IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

WADE TRAVIS WEBB,
Plaintiff/Appellant,

v.

PIMA COUNTY SHERIFF'S DEPARTMENT,
Defendant/Appellee.

No. 2 CA-CV 2016-0187
Filed August 3, 2017

Appeal from the Superior Court in Pima County
No. C20162586
The Honorable Jeffrey T. Bergin, Judge

AFFIRMED

COUNSEL

Wade Travis Webb, Lebanon, Kentucky
In Propria Persona

Miniat & Wilson, L.P.C., Tucson
By Jerald R. Wilson
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Howard[1] concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Wade Webb appeals from the trial court's dismissal of his complaint against the Pima County Sheriff's Department (PCSD). Webb contends the court erred in finding his notice of claim and lawsuit were filed untimely, because he was mentally incapacitated and the relevant time limitations were thus tolled. Because we find no error, we affirm.

Factual and Procedural Background

¶2 The following facts are not in dispute. In March 2014, a grand jury indicted Webb on one count of stalking. However, Webb filed a motion to remand for a redetermination of probable cause, arguing the state had failed to instruct the grand jury on the elements of the offense and "withheld crucial exculpatory evidence." Before a scheduled hearing, the state filed a motion to dismiss the charge, which the court granted on June 6, 2014. In May 2016, Webb filed a notice of claim with PCSD[2] and, the following month, filed this

[1]The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[2]The record does not contain Webb's notice of claim. In its motion to dismiss, PCSD stated it had received the notice of claim on May 3, 2016, an assertion that Webb has never disputed. We presume, for the purposes of our discussion regarding timeliness, PCSD is correct.

lawsuit alleging PCSD had violated his constitutional rights during the investigation that lead to his indictment.[3]

¶3 PCSD filed a motion to dismiss the complaint pursuant to Rule 12(b), Ariz. R. Civ. P., asserting that it was "a nonjural entity that cannot be sued, that [Webb] failed to meet the notice of claim requirements in A.R.S. § 12-821.01 and that [he] has failed to timely file a complaint as required by [A.R.S. § 12-821]."[4] PCSD maintained Webb's notice of claim and complaint were untimely because his cause of action accrued, at the latest, when the charge against him was dismissed in June 2014. *See* §§ 12-821, 12-821.01(A). At the hearing held on that motion, Webb conceded his claims accrued in June 2014 and therefore were untimely under §§ 12-821 and 12-821.01(A), but argued the time limits in the statutes should be tolled because he had a mental incapacity that prevented him from initiating this action within the applicable time limitations. The trial court granted PCSD's motion to dismiss with prejudice, finding Webb's action was time barred and he had not shown that "he suffered a mental disability to a degree justifying tolling the statute of limitations and notice of claim statute." We have jurisdiction over Webb's appeal pursuant to A.R.S. §§ 12–120.21(A)(1) and 12–2101(A)(1).

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[3] Webb additionally appears, both below and on appeal, to include the Pima County Attorney's Office in his allegations that his constitutional rights were violated. But that office was not named as a defendant in this action, did not make an appearance, and does not appear to have been served with the complaint.

[4] Section 12-821.01 provides that "[p]ersons who have claims against a public entity . . . shall file [a notice of claim] with the person or persons authorized to accept service for the public entity . . . within one hundred eighty days after the cause of action accrues." Additionally, § 12-821 provides: "All actions against any public entity . . . shall be brought within one year after the cause of action accrues and not afterward."

Discussion

¶4 We first address several arguments Webb makes in his opening brief that he failed to raise before the trial court. These include his contentions that PCSD has "waive[d] all rights to any defense" because it "knowingly violat[ed his] constitutional rights and offer[ed] no restitution"; that §§ 12-821 and 12-821.01 are unconstitutional when applied to claims of constitutional violations;[5] that amending the complaint, rather than dismissing it, is the appropriate procedure when a plaintiff names a nonjural entity as a party;[6] that promissory estoppel "tolled" the limitation periods "indefinitely"; and, that dismissal was improper because "issues of disputed facts exist regarding [his] claim."

¶5 "[W]e generally do not consider issues, even constitutional issues, raised for the first time on appeal." *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13, 13 P.3d 763, 768 (App. 2000). Although Webb is a nonlawyer representing himself, he is held

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[5]Even assuming this claim was not waived, we have previously upheld the constitutionality of § 12-821 as applied to constitutional claims "because it regulates rather than abrogates the time within which an action must be filed against a public entity." *Flood Control Dist. of Maricopa Cty. v. Gaines*, 202 Ariz. 248, ¶¶ 15-18, 43 P.3d 196, 201-02 (App. 2002); *see Rogers v. Bd. of Regents of Univ. of Ariz.*, 233 Ariz. 262, ¶ 24, 311 P.3d 1075, 1082 (App. 2013).

[6]Below, Webb argued only that PCSD was a jural entity and therefore could be sued. However, even had Webb raised this precise argument, we would still decline to address it. At the hearing, the trial court stated it wanted to "set the nonjural entity issue aside" and focus on the issue of timeliness. And in its ruling, the court clearly based its decision solely on its finding that Webb's action was time barred and did not address the nonjural entity issue. Because we conclude the court did not err in finding Webb's claim was time barred, we need not address the nonjural-entity issue. *See Old Republic Nat'l Title Ins. Co. v. New Falls Corp.*, 224 Ariz. 526, ¶ 19, 233 P.3d 639, 643 (App. 2010) (court of appeals will affirm "trial court's grant of a motion to dismiss if it is correct for any reason").

to the same standards as an attorney. *See Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). He is thus charged with "the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer." *Higgins v. Higgins*, 194 Ariz. 266, ¶ 12, 981 P.2d 134, 138 (App. 1999). Having failed to raise these arguments in the trial court, he has waived review of them on appeal. *See Englert*, 199 Ariz. 21, ¶ 13, 13 P.3d at 768-69.

¶6 Webb argues in his reply brief, however, that we should not hold him to the same standards as an attorney because "he was forced to [represent himself] because of the severity of the damage inflicted upon him by . . . PCSD." But the circumstances that may have led a party to represent himself are irrelevant. We hold self-represented litigants to the same standards as practicing attorneys because "[s]uch a rule is indispensable to the orderly and efficient administration of justice." *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963). We have reiterated this rule even when self-represented litigants have claimed, for example, that "the ulterior machinations" of previous attorneys "made it impossible" to obtain new counsel. *Id.*; *see also Old Pueblo Plastic Surgery, P.C.*, 146 Ariz. at 179, 704 P.2d at 820. We thus reject Webb's contention on this point.

¶7 We turn to Webb's remaining argument that is preserved for review—that the trial court erred by finding he failed to show a mental incapacity justifying the tolling of the limitations periods. He contends he provided sufficient evidence that "it would be impossible to expect [him] to bring a lawsuit in his condition" after the criminal charge was dismissed.

¶8 Although neither party has raised the issue, we note that the trial court, in its ruling, considered exhibits that Webb had attached to his response to PCSD's motion to dismiss. Consequently, the court should have treated the motion to dismiss as a motion for summary judgment. *See* Ariz. R. Civ. P. 12(d); *see also Vasquez v. State*, 220 Ariz. 304, ¶ 8, 206 P.3d 753, 757 (App. 2008). "We therefore review de novo whether any dispute of material fact exists and whether the trial court erred in applying the law." *Vasquez*, 220 Ariz. 304, ¶ 8, 206 P.3d at 757.

¶9 A statutory limitations period is tolled if the plaintiff demonstrates he was of "unsound mind" at the time the cause of action accrued and tolling will continue until "the period of such disability" has ended. A.R.S. § 12-502; *see also* § 12-821.01(D). "Unsound mind" means that "a person is unable to manage his affairs or to understand his legal rights or liabilities." *Allen v. Powell's Int'l, Inc.*, 21 Ariz. App. 269, 270, 518 P.2d 588, 589 (1974); *see Doe v. Roe*, 191 Ariz. 313, ¶ 42, 955 P.2d 951, 964 (1998). A plaintiff must provide "hard evidence that [he] is simply incapable of carrying on the day-to-day affairs of human existence." *Florez v. Sargeant*, 185 Ariz. 521, 526, 917 P.2d 250, 255 (1996). This requires "empirical facts [that are] easily verifiable and more difficult to fabricate than a narrow claim of inability to bring the action." *Id.*

¶10 We find *Florez* instructive. In that case, two adult plaintiffs, Gomez and Moonshadow, filed separate actions stemming from sexual abuse they suffered as children and argued the statutes of limitation were tolled because they were both of unsound mind. *Id.* at 523-24, 917 P.2d at 252-53. Both plaintiffs submitted affidavits from experts stating they suffered from post-traumatic stress disorder. *Id.* Gomez's affidavits additionally stated that he had dropped out of high school, had trouble maintaining employment and stable housing, and had poor money-management skills. *Id.* at 527, 917 P.2d at 256. Moonshadow's affidavit attested that she had difficulty "conduct[ing] her life 'normally.'" *Id.* The court rejected those affidavits as "conclusory," noting that leading a "less than satisfactory [life]" is not evidence of an "inability to perform the basic functions of human existence." *Id.* Rather, the evidence showed that in the years prior to filing his lawsuit Gomez had "been able to work, maintain a bank account, and take care of himself" and had sought legal assistance with his claim years before filing his complaint. *Id.* at 526, 917 P.2d at 255. Likewise, Moonshadow had worked full-time, attended school part-time, could support herself, could function on a daily basis, and had discussed bringing the action years prior to filing her complaint. *Id.* Accordingly, the court concluded that neither plaintiff established the limitation period should have been tolled based on an "unsound mind." *Id.*

¶11 The record in this case similarly shows that Webb was able to manage his day-to-day affairs and understand his legal rights. *See Allen*, 21 Ariz. App. at 270, 518 P.2d at 589. In the two years prior to filing his complaint, Webb gave financial management presentations and was able to work. He sought counseling for his emotional problems stemming from his arrest and indictment. He told a counselor in 2015 that he was doing "whatever he can as it relates to [the] lawsuit regarding the arresting officer." Although it is unclear, it appears he also coached youth soccer during that time. But even if Webb had not coached youth soccer after June 2014, the record nonetheless does not demonstrate that he was of unsound mind during the time between his criminal case being dismissed and filing this lawsuit. *See id.*; *see also Florez*, 185 Ariz. at 526, 917 P.2d at 255.

¶12 Webb, however, points to a letter from his counselor stating that, since his arrest and indictment, he had been "exhibit[ing] signs of post[-]traumatic stress trauma." Specifically, he "was having difficulty sleeping, concentrating, experiencing nightmares, and feeling exploited and humiliated by" his experiences in Tucson and "has had difficulty with employment." Like the affidavits in *Florez*, his counselor's statements do not amount to evidence sufficient to demonstrate Webb was "incapable of carrying on the day-to-day affairs of human existence" and thus do not support his claim. *Florez*, 185 Ariz. at 526-27, 917 P.2d at 255-56. Similarly, the other facts Webb points to—that his family sent text messages demonstrating concern for him, that he had been in counseling since 2014, and that he was, for several nights after returning to Arizona in 2016, homeless—do not support a legal finding of unsound mind. *See id.*

¶13 Webb additionally argues the "earliest date" for the tolling to end should be February 21, 2016, when he returned to Arizona from Kentucky for the first time since 2014.[7] To the extent Webb suggests the statutory timeframes should have been tolled while he was in Kentucky, a plaintiff's mere absence from Arizona is not, standing alone, a sufficient basis to toll a statutory-limitations period. *See* A.R.S. § 12-501. Moreover, a plaintiff's "ability to pursue

[7]Webb had returned to his home state of Kentucky following the dismissal of the criminal charge.

the subject matter of the litigation" is not the focus of the unsound-mind inquiry. *Florez*, 185 Ariz. at 525, 917 P.2d at 254. We are concerned only with whether, following the accrual of Webb's claims, he was able to manage his daily affairs and understand his legal rights. *Id.* Because Webb has failed to demonstrate he was of unsound mind when his cause of action accrued and throughout the two years that followed, the trial court did not err in granting PCSD's motion to dismiss. *See Vasquez*, 220 Ariz. 304, ¶ 8, 206 P.3d at 757.

Disposition

¶14 For the foregoing reasons, we affirm the trial court's ruling.