

Circuit Court for Baltimore City
Case No. 24-C-14-003001

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2163

September Term, 2015

JOHN WRIGHT

v.

HOUSING AUTHORITY OF
BALTIMORE CITY

Woodward, C.J.,
Friedman,
*Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: July 12, 2018

*Krauser, Peter B., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

**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.

On May 22, 2014, John Wright, appellant, filed a complaint¹ in the Circuit Court for Baltimore City against the Housing Authority of Baltimore City (“HABC”), appellee, for negligence and violations of the Maryland Consumer Protection Act as a result of alleged injuries caused by lead exposure while living in HABC housing from 1995 to 2005.² HABC filed a motion for summary judgment arguing that appellant failed to comply with the notice requirement under the Local Government Tort Claims Act (“LGTCA”) and that appellant could not demonstrate good cause to waive the LGTCA notice requirement. After a hearing, the circuit court granted HABC’s motion.

Appellant filed this timely appeal and presents the following questions for our review, which we have rephrased as follows:³

¹ Appellant’s mother, Charmaine Huggins, and sister, Le’Asia Huggins, were co-plaintiffs in the underlying case, but this appeal is brought by appellant only.

² Appellant also filed complaints against fourteen other defendants for alleged lead paint poisoning for the same period of 1995 to 2005. Appellant later dismissed all of these defendants facilitating this appeal.

³ Appellant’s questions presented, as stated in his brief, are as follows:

1. When an oral notice of claim is provided by the mother of a lead poisoned minor Plaintiff to the designated representative of the Defendant HABC, and that notice included the required elements for substantial compliance under the LGTCA, whether there is an absolute requirement that substantial compliance include written notice – so that any oral notice necessarily fails as substantial compliance?
2. Given that the test for good cause under the LGTCA is the “reasonable person test,” should the issue of good cause be submitted to the fact-finder when it involves a dispute of fact or when reasonable jurors could differ as to the inferences that can be drawn from the facts?

1. Did the circuit court err by ruling that appellant failed to substantially comply with the LGTCA’s notice requirement?
2. Did the circuit court err by deciding the issue of good cause instead of submitting the issue to a jury?
3. Did the circuit court err or abuse its discretion by concluding that appellant did not demonstrate good cause to waive the LGTCA’s notice requirement?

For the reasons set forth below, we answer all of these questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

Appellant was born on April 26, 1995. According to the affidavit of appellant’s mother, Charmaine Huggins, appellant and his mother lived in housing owned or operated by HABC located in Baltimore City at 247 Dallas Court for “a little under a month” and at 1411 Mosander Way “for approximately two years.” According to HABC’s tenant file, Huggins and appellant lived at 1411 Mosander Way from September 1997 until September 2000. Appellant filed a complaint on May 22, 2014, alleging that due to HABC’s negligence and violations of the Maryland Consumer Protection Act, he suffered injuries caused by lead paint poisoning in HABC’s housing.

On December 18, 2014, HABC filed a motion for summary judgment. HABC

-
3. Did the trial court err as a matter of law by misinterpreting and misapplying the test for good cause under the LGTCA?
 4. Whether the trial court’s ruling on good cause is clearly erroneous if it contradicts material facts on that issue.

argued that summary judgment should be granted, because appellant failed to notify HABC within 180 days of his injury, pursuant to the LGTCA notice requirement. HABC further argued that appellant could not demonstrate good cause to waive the notice requirement and that waiving the notice requirement would prejudice HABC. HABC attached multiple documents pertaining to lab tests and inspections of 247 Dallas Court and 1411 Mosander Way, which showed that these properties passed all inspections. HABC also included documentation demonstrating that appellant's mother received a lead paint packet on September 18, 1997, when she was living at 1411 Mosander Way, which contained information about the procedures to follow if she believed her child was suffering from lead paint poisoning.

Also attached to the motion was an affidavit from William M. Peach, III, Director of Housing Management Administration of HABC, which confirmed that HABC owned properties located at 247 Dallas Court and 1411 Mosander Way. Peach's affidavit also stated:

3. I was and still am, the individual at the HABC responsible for receiving and dealing with violation notices and written complaints against the HABC alleging exposure of tenants and/or their children to lead-based paint at the HABC's rental dwellings. If a statutory notice of injury due to lead exposure had been presented to an officer of the HABC in accordance with the Local Government Tort Claims Act, it would have been required to be forwarded to me for investigation. **I do not recall ever receiving copies of any written notices setting forth the time, place, and cause of any alleged lead poisoning injury, as required by statute, for any claimant in any alleged lead poisoning case.**

* * *

6. Some of the HABC managers involved in the operation and/or

maintenance of the property when the [appellant] claim[s] to have resided at and/or visited there are no longer employed by the HABC. **In cases where I have been able to find current employees of HABC who were in any managerial capacity during the time-frame referenced in [appellant's] complaint they have been uniformly unable to recall anything about the condition of specific properties during the time frames referenced in [appellant's] [c]omplaint[.]**

7. I have caused a search of all HABC's files and records for any complaints, letters, notices or related documentation made by [appellant] or anyone in [appellant's] family prior to service of suit in this case regarding [appellant's] alleged injurious exposure to lead-based paint at the property during the time [appellant] claim[s] to have lived or visited there and **I have found none. The first documentary evidence found regarding [appellant's] claims for damages as a result of alleged injurious exposure to lead-based paint at the properties was this lawsuit served upon HABC on June 6, 2014.**

(Emphasis added). Peach's affidavit further stated that the failure to give HABC notice prejudiced HABC, because HABC was unable to investigate the alleged condition of appellant's dwelling.

Appellant filed an opposition to HABC's motion for summary judgment on January 14, 2015. Appellant first argued that HABC's motion for summary judgment was premature, because appellant needed to retain an expert to determine the exact date of his injury, and because discovery was still on-going. Appellant then argued that there was substantial compliance with the LGTCA notice requirement. In addition, appellant contended that, even if there was not substantial compliance, there was good cause to waive the notice requirement, and HABC had not proven that it would be prejudiced if the notice requirement was waived. Huggins' affidavit was executed on January 7, 2015, and was attached to appellant's opposition. Huggins' affidavit read, in relevant part:

3. [Appellant] and I lived at 247 Dallas Court, Baltimore City, for a little under a month. [Appellant] and I lived at 1411 Mosander Way for approximately two years.

4. I recall that 1411 Mosander Way was in “messed up” condition. The back door and door frame, and windows in the living room and back room, all had chipping, peeling, and flaking paint.

5. On several occasions while I lived in 1411 Mosander Way, I notified the housing manager at the leasing office of 1411 Mosander Way about the chipping, peeling, and flaking paint at my house. I recall that at least on one occasion, in response to my complaints about chipping, peeling, and flaking paint, I was given paint and told to paint over the chipping and flaking paint myself. I relied on the Housing Authority in believing that painting over these conditions would resolve any issues the chipping, peeling, and flaking paint might cause me or my children. The Housing Authority had told me to make my complaints to the housing manager, and I followed those instructions when I told the housing manager about the conditions in my home.

* * *

9. To the best of my recollection, after I moved out of 1411 Mosander Way a doctor told me that children can become sick due to lead poisoning. But at that time, neither that doctor nor any other doctor told me that my child was injured, was suffering an injury, or will become injured as a result of exposure to lead paint.

10. During the time I lived at 247 Dallas Court and 1411 Mosander Way, and within 180 days after I moved from those addresses, I did not know that Maryland has a law that required me to tell the Housing Authority that I was going to sue them for my child’s exposure to lead within 180 days of my child’s injury. **Also, during the time I lived at those addresses and within 180 days after I moved from those addresses, I did not know I would have a potential claim or lawsuit against the Housing Authority because I could not tell and did not know that my kids were injured.**

(Emphasis added).

Huggins did not give any dates or a date range for when she lived at 247 Dallas

Court or 1411 Mosander Way, nor did she indicate when she orally complained to the housing manager. Huggins also did not state in her affidavit that her oral complaints to HABC included a statement that she intended to sue HABC. Finally, her affidavit was devoid of any statement that she witnessed appellant ingesting any paint chips or flakes.

Documents attached to appellant’s opposition included a September 26, 1996, lab result indicating that appellant tested positive for lead with a high level of 12 micrograms per deciliter. Appellant also tested positive for lead in September 1998 with a level of 8 micrograms per deciliter, which was listed as “[n]ormal in children.”⁴ In a supplemental opposition, appellant further argued that the jury should determine the issue of good cause for a waiver of the LGTCA notice requirement.

On January 29, 2015, HABC filed a response to appellant’s opposition, in which HABC stated that it could not find a record of appellant or Huggins living at 247 Dallas Court. HABC, however, attached a tenant file, which indicated that Huggins and appellant lived at 1411 Mosander Way from September 1997 until they were evicted in September 2000.

On February 18, 2015, the circuit court heard argument on HABC’s motion for summary judgment. At the conclusion of the hearing, the court gave a partial ruling rejecting appellant’s arguments that an expert was needed to determine the date of

⁴ “Until 2012, children were identified as having a blood lead ‘level of concern’ if the test result is 10 or more micrograms per deciliter of lead in blood.” *See* Ctrs. for Disease Control and Prevention, *What Do Parents Need to Know to Protect Their Children?*, https://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm (last updated May 17, 2017). “Experts now use a reference level of 5 micrograms per deciliter to identify children with blood lead levels that are much higher than most children’s levels.” *Id.*

appellant’s injury and that incomplete discovery rendered HABC’s motion for summary judgment premature. The court also rejected appellant’s argument that a jury must decide the issue of good cause for a waiver of the notice requirement of the LGTCA.

On March 11, 2015, the circuit court entered an order granting HABC’s motion for summary judgment and set forth the following reasons for its ruling:

HABC asserts that [appellant has] not complied with the notice requirements of the Local Government Tort Claims Act. Md. Code, § 5-304 of the Courts & Judicial Proceedings Article (“Courts”). [Appellant has] provided no evidence of any attempt to notify HABC within the 180-day notice period of [his] intent to pursue tort claims against HABC. [He] therefore [has] not shown actual or substantial compliance with the LGTCA notice requirement. *Ellis v. Housing Auth. of Baltimore City*, 436 Md. 331, 342-47 (2013). [Appellant also has] not shown “good cause” to excuse [his] non-compliance with the notice requirement. *See* Courts § 5-304(d). This action was not brought until approximately ten or eleven years after [appellant’s] alleged exposure to lead in HABC housing. [Appellant has] not demonstrated that [he] proceeded with ordinary diligence in pursuing [his] claims or that HABC did anything or told [appellant or Huggins] anything on which they might have reasonably relied in not providing notice or pursuing [appellant’s] claims earlier.

Appellant filed this timely appeal. Additional facts will be included as necessary for the resolution of the questions presented in the instant appeal.

DISCUSSION

I. Substantial Compliance with the LGTCA Notice Requirement

Appellant does not contend that he strictly complied with the LGTCA notice requirement, which required that HABC be given written notice within 180 days of appellant’s injury. Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings (“CJP”), § 5-304. Instead, appellant argues that Huggins’ oral notice to HABC

substantially complied with the notice requirement, because she told HABC about the chipping, peeling, and flaking paint at 1411 Mosander Way.⁵ Moreover, appellant asserts that HABC already knew that there was lead paint in its buildings and decided to take no action. According to appellant, HABC’s knowledge of an injurious condition should be considered when determining whether there has been substantial compliance with LGTCA’s notice requirement.

“An appellate court reviews without deference a trial court’s conclusion as to whether a plaintiff substantially complied with the LGTCA notice requirement.” *Ellis v. Housing Authority of Baltimore City*, 436 Md. 331, 342 (2013). The Court of Appeals has set forth the following test to determine whether a plaintiff substantially complied with the LGTCA notice requirement:

[A] plaintiff substantially complies with the LGTCA notice requirement where: (1) the plaintiff makes “some effort to provide the requisite notice”; (2) the plaintiff does “in fact” give some kind of notice; (3) the notice “provides ... requisite and timely notice of facts and circumstances giving rise to the claim”; and (4) the notice fulfills the LGTCA notice requirement’s purpose, which is

to apprise [the] local government of its possible liability at a time when [the local government] could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government’s] responsibility in connection with it.

⁵ In this appeal, appellant’s arguments all reference 1411 Mosander Way, and he does not raise any issues pertaining to his alleged lead exposure at 247 Dallas Court. Thus we will only focus on the 1411 Mosander Way residence in this opinion.

Faulk, 371 Md. at 298–99, 808 A.2d at 1272–73 (ellipsis in original) (citations and internal quotation marks omitted) (emphasis added).

Ellis, 436 Md. at 342–43 (emphasis added).

As appellant’s counsel conceded at oral argument before this Court, *Ellis* is determinative of the issue of substantial compliance in this case. In *Ellis*, the co-appellant, Johnson, argued that she substantially complied with the LGTCA notice requirement, because her mother “orally complained to an HABC housing manager about chipping paint and threatened to sue HABC if it did not fix the chipping paint.” *Id.* at 345. The Court of Appeals first held that Johnson did not substantially comply with the notice requirement, because her mother’s complaint “neither explicitly nor implicitly indicated that [appellant’s mother] intend[ed] to sue [HABC] regarding any injury.” *Id.* In other words, the appellant’s mother “essentially advised that the threatened action against HABC would be a landlord-tenant action (in which Johnson’s mother sought that HABC fix the chipping paint), not a lead paint action[.]” *Id.* The Court also held that the notice was not in substantial compliance with the LGTCA, because

Johnson’s mother did not learn of Johnson’s injury (*i.e.*, Johnson’s elevated blood-lead level) until approximately six or seven years after her oral complaint; thus—in addition to Johnson’s mother’s failure to give notice of an intent to initiate a lead paint action—at the time of Johnson’s mother’s oral complaint, it was not possible for Johnson’s mother to give notice of an injury allegedly caused by HABC.

Id. at 346.

In this case, appellant is in a worse position than Johnson was in *Ellis*, because Huggins never told HABC that she intended to sue for injuries sustained by appellant as a

result of his exposure to lead paint at 1411 Mosander Way. Instead, Huggins simply stated in her affidavit:

5. On several occasions while I lived in 1411 Mosander Way, **I notified the housing manager at the leasing office of 1411 Mosander Way about the chipping, peeling, and flaking paint at my house.** I recall that at least on one occasion, in response to my complaints about chipping, peeling, and flaking paint, I was given paint and told to paint over the chipping and flaking paint myself. I relied on the Housing Authority in believing that painting over these conditions would resolve any issues the chipping, peeling, and flaking paint might cause me or my children. The Housing Authority had told me to make my complaints to the housing manager, and I followed those instructions when I told the housing manager about the conditions at my home.

(Emphasis added).

In addition, like *Ellis*, Huggins claimed that she did not know about appellant's injury while she lived in HABC housing; and therefore, she could not have given HABC notice of appellant's injury. She stated in her affidavit:

10. During the time I lived at 247 Dallas Court and 1411 Mosander Way, and within 180 days after I moved from those addresses, I did not know that Maryland has a law that required me to tell the Housing Authority that I was going to sue them for my child's exposure to lead within 180 days of my child's injury. **Also, during the time I lived at those addresses and within 180 days after I moved from those addresses, I did not know I would have a potential claim or lawsuit against the Housing Authority because I could not tell and did not know that my kids were injured.**

(Emphasis added). Accordingly, we find no error in the circuit court's ruling that appellant failed to substantially comply with the notice requirement of the LGTCA.⁶

⁶ Because, as explained above, Huggins' oral complaints to the housing manager did not substantially comply with the LGTCA notice requirement, we decline appellant's

II. Deciding Good Cause

Appellant next argues that the circuit court erred by not allowing the jury to determine whether there was good cause to waive the notice requirement of the LGTCA. According to appellant, good cause is premised on a finding that a party acted with a degree of diligence in pursuing his or her claim as an ordinary prudent person would have acted under similar circumstances. Appellant asserts that, like the reasonable person standard in tort actions, a jury should apply the ordinary prudent person standard when there are factual disputes. Moreover, appellant contends that the circuit court violated Article 23 of the Maryland Declaration of Rights by failing to allow the jury to determine whether there was good cause, because Article 23 requires that a jury must be the finder of fact in civil cases where a party properly requests a jury.

As a preliminary matter, we conclude that under Maryland Rule 8-131(a), appellant failed to preserve his argument that the circuit court violated Article 23 of the Maryland Declaration of Rights by determining good cause, because such argument was not raised or decided below. Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court .”); *see also Harris v. Housing Authority of Baltimore City*, 227 Md. App. 617, 638, *cert. denied*, 449 Md. 418 (2016).

request for this Court to decide whether oral notice will ever suffice as substantial compliance with the LGTCA notice requirement.

As to appellant’s argument that a jury must determine good cause, we rejected this argument in *Harris*:⁷

Appellants’ contention that the judge inappropriately usurped the role of the jury is plainly without merit according to the applicable statute:

(c) *Waiver of notice requirement.*—Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, **upon motion and for good cause shown the court may entertain the suit** even though the required notice was not given.

CJP § 5–304(c) (emphasis added). [] Thus, even when a plaintiff does not strictly or substantially comply with the LGTCA’s notice requirement, a trial court may, upon a finding of good cause, waive the notice requirement. *Id.* After a finding of good cause, the trial court may only waive the notice requirement if the defendant cannot affirmatively demonstrate prejudice. *Id.*

227 Md. App. at 637 (bold emphasis in original) (italic emphasis added) (footnote omitted).

We also reject appellant’s request that we depart from the above precedent, and we reiterate the following from *Harris*:

Because the issue of good cause frequently arises in these cases in a defendant’s motion for summary judgment, as it did in this case, we caution future litigants not to conflate the applicable standards. **It is the circuit court’s responsibility to find—or to not find—whether good cause exists.** *See* CJP § 5–304(c) (“upon motion and for good cause shown the court may entertain the suit ...”). The standard for this limited good cause inquiry is not the summary judgment standard of Maryland Rule 2–501—“no genuine dispute as to any material fact.” **The circuit court must resolve factual disputes as to good cause, and, once the court makes a finding**

⁷ Appellant’s counsel fails to cite *Harris* or distinguish it from the case before us. We find such failure to be particularly disturbing, because appellant’s counsel was counsel of record in *Harris*, and in our view, *Harris* is the controlling case on this issue and the issue of the good cause test discussed *infra*.

on whether good cause exists, that finding becomes a relevant (and perhaps the only dispositive) fact in the summary judgment inquiry. That fact is simply no longer disputed, and the question then becomes whether summary judgment is proper.

Id. at 637 n.10 (emphasis added).

III. Circuit Court’s Ruling on Good Cause

A. Good Cause Test

Regarding the issue of good cause to waive the LGTCA notice requirement, appellant argues that the circuit court misapplied the “good cause” test, because the court based its decision on the ““ten or eleven year[.]” gap between [appellant’s] notice and [appellant’s] filing of the lawsuit[.]” According to appellant, the purpose of such test is to determine whether there was good cause in failing to give the required notice, “not failures to follow through on litigating the claim subsequent to any defective notice.”

The circuit court wrote the following on the issue of good cause:

[Appellant also has] not shown “good cause” to excuse [his] non-compliance with the notice requirement. *See* Courts § 5-304(d). **This action was not brought until approximately ten or eleven years after [appellant’s] alleged exposure to lead in HABC housing. [Appellant has] not demonstrated that [he] proceeded with ordinary diligence in pursuing [his] claims** or that HABC did anything or told [appellant or Huggins] anything on which they might have reasonably relied in not providing notice or pursuing [appellant’s] claims earlier.

(Emphasis added).

In *Harris*, this Court rejected appellant’s argument that a trial court cannot consider the gap between the alleged notice and the filing of a lawsuit in determining whether good cause exists:

“**[a] plaintiff shows good cause** for his or her failure to comply with the LGTCA notice requirement **where the plaintiff ‘prosecute[s] his [or her] claim with th[e] degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.’**” *Ellis*, 436 Md. at 348, 82 A.3d 161 (alteration in *Ellis*) (emphasis supplied) (quoting *Rios*, 386 Md. at 141, 872 A.2d 1). **We conclude that the time of filing suit is patently relevant to determining the degree of a plaintiff’s diligence in prosecuting her claim under the LGTCA.** Certainly, the Court of Appeals has examined the time between injury and lawsuit in analyzing good cause in the past. *See Ellis*, 436 Md. at 350, 82 A.3d 161 (concluding that it was not an abuse of discretion for the circuit court to find that there was no good cause when the appellants waited 18 and 11 years to sue, respectively).

The circuit court determined that good cause for waiver did not exist when Ms. Ratchford complained of William Harris’s alleged lead exposure in 2004, but waited until 2012 to file a complaint. *The circuit court did not abuse its discretion when it considered the substantial length of time between the alleged oral complaint and the time of filing suit.*

227 Md. App. at 642 (alterations in original) (bold emphasis in original) (italic emphasis added). We decline to depart from the above holding.

In an apparent attempt to avoid our holding in *Harris*, appellant contended for the first time at oral argument before us that the Court of Appeals’ opinion in *Ellis* only permits a trial court to consider the gap between the injury and the filing of the suit when there is no communication with HABC until the filing of the lawsuit. Appellant asserted that in this case Huggins stated in her affidavit that there were communications with HABC before the filing of the lawsuit when she informed HABC of the chipping paint. Thus, according to appellant, the circuit court should not have considered the gap between the injury and the filing of the lawsuit.

We do not address arguments raised by a party for the first time at oral argument on appeal. *Uninsured Emp’rs’ Fund v. Danner*, 388 Md. 649, 664 n.15 (2005) (declining to consider argument raised for the first time at oral argument pursuant to, then Maryland Rule 8-504(a)(5), now Rule 8-504(a)(6)). Even if we were to entertain appellant’s argument, we would find it unpersuasive.

In *Ellis*, the Court of Appeals emphasized that there was no action taken regarding appellants’ “potential claim[s]” after the appellants or their respective mothers knew of the lead paint injuries until the filing of the lawsuits:

[] *Ellis v. HABC*

The circuit court did not abuse its discretion in concluding that Ellis did not show good cause for her failure to comply with the LGTCA notice requirement. *As early as 1992, Ellis’s mother knew that Ellis’s blood-lead level was 14 µg/dL. However, the record does not indicate that Ellis or her mother took any action regarding Ellis’s potential claim until 2010, when Ellis sued HABC.* A plaintiff does not show good cause for his or her failure to comply with the LGTCA notice requirement where the plaintiff does not “prosecute[] his [or her] claim with th[e] degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.” *Rios*, 386 Md. at 141, 872 A.2d at 22 (citation and internal quotation marks omitted).

[] *Johnson v. HABC*

The circuit court did not abuse its discretion in concluding that Johnson did not show good cause for her failure to comply with the LGTCA notice requirement. *As the circuit court noted, Johnson’s mother did not “become aware of [Johnson’s] elevated blood[-lead] level until 2000.” The record does not indicate that Johnson or her mother took any action regarding Johnson’s potential claim between 2000 and 2011, when Johnson sued HABC.*

436 Md. at 350 (bold emphasis in original) (italic emphasis added).

The Court then indicated that the lack of any action regarding a “potential claim” was relevant to the determination of whether a plaintiff “prosecute[s] his [or her] claim with th[e] degree of diligence that an ordinary prudent person would have exercised under the same or similar circumstances.” *Id.* at 350. It follows that any action by a plaintiff that is *not* regarding his or her potential claim is *not* relevant to such determination. In the case *sub judice*, appellant claims that Huggins did take action between the injury to appellant and the filing of the lawsuit by communicating with HABC on several occasions about the chipping and flaking paint. These communications, however, did not constitute action regarding appellant’s claim against HABC for lead paint injury, because neither Huggins nor appellant ever told HABC before the filing of the instant lawsuit that appellant had a claim for lead paint injury or intended to sue HABC for such injury. Therefore, the time gap between appellant’s injury and the filing of the lawsuit was a relevant consideration in the circuit court’s determination of whether appellant prosecuted his claim with the degree of diligence of an ordinary prudent person under the same or similar circumstances.

B. Good Cause for Waiver of Notice Requirement

Finally, appellant argues that the circuit court was clearly erroneous when it found that appellant had “not demonstrated that [he] proceeded with ordinary diligence in pursuing [his] claims or that HABC did anything or told them anything on which [appellant or Huggins] might have reasonably relied in not providing notice or pursuing [appellant’s] claims earlier.” Specifically, appellant contends that the court’s finding contradicted the “uncontroverted” facts that his “mother relied on [HABC] giving her paint and telling her to paint over the chipping paint as meaning that if she followed [HABC]’s painting

instructions, it would resolve the harm that chipping paint could cause her family.” Appellant concludes that his mother’s reliance is sufficient to support a finding of good cause to waive the LGTCA notice requirement. We disagree.

As previously stated, “[a] plaintiff shows good cause for his or her failure to comply with the LGTCA notice requirement where the plaintiff prosecute[s] his [or her] claim with th[e] degree of diligence that an ordinarily prudent person would have exercised under the same or similar circumstances.” *Ellis*, 436 Md. at 348 (citations and internal quotation marks omitted) (alterations in original). Moreover, “[a] plaintiff suing a local government also shows good cause for his or her failure to comply with the LGTCA notice requirement where the plaintiff reasonably relies on misleading representations by a local government.” *Harris*, 227 Md. App. at 638-39 (citations and internal quotations omitted)).

Here, the record reveals that appellant was tested for lead in his blood on September 26, 1996, and that the test revealed an elevated blood lead level of 12 micrograms per deciliter.⁸ Among the information packets that Huggins received when she and appellant moved into 1411 Mosander Way was a document entitled, “Protect Your Family From Lead In Your Home.” That document stated, in relevant part: (1) “children with high levels of lead in their bodies can suffer from: [] [d]amage to the brain and nervous system[,] [b]ehavior and learning problems (such as hyperactivity)[,] [s]lowed growth . . . [;]” (2) “[e]ven children who appear healthy can have dangerous levels of lead[;]” and (3)

⁸ Taking the evidence in the light most favorable to appellant, we shall assume that appellant was living in HABC housing in 1996, even though the record indicated that appellant and his mother did not begin living in HABC housing until sometime in 1997.

“[p]eople can get lead in their body if they: [] [e]at paint chips or soil that contains lead.” Notwithstanding the foregoing, Huggins claimed in her affidavit that at the time that she and appellant lived at 247 Dallas Court and 1411 Mosander Way and “within 180 days after I moved from those addresses, I did not know I would have a potential claim or lawsuit against [HABC] because I could not tell and did not know that my kids were injured.”

Even accepting Huggins’ assertion of a lack of knowledge, neither Huggins nor appellant explained why the instant lawsuit was not filed for approximately thirteen years after 180 days from when they stopped living in HABC housing. Such unexplained delay supports the circuit court’s finding that appellant and Huggins “have not demonstrated that they proceeded with ordinary diligence in pursuing their claims[.]”

Appellant also claims that the circuit court erred when it found “that HABC did not do ‘anything’ upon which [appellant or Huggins] could have relied[.]” Specifically, appellant asserts that his mother’s reliance on HABC’s instructions to paint over the chipping paint “supports a finding of good cause[.]” because Huggins believed that such instructions “would resolve the harm that chipping paint could cause her family.” Appellant’s argument, however, overlooks the requirement that Huggins’ reliance must be reasonable. *See Ellis*, 436 Md. at 348-49 (“A plaintiff shows good cause for his or her failure to comply with the LGTCA notice requirement where the plaintiff reasonably relies on misleading representations by a local government.” (internal quotation marks and citation omitted)). Given the fact that appellant had an elevated blood lead level in 1996 and that at the beginning of the tenancy at 1411 Mosander Way, Huggins was notified about the potential injuries caused by elevated blood lead levels and the introduction of

lead into the body by eating paint chips containing lead, it was clearly unreasonable for her to rely on HABC’s painting instructions as a preventative measure for any injury that may have already occurred. As the circuit court aptly queried during oral argument on the motion for summary judgment: “How could someone think that painting over chipping paint is going to undo something that has already occurred to the child?” Therefore, there was ample evidence to support the circuit court’s finding that HABC did not do “anything on which [appellant or Huggins] might have *reasonably* relied in not providing notice or pursuing [appellant’s] claims earlier.” (Emphasis added).

For the foregoing reasons, we conclude that the circuit court was not clearly erroneous when it found that appellant and Huggins did not demonstrate (1) diligence in pursuing their claims that an ordinary prudent person would have exercised under the same or similar circumstances, and (2) reasonable reliance on the actions of HABC in not providing the required notice. Accordingly, we hold that the circuit court did not abuse its discretion by concluding that appellant and Huggins did not show “good cause” to excuse their non-compliance with notice requirement of the LGTCA.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
APPELLANT TO PAY COSTS.**