

Circuit Court for Anne Arundel County  
Case No. C-02-CV-21-001736

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 794

September Term, 2022

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DERONTA HOWARD

v.

DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES, *et al.*

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Arthur,  
Tang,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: May 17, 2023

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

\*\* At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Deronta Howard, an inmate at the Jessup Correctional Institute, filed suit in the Circuit Court for Anne Arundel County against the State of Maryland, the Department of Public Safety and Correctional Services, and the Patuxent Institution (collectively, the “State”). In his complaint, Howard alleged negligence in connection with injuries that he suffered during an altercation with several inmates.

The State moved to dismiss, arguing that Howard’s complaint was time-barred and that he had not exhausted his administrative remedies. The court granted the motion.

In this appeal, Howard presents two questions, which we have rephrased and consolidated into one: Did the circuit court err in dismissing Howard’s complaint?<sup>1</sup>

For reasons to follow, we hold that the court did not err. Accordingly, we affirm the court’s judgment.

### **BACKGROUND**

On November 8, 2017, Howard was assaulted by several inmates. Howard suffered serious injuries as a result of the assault. He retained an attorney.

On September 25, 2018, Howard’s attorney submitted a “Notice of Claim Form” to the Maryland State Treasurer. In the form, the attorney alleged that the State had

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<sup>1</sup> Howard phrased the questions as:

1. Whether the trial court abuse [sic] its discretion when it dismissed Mr. Howard’s civil complaint?
2. Whether the ambiguity in the Chief Judge’s Order regarding extension of the Statute of Limitation extension [sic] creates uncertainty and ultimately extends the deadline for the filing of Mr. Howard’s civil complaint?

negligently failed to prevent the assault, to render appropriate aid to Howard, and to oversee the corrections officers who were on duty during the assault. Howard’s attorney claims to have engaged in settlement negotiations with a representative in the Maryland State Treasurer’s office after the filing of the claim.<sup>2</sup>

On about October 20, 2021, the Treasurer’s office wrote to Howard, informing him that his claim had been denied. The letter asserted that the State was not at fault.

On December 17, 2021, Howard, through his attorney, filed a complaint in the circuit court. In that complaint, Howard alleged that the State had negligently failed to protect him from the injuries that he suffered on November 8, 2017.

The State moved to dismiss Howard’s complaint, raising two grounds. First, the State argued that Howard had failed to file the complaint within three years of the incident, as required by the Maryland Tort Claims Act (“MTCA”), Maryland Code (1984, 2014 Repl. Vol., 2018 Supp.) §§ 12-101 to -110 of the State Government Article (“SG”). Second, the State argued that Howard had failed to exhaust his administrative remedies, as required by the Prisoner Litigation Act, Maryland Code (1974, 2013 Repl. Vol.), §§ 5-1001 to -1007 of the Courts and Judicial Proceedings Article.

The circuit court granted the motion and dismissed Howard’s complaint.

This timely appeal followed.

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<sup>2</sup> In contravention of Rule 2-311(d), that claim was not supported by an affidavit or accompanied by any papers on which it is based.

## DISCUSSION

### *Standard of Review*

On review of the grant of a motion to dismiss, the appellate court analyzes whether the trial court’s ruling was legally correct, without any special deference to that court’s legal conclusions. *Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 95 (2014). This Court may affirm the dismissal of a complaint on any ground adequately shown by the record, regardless of whether the trial court relied on that ground or whether the parties raised that ground. *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 695-96 (2015).

### *Analysis*

Generally, the State of Maryland is immune from suit. *See, e.g., Board of Educ. of Baltimore County v. Zimmer-Rubert*, 409 Md. 200, 211 (2009). The MTCA creates an exception to that general rule by permitting a suit against the State under certain conditions. SG § 12-104.

The MTCA, however, imposes time constraints on the assertion of a claim against the State. In the absence of certain exceptions that are inapplicable here, a claimant may not institute an action under the MTCA unless:

- (1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim;
- (2) the Treasurer or designee denies the claim finally; and
- (3) the action is filed within 3 years after the cause of action arises.

SG § 12-106(b).

Here, Howard met the first two requirements: he submitted a timely claim, and the Treasurer denied the claim finally.<sup>3</sup> He did not, however, file his action within the MTCA’s three-year filing deadline. Howard’s cause of action arose on November 8, 2017, when he was assaulted, but he did not file his complaint until December 17, 2021, over four years later.

Howard argues that the MTCA includes an additional time period that allows a complaint to be filed “within 1 year after the claim is denied finally or 3 years after the cause of action arises, whichever is later.” He is incorrect. The language on which he relies was deleted almost 30 years ago, in 1994. 1994 Laws of Maryland Ch. 565; *see Higginbotham v. Public Service Comm’n*, 412 Md. 112, 124-25 (2009). When Howard’s claim arose, the statute included only the language requiring a complaint to be “filed 3 years after the cause of action arises.” SG § 12-106(b). The applicable deadline is the deadline in the statute as it stood at the time when his claim arose.

Howard goes on to argue that, even if his complaint were subject to the three-year limitations period (as it is), the limitations period should have been tolled. He cites the administrative orders that were propounded during the COVID-19 pandemic by the Chief

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<sup>3</sup> A claim is “denied finally” if the Treasurer or the Treasurer’s designee sends a written notice of denial or if the Treasurer fails to give such notice within six months after the filing of the claim. SG § 12-107(d). Because the Treasurer or the Treasurer’s designee failed to give notice of denial within six months after filing of Howard’s claim, his claim was “denied finally” on March 25, 2019, six months after he submitted it.

Judge of what was then called the Court of Appeals of Maryland.<sup>4</sup> He contends that those orders, which tolled all limitations periods by the amount of time when the Maryland courts were closed because of the pandemic, are “vague and subject to interpretation” and that a reasonable person in his position would not have known exactly when the limitations period would expire. He also contends that the State acted in “bad faith” during the settlement negotiations by allegedly leading him to believe that his claim would be settled and allegedly failing to inform him of a change in the representative who was handling his claim. Howard argues that the confluence of these circumstances amounted to “good cause” for his delay in filing his complaint.

Before addressing the merits of that argument, we address the State’s claim that the MTCA’s three-year filing deadline cannot be tolled because it is a “condition precedent” to the filing of a suit and not a “statute of limitations” subject to tolling. The State is incorrect. In *Higginbotham v. Public Service Comm’n*, 412 Md. at 126-27, the Court rejected a similar argument on the ground that “it finds no support whatsoever in the legislative history.” The Court concluded, instead, that the MTCA’s three-year filing deadline was “not a ‘mere’ or ‘ordinary’ statute of limitations, but is *both* a statute of limitations and—along with SG § 12-106(b)(1)—a condition precedent to the waiver of sovereign immunity.” *Id.* at 128 (emphasis in original).<sup>5</sup> Although the Court did not

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<sup>4</sup> At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

<sup>5</sup> SG § 12-106(b)(1) requires a claimant to submit a claim to the Treasurer or the Treasurer’s designee within one year of the injury.

expressly state that the three-year filing deadline was, like “ordinary” statutes of limitations, subject to tolling, nothing in the opinion suggests that that deadline could not be tolled. We shall assume, therefore, that the filing deadline can be tolled, and we shall address Howard’s claims on the merits.<sup>6</sup>

We begin by reviewing the administrative orders that the Chief Judge issued in response to the pandemic.

On March 16, 2020, the Chief Judge closed the clerks’ offices, with limited exceptions. *Murphy v. Liberty Mutual Insurance Co.*, 478 Md. 333, 358 (2022). On April 3, 2020, she issued an “Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations and Statutory and Rules Deadlines Related to the Initiation of Matters and Certain Statutory and Rules Deadlines in Pending Matters.” *Id.* at 358-59. That order stated that “all statutory and rules deadlines related to the initiation of matters required to be filed in a Maryland state court, including statutes of limitations, shall be tolled or suspended, as applicable, effective March 16, 2020, by the number of days that the courts are closed to the public due to the COVID-19 emergency[.]”

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<sup>6</sup> The State relies on *Ferguson v. Loder*, 186 Md. App. 707, 713-14 (2009), in which this Court treated the three-year filing deadline as a condition precedent that was not subject to tolling, and not as a statute of limitations. This Court did so, at least in part, because neither party contended that the deadline was anything other than a condition precedent. *See id.* at 713. Furthermore, this Court did not cite *Higginbotham* and its conclusion that SG § 12-106 contains both a statute of limitations and a condition precedent. Because of the tension between *Higginbotham* and *Ferguson v. Loder*, we assume that the three-year filing deadline in SG § 12-106(b)(3) is a statute of limitations that can be tolled.

On May 22, 2020, after it was declared that the courts would reopen on July 20, 2020, the Chief Judge issued a Revised Administrative Order, which reiterated that all statutory and rules deadlines related to the initiation of matters would be tolled by the number of days that the courts were closed. The order explained that “the days that the offices of the clerks of court were closed to the public (from March 16, 2020 through July 20, 2020) do not count against the time remaining for the initiation of matters.” Moreover, the order extended all filing deadlines by an additional 15 days. The order provided, by way of example, that “if two days remained for the filing of a new matter on March 15, 2020, then . . . seventeen days would be left for a timely filing, beginning July 20, 2020,” when the courts reopened.

Between June 2020 and March 2022, the Chief Judge’s Revised Administrative Order was amended 11 times. *Murphy v. Liberty Mutual Insurance Co.*, 478 Md. at 362. Those amended orders were, for the most part, designed to provide updated cross-references to other administrative orders that were issued during the COVID-19 pandemic. *Id.* The extension of filing deadlines and the language used to explain that extension, as set forth in the Revised Administrative Order, did not change in any substantive way between when that order was issued on May 22, 2020, and when the Final Administrative Order was issued on March 26, 2022. *See* <https://mdcourts.gov/coronavirusorders> (last visited May 11, 2023).

Applying those mandates to the instant case, we are convinced that a reasonable person in Howard’s position would have understood when his complaint was due. The



incident that gave rise to the complaint occurred on November 8, 2017, which meant that, to comply with the MTCA’s filing deadline, Howard needed to file his complaint by November 8, 2020. When the courts closed on March 16, 2020, Howard had 238 days remaining to file his claim. That time was tolled, under the Chief Judge’s Revised Administrative Order, until July 20, 2020, when the courts reopened. Beginning on July 20, 2020, Howard had 238 days, plus an additional 15 days, to file his complaint. At that point, Howard should have known that he had a total of 253 days from July 20, 2020, or until March 30, 2021, to file.<sup>7</sup>

Moreover, between when the first Revised Administrative Order was issued and when Howard’s complaint was due, the Chief Judge issued multiple Revised Administrative Orders, each of which outline the same procedure for the tolling of the filing deadlines for the initiation of a claim. Under the language of those orders, it was clear that Howard’s complaint was due on March 30, 2021.

In short, Howard had ample, unambiguous notice that his complaint needed to be filed by March 30, 2021. That the Chief Judge did not issue the Final Administrative Order until March 2022 is irrelevant, as Howard’s filing deadline had already been well established. Howard’s failure to meet that deadline by nearly nine months cannot be excused by his inability to follow the Chief Judge’s clear and unchanging directive.

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<sup>7</sup> The State asserts that Howard was required to file his complaint on March 29, 2021, but by our calculations he had until the following day. The difference is immaterial because Howard failed to file his complaint on or before either date.

Nor can Howard’s untimely filing be excused by the State’s alleged “bad faith” during the settlement process. Even if the State did everything that Howard alleges, none of those actions, either individually or collectively, would justify a tolling of the MTCA’s three-year filing period.

As the Court explained in *Condon v. State of Maryland-University of Maryland*, 332 Md. 481 (1993), a tolling of the MTCA’s filing deadline is appropriate where plaintiffs are “prevented from complying strictly with the statute because they were unable, through no lack of diligence of their own, to gain the information necessary to file a claim or bring suit against the government in a timely fashion.” *Id.* at 499-500. Yet, in this case, no one prevented Howard from strictly complying with the statute. He knew when his claim accrued (when he was assaulted on November 8, 2017), so he knew that he would ordinarily be required to file a complaint within three years of the assault (i.e., by November 20, 2020). He also knew, or was reasonably capable of ascertaining, that the administrative orders extended his deadline by a total of 253 days from July 20, 2020, or until March 30, 2021. It is immaterial that he may have thought that the State would settle his case or that someone failed to inform him of a change in the representative who was handling his claim. If he hadn’t reached a settlement by the time his deadline ran, he was required to file suit to preserve his rights.

Howard suggests that his late filing should be excused because, he says, the Treasurer did not finally deny his claim until October 20, 2021, a mere two months before he filed his complaint. The premise of Howard’s argument is incorrect. Under the

MTCA, a claim is “denied finally” if a claimant receives a written notice of denial or if the Treasurer fails to give such notice within six months after the filing of the claim. SG § 12-107(d); *see supra* n.2. Howard filed his claim with the Treasurer on September 25, 2018, and he did not receive notice of a final decision within six months of that date. Thus, his claim was “denied finally” on March 25, 2019, more than two years before he needed to file his complaint.

In sum, Howard failed to comply with the MTCA’s three-year filing deadline, and he has presented no compelling argument that would excuse that failure. Accordingly, the circuit court did not err in dismissing his complaint.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED; COSTS TO BE PAID BY  
APPELLANT.**