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SUPREME COURT OF THE UNITED STATES

SABRINA VERONICA PEREZ	)	Trial Appellate Case No. VCL296497
Plaintiff,	)	
	)	Supreme Court of California Case No. F090149
	)	
v.	)	Appendix 1 and Appendix 2
	)	
Tulare County Adult Pre-Trial	)	
Facility.	)	
Defendant.	)	
_____	)	

Attached are the Appendix 1 and Appendix 2.

I declare under penalty of perjury of the laws of the state of California the foregoing is true and correct.

Date: February 4, 2025



ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE
09/09/2024
STEPHANIE CAMERON, CLERK
Kim Anaya, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE
APPELLATE DIVISION

SABRINA VERONICA PEREZ,

Plaintiff/Respondent,

v.

TULARE COUNTY ADULT PRE-TRIAL
FACILITY,

Defendant/Appellant.

Case Nos. VCL296497

**DECISION BY WRITTEN OPINION ON
APPEAL**

Hearing Date: August 28, 2024

Time: 3:30 PM

Department: 11

Judges: Hon. Sylvia J. Hanna, *Acting Presiding Judge*
Hon. Ricky Tripp, J.
Hon. Robin Wolfe, J.

Unanimous opinion by the court.

APPEAL from judgment of the Superior Court of Tulare County. John P. Bianco, Judge.

Counsel: The Appellant appeared *propria persona*.

Joseph Beery, Chief Deputy County Counsel, appeared for the Tulare Adult
Pre-Trial Facility, Et. Al.

The Court rules as follows:

Construing the order sustaining the demurrer without leave to amend as a final judgment,
the Court affirms the judgment. Upon remand, the trial court is directed to dismiss the case.

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STATEMENT OF THE CASE

On March 10, 2023, the appellant filed her first complaint. On August 11, 2023, the appellant filed a motion to amend the complaint, and the trial court granted the motion on August 16, 2023. On August 23, 2023, the appellant filed her first amended complaint. On September 20, 2023, the respondent filed a demurrer to the complaint and on October 30, 2023, the trial court granted the demurrer with leave to amend. On November 8, 2023, the appellant filed her second amended complaint, and the respondent filed another demurrer on November 20, 2023. On January 8, 2024, the trial court sustained the demurrer without leave to amend. On January 11, 2024, the appellant filed a motion for reconsideration and the trial court denied the motion on February 26, 2024.

On February 27, 2024, the appellant filed a notice of limited appeal. On February 28, 2024, the appellant filed a notice designating the record on appeal.

On March 21, 2024, the appellant filed a brief arguing that the California Tort Claims Act did not apply to her case and that she has a 42 U.S.C. § 1983 claim that should not have been dismissed. On April 11, 2024, she filed an opening brief arguing substantially the same thing, just in the correct format.

On April 15, 2024, the Court issued an Appeal-Notice of Filing Record on Appeal and Hearing. On May 15, 2024, the Court issued a notice setting the due date for the respondent's brief because the appellant did not file anything after the notice sent on April 15, 2024.

On June 12, 2024, the respondents filed a respondent's brief arguing that the appeal should be dismissed due to the lack of final judgment or appealable order, that the trial court did not abuse its discretion by sustaining the demurrer without leave to amend, and that the operative complaint did not state a cause of action under 42 U.S.C. § 1983.

On August 28, 2024, an oral argument was held where the parties submitted on their briefs. The Court took the matter under submission.

STATEMENT OF THE FACTS

On June 25, 2020, May 12, 2021, September 6, 2021, and September 18, 2022, the appellant was in custody at the Tulare County Adult Pre-Trial Facility. The appellant alleges that while she was incarcerated the respondents failed to provide her with clean water, mental health services or a

complaint form. The appellant also claimed that she was “shoved” while at the facility.

ISSUES ON APPEAL

- I. Whether The Trial Court Abused Its Discretion by Sustaining the Demurrer Without Leave to Amend?

DISCUSSION

- I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY SUSTAINING THE DEMURRER WITHOUT LEAVE TO AMEND?

Appealability

“Orders sustaining demurrers are not appealable.” (*Zipper v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1019.) “Nevertheless, in the interest of judicial economy, we may construe the order sustaining the demurrer without leave to amend as a final appealable judgement.” (*Cardenas v. Horizon Senior Living, Inc.* (2022) 78 Cal.App.5th 1065, 1069.)

Here, the Court acknowledges, as the respondents point out, that the appellant filed the notice of appeal prematurely and that the Motion for Reconsideration is not an appealable order. However, in the interest of judicial economy, the Court is going to construe the order sustaining the demurrer without leave to amend as a final appealable judgment.

Standard of Review

“In reviewing an order sustaining a demurrer, we examine the operative complaint *de novo* to determine whether it alleges facts sufficient to state a cause of action under any legal theory.” (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.)

Analysis

“There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities...” (Cal. Govt. Code § 905.) “A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action.” (Cal. Govt. Code § 911.2, subd. (a).) An application to present a claim not timely filed pursuant to Cal. Govt. Code § 911.2, subd. (a) must be filed “within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim.” (Cal. Govt. Code § 911.4, subd. (b).)

1 “Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be
2 brought against a public entity on a cause of action for which a claim is required to be presented in
3 accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with
4 Section 910) of Part 3 of this division until a written claim therefor has been presented to the public
5 entity and has been acted upon by the board, or has been deemed to have been rejected by the board,
6 in accordance with Chapters 1 and 2 of Part 3 of this division.” (Cal. Govt. Code § 945.4.)

7 Here, the accrual of the cause of action was no later than September 18, 2022. Six months
8 from this date would be March 18, 2023. The appellant filed her first complaint in this case on
9 March 10, 2023, without filing a claim pursuant to Cal. Govt. Code § 911.2, subd. (a) with Tulare
10 County. Consequently, she would have had to file an application to present a late claim pursuant to
11 Cal. Govt. Code § 911.4, subd. (b).

12 The appellant filed a claim that was mailed on or about October 13, 2023. (CT 76.) However,
13 she does not “state the reason for the delay in presenting the claim.” (Cal. Govt. Code § 911.4, subd.
14 (b).) She simply filed the claim as if it were timely filed pursuant to Cal. Govt. Code § 911.2, subd.
15 (a). Further, the appellant does not demonstrate that this purported application to present an untimely
16 claim was granted or denied. Nor can she demonstrate what the respondent’s response was to the
17 claim.

18 Due to the appellant’s inability to demonstrate that she complied with Cal. Govt. Code §
19 911.2, subd. (a) or her application to file a late claim was granted pursuant to Cal. Govt. Code §
20 911.4, subd. (b), the trial court had no other choice but to grant the demurrer without leave to amend
21 because it could not exercise jurisdiction over the case without those prerequisites being met. (Cal.
22 Govt. Code § 945.4.) The appellant does not present any facts she could plead demonstrating
23 compliance with Cal. Govt. Code § 911.2, subd. (a) or Cal. Govt. Code § 911.4, subd. (b). Rather it
24 appears from the record that she did not even oppose the demurrer to the amended complaint filed
25 on November 20, 2023. She also did not appear for oral argument on January 8, 2024. (CT 118.)

26 Regarding the appellant’s 42 U.S.C § 1983 claim, this claim is not plead in any of her
27 complaints. It appears that she raised this claim for the first time on appeal and we will not consider
28 the appellant’s arguments raised for the first time on appeal. (*Stiles v. Kia Motors America, Inc.*

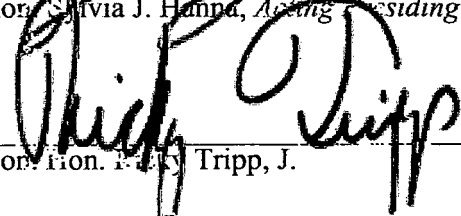
1 (2024) 101 Cal. App. 5th 913, 920.)

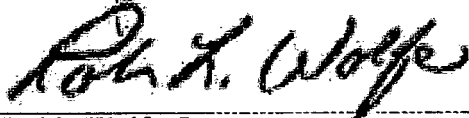
2 **DISPOSITION**

3 Construing the order sustaining the demurrer without leave to amend as a final judgment,
4 the Court affirms the judgment. Upon remand, the trial court is directed to dismiss the case.

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6 Dated: 09/09/2024

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8 Hon. Sylvia J. Hanna, Acting Presiding Judge

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10 Hon. Hon. F. J. Tripp, J.

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12 Hon. Robin Wolfe, J.
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IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

SABRINA VERONICA PEREZ,

Petitioner,

v.

APPELLANT DIVISION OF THE
SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY ADULT PRETRIAL
FACILITY,

Real Party in Interest.

F090149

(Tulare Super. Ct. No. VCL296497)

ORDER

BY THE COURT:*

The "Petition for a Writ of Certiorari," transferred from the Supreme Court (S291890) and filed in this court on July 21, 2025, is denied.



Franson, A.P.J.

* Before Franson, A.P.J., Snauffer, J. and Fain, J.†

† Judge of the Fresno Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.