

Appellate Division Bars A Parent's Wrongful Death Claim Against A Public University Based On Her Untimely Notice Of Claim

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In *Garriga v. Rowan University* (A-1353-17T1), the Appellate Division held that the mother of a Rowan University doctoral student who took her own life after Rowan professors allegedly pressured her to withdraw from her graduate program could not sue the public school because she did not timely provide the school with notice of her impending claim. The Court held that the mother's self-evident grief over the loss of a child, in and of itself, was insufficient to excuse the late notice of claim filing. In order to sue a public entity in New Jersey, a plaintiff is required to file a notice of claim within 90 days of the accrual of the cause of action. A plaintiff is permitted to file a late notice of claim if she demonstrates extraordinary circumstances for failing to comply with the 90-day filing requirement and if the public entity was not substantially prejudiced by the late filing.

In *Garriga*, the plaintiff served Rowan University with notice of her claim 108 days after her daughter's death and argued her state of grief over the loss of a child constituted extraordinary circumstances. In support of the plaintiff's motion to file a late notice of claim, the plaintiff's attorney certified that the plaintiff's son met with him the day after his sister's death and explained his parents were too grief stricken to attend the meeting. The plaintiff also maintained that it was self-evident the grief she experienced was paralyzing and no additional proof was necessary to demonstrate why she did not file a timely notice of claim. The trial court granted plaintiff's motion to file a late notice of claim.

The Appellate Division disagreed and held the plaintiff's grief was insufficient to meet the high standard of extraordinary circumstances based on the record provided. The Court's ruling was premised on the fact that the only evidence submitted to support the plaintiff's extraordinary circumstances claim was the hearsay statement that the plaintiff's son told the attorney his parents were too grief stricken to attend a meeting immediately following the death of their daughter. Importantly, the Court noted the plaintiff made no mention of her incapacity due to grief, offered no explanation regarding why her circumstances were extraordinary, and offered no explanation as to

why another family member could not have asked the attorney to file a timely notice of claim. Therefore, the Appellate Division reversed the order of the trial court permitting the plaintiff to file a late notice of claim. When arguing extraordinary circumstances exist to justify a late notice of claim, it is crucial for plaintiffs to thoroughly put forth evidence explaining why their circumstances were extraordinary.