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CITY OF SACRAMENTO



DEPARTMENT OF LAW
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SACRAMENTO, CA 95814
TELEPHONE (916) 449-5346

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DIANE B. BALTER
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

February 23, 1982

Honorable City Council
Council Chamber
City Hall
Sacramento, California

CITY MANAGER'S OFFICE
RECEIVED
MAR 1 1982

RE: LATE CLAIM APPLICATION OF WILLIAM MONTGOMERY

Members in Session:

MAR 9 1982

SUMMARY

William Montgomery 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

Mr. Montgomery has applied for leave to present a late claim. The claim seeks damages for injuries allegedly suffered as a result of an automobile accident which he claims was caused by a defective condition on public property.

Government Code §911.2 provides that a claim such as this shall be presented within 100 days of accrual of the cause of action. Applicant's cause of action accrued on January 8, 1981. The claim and late claim application were presented on January 8, 1982, one year after accrual of the cause of action. Additional information was subsequently filed on February 5, 1982.

The application states that a timely claim was not presented because applicant did not realize that he had a potential claim against the City. It is also stated that the applicant was incarcerated from February 17, 1981 to October 8, 1981.

ANALYSIS

A person seeking to file a late claim must show both: (1) that the application was presented within a reasonable time not to exceed one year after the accrual of the cause of action (Government Code §911.2(b)); and (2), that the failure to file a timely claim was due to mistake, inadvertence, surprise or

MAR 9 1982

excusable neglect (Government Code §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 (1971) 39 C.A.3d 844; El Dorado Irr. Dist. vs. Superior Court (1979) 98 Cal.App.3d 57). It does not appear to us that these standards have been met in the instant case.

The failure to discover the alleged basis of a cause of action against the City does not excuse the failure to file a timely claim. (Kupka vs. Board of Administration (1981) 122 C.A.3d 791; Tsingaris vs. State (1979) 91 C.A.3d 312; Black vs. Los Angeles (1970) 12 C.A.3d 760; Bennett vs. Los Angeles (1970) 12 C.A.3d 116). Applicant sought action against the driver involved in the accident and thus must have recognized that he had a potential cause of action. The fact that applicant was incarcerated for some of the claim filing period does not alter this conclusion (CCP §352(b); Government Code §§945.6(b), 946.6(c); Goodhue vs. Turead (1979) 100 C.A.3d 205). Applicant knew he had recourse as a result of the accident but allowed a year to pass before undertaking the fairly simple and easy act of filing a claim. In short, it does not appear that the failure to file a timely claim was due to the mistake, inadvertence, surprise or excusable neglect of a reasonably diligent person.

In addition the application was presented a full year after accrual of the cause of action. A delay of a shorter period of time has been held unreasonable (Martin vs. Madera (1968) 265 C.A.2d 76). Applicant did not file a claim until January 8, 1982, a full four months after he was released from custody. It does not appear that the application was presented within a reasonable time under the circumstances.

RECOMMENDATION

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

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen B. Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slife

CITY MANAGER



CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET
CITY HALL ROOM 203

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 448-5426

LORRAINE MAGANA
CITY CLERK

March 10, 1982

Jed Scully
Juvenile Law Clinic
McGeorge School of Law
3130 Fifth Avenue
Sacramento, CA 95817

RE: APPLICATION TO FILE A LATE CLAIM ON BEHALF OF WILLIAM MONTGOMERY.
DATE OF ALLEGED INCIDENT: JANUARY 8, 1981

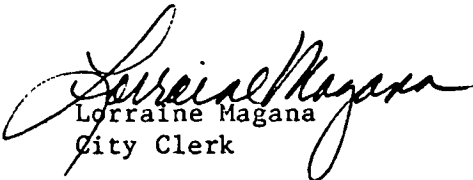
Dear Mr. Scully:

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 March 9, 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,


Lorraine Magana
City Clerk

LM/mm/20

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 Government 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.

1 JED SCULLY
2 McGEORGE SCHOOL OF LAW
3 JUVENILE LAW CLINIC
4 3130 Fifth Avenue
5 Sacramento, CA 95817
6 Telephone: (916) 739-7283

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JAN 8 4 29 PM '82

Attorneys for Claimant

7 In the Matter of the) APPLICATION FOR LEAVE TO
8 Claim of WILLIAM MONTGOMERY) PRESENT LATE CLAIM
9 against the) [Gov C §911.4]
CITY OF SACRAMENTO)

10 TO: CITY OF SACRAMENTO:

11 1. Application is hereby made for leave to present a late
12 claim under Section 911.4 of the Government Code. The claim is
13 founded on a cause of action for wrongful death which accrued on
14 January 8, 1981, and for which a claim was not timely
15 presented. For additional circumstances relating to the cause of
16 action, reference is made to the proposed claim attached hereto
17 as Exhibit A and made a part hereof.

18 2. A reason for the delay in presenting this claim is the
19 mistake, inadvertence, surprise and excusable neglect of the
20 claimant as more particularly shown in a declaration to be
21 presented. City of Sacramento was not prejudiced by the failure
22 to timely file the claim as will be shown by a declaration to be
23 presented.

24 3. A reason for the delay in presenting this claim is that
25 the claimant was incarcerated during all of the period when the
26 claim should have been presented and by reason of the
27 incarceration failed to timely present the claim as shown by the
28 declaration to be presented.

1 JED SCULLY
2 McGEORGE SCHOOL OF LAW
3 JUVENILE LAW CLINIC
4 3130 Fifth Avenue
5 Sacramento, CA 95817
6 Telephone: (916) 739-7283

Attorneys for Claimant

7 Claim of) CLAIM FOR DAMAGES
8 WILLIAM MONTGOMERY)
9 against)
CITY OF SACRAMENTO)
)

10 TO: The CITY OF SACRAMENTO:

11 WILLIAM MONTGOMERY hereby makes claim against the CITY OF
12 SACRAMENTO for the sum of \$100,000.00 and makes the following
13 statements in support of the claim:

- 14 1. Claimant's post office address is 7536 Thorpe Way,
15 Sacramento, California.
- 16 2. Notices concerning the claim should be sent to JED
17 SCULLY, 3130 Fifth Avenue, Sacramento, California.
- 18 3. The date and place of the accident giving rise to this
19 claim are January 8, 1981, on Franklin Boulevard.
- 20 4. The circumstances giving rise to this claim are due to
21 the dangerous condition of an elevated traffic island. It was
22 struck by the vehicle in which claimant's brother was a passenger
23 and he was killed.
- 24 5. Claimant's injuries are the wrongful death of his
25 brother MICHAEL JOHN WILEY MONTGOMERY.
- 26 6. The names of the public employees causing the claimant's
27 injuries are unknown.
- 28 7. My claim as of the date of this claim is \$500,000.00.

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8. The basis of computation of the above amount is as follows:

| | |
|-----------------|--------------|
| General Damages | \$100,000.00 |
| TOTAL | \$100,000.00 |

Dated: January 8, 1982.

McGEORGE SCHOOL OF LAW
JUVENILE LAW CLINIC

By: *Barry J. Martin*
John J. Curly
Attorneys for Claimant

1 JED SCULLY
2 McGEORGE SCHOOL OF LAW
3 JUVENILE LAW & APPELLATE CLINIC
4 3130 Fifth Avenue
5 Sacramento, CA 95817
6 Telephone: (916) 739-7283

7 Attorneys for Claimant

8 In the Matter of the
9 Claim of MELANIE PARKER,
10 a minor, against the
11 CITY OF SACRAMENTO

DECLARATION OF WILLIAM
MONTGOMERY, IN SUPPORT OF
APPLICATION FOR LEAVE
TO PRESENT LATE CLAIM

12 COUNTY OF SACRAMENTO:

13 STATE OF CALIFORNIA:

14 I, WILLIAM MONTGOMERY, declare:

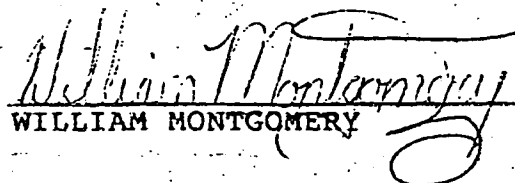
15 I am the brother of the decedent, MICHAEL MONTGOMERY, and I
16 was incarcerated in the California Youth Authority throughout the
17 majority of the 100 day period for presenting a claim against a
18 public entity for the wrongful death of my brother, which
19 occurred on January 8, 1981. I was arrested on February 17, 1981
20 and was in custody until my release on October 8, 1981. As a
21 result of this incarceration I was physically incapacitated
22 during most of the 100 day claim period following the accident as
23 would allow the filing of a claim against the public entity.
24 This physical disability along with the restrictive means of
25 seeking legal advice prevented me from filing a claim against the
26 CITY OF SACRAMENTO within the statutory period.

27 I was released from CYA on October 8, 1981. My main
28 objective in contacting the JUVENILE LAW & APPELLATE CLINIC was
to bring criminal charges against the driver of the car in which
my brother, the deceased was a passenger. At that time I was

1 unaware of any possible claim against the city. For these
2 reasons I have exercised reasonable diligence in pursuing a
3 wrongful death claim.

4 I declare under penalty of perjury that the foregoing is true
5 and correct.

6 Executed on February 1, 1982, at Sacramento, California.

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8 
9 WILLIAM MONTGOMERY
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