IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IRA JON YATES, AN INDIVIDUAL,
Plaintiff/Appellant,

v.

PIMA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA,
Defendant/Appellee.

No. 2 CA-CV 2020-0077
Filed August 24, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20183480
The Honorable Leslie Miller, Judge

AFFIRMED

COUNSEL

Udall Law Firm LLP, Tucson
By Jeanna Chandler Nash, Thomas D. Laue, and Brooke Marissa Lee Harris
Counsel for Plaintiff/Appellant

Laura Conover, Pima County Attorney
By Michael LeBlanc, Deputy County Attorney, Tucson
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 Ira Yates appeals from the trial court's dismissal of his inverse condemnation action for failure to timely file his claim. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We accept all well-pleaded facts as true and view all inferences therefrom in the light most favorable to Yates. *See Botma v. Huser*, 202 Ariz. 14, ¶ 2 (App. 2002). In 2006, voters approved a Regional Transportation Authority plan, which included Pima County's plan to widen the intersection of Magee Road and La Cholla Boulevard. Yates objected to the county, claiming the widening would "eliminat[e]" an easement on his property adjoined to La Cholla. The county proceeded with the widening, and access to Yates's easement was eliminated by July 2011. Although Yates was "led to believe" the county would provide "equal alternative access" to his property, later that year, he and the county signed an agreement "toll[ing] and extend[ing] the time [for Yates] to file a Notice of Claim" for "damages against Pima County" to February 10, 2012. The agreement also provided that the county would not raise the statute of limitations as a defense to "any action . . . filed by July 10, 2012." The agreement further stated, "Because of the construction undertaken by Pima County on and near Yates' property in the widening of La Cholla Blvd., [he] may have a claim for damages against [the] County."

¶3 Following an unsuccessful application for rezoning, litigation related to the zoning application, and other negotiations between the parties, Yates filed an inverse condemnation action against the county on July 12, 2018.[1] The county moved to dismiss, arguing that pursuant to

---

[1]*See generally* Ariz. Const. art. II, § 17 ("No private property shall be taken *or damaged* for public or private use without just compensation having first been made . . . ." (emphasis added)); *City of Scottsdale v. CGP-Aberdeen, L.L.C.*, 217 Ariz. 626, n.3 (App. 2008) ("An 'inverse' condemnation . . . is one in which the [government] takes . . . property without filing a complaint,

A.R.S. § 12-821, Yates "realized his damages and knew the cause and source of his alleged damages more than one year before he filed this suit." The trial court granted the motion, recognizing that in April 2017, Yates "had a claim, and yet . . . didn't file it." This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[2]

Discussion

¶4 Yates primarily argues the trial court erred in granting the motion to dismiss "by holding [his] claim was untimely under the statute of limitations." We review this decision de novo.[3] *See Romero v. Hasan*, 241 Ariz. 385, ¶ 6 (App. 2017); *Redhair v. Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*, 218 Ariz. 293, ¶ 21 (App. 2008).

¶5 An action against a public entity, including a county in the state of Arizona, must "be brought within one year after the cause of action accrues."[4] § 12-821; *see* A.R.S. § 12-820(7). "[A] cause of action accrues

---

and it is the landowner who thereafter files suit to obtain just compensation.").

[2]While Yates's notice of appeal refers to the trial court's minute entry "entered on March 16, 2020," noting the case's dismissal, a properly certified, final, appealable order was entered on March 30. *See* Ariz. R. Civ. P. 54(c); *McCleary v. Tripodi*, 243 Ariz. 197, ¶ 7 (App. 2017) (judgment must be final and entered under Rule 54(c) to be appealable). Nonetheless, the notice was filed after the final order's entry, and this technical defect does not impair our jurisdiction. *See* Ariz. R. Civ. App. P. 8(d); *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 30 (App. 1998); *DeLong v. Merrill*, 233 Ariz. 163, ¶ 9 (App. 2013) ("resolution of cases on their merits is preferred").

[3]Although in considering the county's motion to dismiss, the trial court referenced the tolling agreement, a matter outside of the pleadings and presented by the county, *see Blanchard v. Show Low Plan. & Zoning Comm'n*, 196 Ariz. 114, ¶ 11 (App. 1999), we are nonetheless not required to treat its ruling as one of summary judgment, *see Pritchard v. State*, 163 Ariz. 427, 432 (1990) ("The proper method for raising a defense of limitation is a motion to dismiss . . . ."); *cf. ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, ¶ 7 (App. 2010) ("[E]ven if a document is not attached to the complaint, if it is central to the claim, the court may consider it without converting a motion to dismiss to a motion for summary judgment.").

[4]Additionally, in order to maintain an action, "[p]ersons who have claims against a public entity . . . shall file claims with the person or persons

when the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition which caused or contributed to the damage." *Mayer Unified Sch. Dist. v. Winkleman*, 219 Ariz. 562, ¶ 15 (2009) (alteration in *Mayer*) (quoting A.R.S. § 12-821.01(B)). A party realizes such damages occurred when it comprehends them "fully or correctly." *Long v. City of Glendale*, 208 Ariz. 319, ¶ 10 (App. 2004) (quoting Webster's II New College Dictionary 922 (2001)).

¶6 Nonetheless, statutes of limitations are subject to claims of equitable estoppel and tolling. *Pritchard v. State*, 163 Ariz. 427, 432 (1990). "To establish equitable estoppel, a party must generally show: (1) affirmative acts inconsistent with a claim afterwards relied upon; (2) action by a party relying on such conduct; and (3) injury to the party resulting from a repudiation of such conduct." *McBride v. Kieckhefer Assocs., Inc.*, 228 Ariz. 262, ¶ 23 (App. 2011). Similarly, "[i]n instances involving equitable tolling, courts have recognized that, as a matter of equity, a defendant whose affirmative acts of fraud or concealment have misled a person from either recognizing a legal wrong or seeking timely legal redress may not be entitled to assert the protection of a statute of limitations." *Porter v. Spader*, 225 Ariz. 424, ¶ 11 (App. 2010).

¶7 The county, in its motion to dismiss, argued Yates had "realized he had been damaged" when access to the easement was eliminated in July 2011, or, alternatively, when the trial court, in a separate proceeding in April 2017, concluded that the property's other easement was "limited to access only for the residence on the Property." Further, it claimed Yates nonetheless failed to "allege the County imposed a legal restraint that diminishes his rights" or "a compensable right to rezone the Property." Thus, it argued Yates also failed to state a claim on which relief could be granted.

¶8 Yates, however, claimed in his response that based on the county's continued representations "that he would be provided equal alternative access" to his property, he could not have realized he had been

---

authorized to accept service for the public entity . . . within one hundred eighty days after the cause of action accrues." A.R.S. § 12-821.01(A). Such notices of claim must explain "the basis on which liability is claimed" and provide "a specific amount for which the claim can be settled and the facts supporting that amount." *Id.* If the public entity does not respond to the claim within sixty days, it is deemed denied. § 12-821.01(E). The parties do not appear to dispute that Yates filed a notice of claim.

damaged until January 19, 2017, when the county informed him his easement "would not support further development of his Property." Alternatively, Yates argued his claim accrued at the time of the trial court's April 2017 ruling. Accordingly, he pointed to the tolling agreement, which states that "the statute of limitations to file an action on Yates' claims should be tolled and each be extended by an additional one hundred eighty . . . days."

¶9 Thus, Yates argued his "claim under the Arizona Constitution expired, at the earliest, on July 16, 2018 (one year and 180 days after the January 19, 2017 letter)." And, he argued, because of the county's conduct, "any earlier statute of limitations would none[thele]ss be waived and subject to estoppel and equitable tolling." Lastly, Yates contended he had adequately stated "a claim for a taking."

¶10 The parties generally reassert these arguments on appeal. In its answering brief, the county relies on the tolling agreement as evidence that Yates realized his damages in 2011 and argues neither equitable estoppel nor equitable tolling are applicable, and therefore they do not extend the statute of limitations and save Yates's claim. We agree.

¶11 Yates stated in his first amended complaint that "[t]he construction of the Intersection Reconfiguration was near completion in July 2011 and completely eliminated easement access and postal service to the La Cholla Easement from La Cholla." Thereafter, "[i]n October and November of 2011," he signed the tolling agreement, which explicitly stated, "Yates may have a claim for damages against Pima County" as a result of the construction. The agreement went on to state the following:

> The parties mutually believe that a resolution of Yates' claims is possible, but additional time is required to reach and finalize any such resolution.
>
> . . . .
>
> The parties are discussing possible design modifications, alternative access rights, or even a direct condemnation action to afford just compensation. Thus, a non-judicial resolution of Yates' claim is possible. The filing of a suit would entail unnecessary costs and expenses and may interfere with the parties' ability to reach a resolution of Yates' claims.

The foregoing demonstrates that Yates "fully or correctly" understood the nature of the damages, and that they arose from the county's actions, far more than a year before he filed his initial complaint. *Long*, 208 Ariz. 319, ¶ 10 (quoting Webster's II New College Dictionary 922); *see* § 12-821; *Standard Constr. Co. v. State*, 249 Ariz. 559, ¶ 5 (App. 2020) ("[W]e construe contracts to give effect to the parties' intent, applying the plain contractual language when it is unambiguous.").

¶12 We further conclude the trial court did not abuse its discretion in declining to apply equitable estoppel or tolling.[5] *See Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007); *Viniegra v. Town of Parker Mun. Prop. Corp.*, 241 Ariz. 22, ¶ 9 (App. 2016), *depublished in part sub nom. Viniegra v. Town of Parker*, 244 Ariz. 453 (2017). As the county points out, in the context of estoppel applied to a government actor:

> [T]he actions relied upon must bear some "considerable degree of formalism." Rarely will unwritten agreements meet the requisite formalism, and, "[i]n general, the state may not be estopped due to the casual acts, advice, or instructions issued by nonsupervisory employees." Rather, estoppel applies only to the authorized acts of government officials when necessary to prevent a "serious injustice."

Gorman v. Pima County, 230 Ariz. 506, ¶ 21 (App. 2012) (first alteration added, second alteration in *Gorman*) (citations omitted) (quoting *Valencia Energy Co. v. Ariz. Dep't of Revenue*, 191 Ariz. 565, ¶ 36 (1998); *Freightways, Inc. v. Ariz. Corp. Comm'n*, 129 Ariz. 245, 248 (1981)). Likewise, equitable tolling is generally reserved for "extraordinary circumstances" and should be applied "only sparingly." *McCloud v. State*, 217 Ariz. 82, ¶ 16 (App. 2007).

¶13 While the tolling agreement may have been a formal one allowing for application of equitable estoppel, it would not have been

[5]To the extent Yates separately contends "the statute of limitations should be waived," his argument is unpersuasive. In support, he relies on *Shea North, Inc. v. Ohio Casualty Insurance Co.*, 115 Ariz. 296, 298 (App. 1977), which involves "contractual limitation period[s]" for "action[s] on [insurance] polic[ies]," and *American Continental Life Insurance Co. v. Ranier Construction Co.*, 125 Ariz. 53, 55 (1980), which also concerns waiver of contractual requirements.

effective as such after 2012. As noted, the agreement expressly provided the county would not raise a statute of limitations defense to any suit filed on or before July 10, 2012. And, Yates has not brought forward acts by the county "bear[ing] some 'considerable degree of formalism'" estopping the county from asserting a statute of limitations defense beyond the expiration of the tolling agreement in 2012. *Gorman*, 230 Ariz. 506, ¶ 21 (quoting *Valencia Energy Co.*, 191 Ariz. 565, ¶ 36). Further, we cannot say the parties' efforts toward rezoning or any assurances of adequate alternative access by the county present the "extraordinary circumstances" necessary for equitable tolling. *McCloud*, 217 Ariz. 82, ¶¶ 12, 16 (collecting cases); *see Hosogai v. Kadota*, 145 Ariz. 227, 229-30, 234 (1985) (applying doctrine where, after favorable verdict overturned on appeal due to procedural defect, second wrongful death claim untimely filed); *Kosman v. State*, 199 Ariz. 184, ¶¶ 6, 10 (App. 2000) (applying doctrine where prisoner failed to timely file notice of claim after going through inmate grievance system); *Kyles v. Contractors/Eng'rs Supply, Inc.*, 190 Ariz. 403, 404, 406 (App. 1997) (applying doctrine where notice from state attorney general gave incorrect deadline for filing claim).[6]

Attorney Fees

¶14 Yates requests costs and attorney fees on appeal pursuant to A.R.S. §§ 11-972, 12-341, and 12-341.01. As he is not the prevailing party, we deny his request. However, the county is entitled to taxable costs upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* § 12-341.

Disposition

¶15 For the foregoing reasons, we affirm.

[6]Concluding the trial court properly dismissed Yates's claims on grounds of untimeliness, *see First Credit Union v. Courtney*, 233 Ariz. 105, ¶ 7 (App. 2013) ("We will uphold the trial court if it is legally correct for any reason."), we need not address his argument that he "stated a valid claim for a taking."