involvement of its employees in the incident.

4) However, the Respondents argue that the Petitioner has not demonstrated “actual notice”, in that the record fails to establish that the Respondents had “timely notice of any injuries or damages claimed by (Petitioner) beyond mere notice of the underlying occurrence”. (*Lewis v Northpole Fire Co.*, 11 AD3d 911 (4th Dept, 2004)). However, the appellate courts have consistently held that a municipality must have knowledge of the connection between the occurrence and the alleged damages within ninety (90) days of the accrual of the claim, “or within a reasonable time thereafter” (emphasis added) (see, e.g. *Santana v Western Regional Off-Track Betting Corp*, 2 AD3d 1304 (4th Dept, 2003)). In this instance, the Petitioner’s Notice of Claim was filed with his motion papers on June 8, 2015 less than two months after the expiration of the ninety (90) day period, which would appear to constitute reasonable notice.

However, even if the Court were to find that the municipality had timely notice of the essential facts of the Petitioner’s claim, the Court is forced to conclude that the Petitioner’s moving papers are insufficient to

establish the existence of a meritorious cause of action. Aside from the affidavit of the Petitioner's attorney, the only document submitted in support of this motion is the Petitioner's proposed Notice of Claim, which sets forth in brief his assertions that he was arrested without probable cause, and that he was denied access to medical care by employees of the Macedon Police Department.

In support of his claim for damages, the Petitioner maintains that, contrary to the conclusions reached by the police officers regarding his physical condition, his subsequent visit to Rochester General Hospital confirmed that he did not have any alcohol or drugs in his system. He further alleges that "the hospital" concluded that he had "most likely" suffered a "mini-stroke". However, the Petitioner has not submitted any affidavits or medical records from the hospital or members of its staff, nor does he provide affidavits from any of his family members who transported him to the hospital. Nor does the Petitioner controvert the sworn allegations of the police officers regarding his erratic driving, the damaged condition of his motor vehicle, and his subsequent behavior at the Macedon Police Station, all of which provided the police with ample probable cause for his arrest.

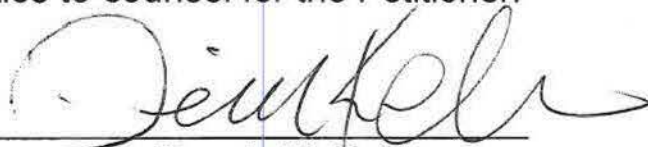
Moreover, the Petitioner has not established that the police officers acted with “deliberate indifference” in denying him access to medical assistance for his alleged physical condition. In his Notice of Claim, the Petitioner alleges that he informed the police that he needed medical treatment; however, in their sworn affidavits, the officers maintain that they offered to provide the Petitioner with medical assistance on more than one occasion, and that he refused their offers, stating that he was suffering from a “sinus condition”. Despite this apparent contradiction in the parties’ factual accounts of the conversation, this discrepancy, without more, is insufficient to give rise to a meritorious claim of “malice”, as alleged in the Petitioner’s Notice of Claim, or “recklessness”, as required by applicable case law. (See, e.g. *Allah v White*, 243 AD2d 913 (3rd Dept, 1997)). As stated above, the Petitioner has presented no documentation corroborating his alleged medical condition on the day in question, and the affidavits of the police officers support a finding that the Petitioner’s behavior, including his appearance, speech, and his poor performance of field sobriety tests, was consistent with the use of an illegal substance. The Petitioner has failed to make a sufficient showing that the officers knew, or had reason to know, that he suffered from any physical ailment. Such a conclusion,

based upon the papers as presented to the Court, is entirely speculative.

The Court concludes that the Petitioner has failed to demonstrate that his claim has merit, as required by case law. (See Cardino, supra).

Therefore, the Petitioner's motion for leave to serve a late Notice of Claim is denied. Counsel for the Respondents is directed to submit an Order consistent with this Decision, on notice to counsel for the Petitioner.

Dated: January 4, 2016
Lyons, New York


Honorable Dennis M. Kehoe
Acting Supreme Court Justice