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STATE OF MICHIGAN

COURT OF APPEALS

JOHN GONZALES,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
September 08, 2026
11:56 AM

No. 376470
Wayne Circuit Court
LC No. 24-002016-NO

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying defendant's motion for summary disposition. On appeal, defendant argues the trial court erred when it denied defendant's motion because plaintiff's notice of injury failed to meet the requirements of MCL 691.1404(1) when the notice did not sufficiently state the nature of the defect or the names of the known witnesses. We affirm.

I. FACTUAL BACKGROUND

This case arises from a fall sustained by plaintiff while walking on a sidewalk along Bagley Street in Detroit on March 1, 2023. Plaintiff was walking home from a gas station after visiting his friend, Jesse Martinez. At approximately 6:30 p.m., while in the dark, plaintiff tripped over a "defective sidewalk" and fell. He shattered his kneecap and, while attempting to stand, fell again, which fractured his hip. Plaintiff stated that he had walked along that part of the sidewalk before but was unaware of the extent of the defect because he usually walked on the other side of the street. The "defect," according to plaintiff, was the result of a tree growing in the verge—the area between the sidewalk and street—that had fallen "a long time ago." When the tree fell, the roots under the sidewalk made the sidewalk "buckle," causing one side of the paving stone to rise higher than the other.

There was nobody in the area when plaintiff fell. When he was unable to stand, he began to scream and cry for help. He telephoned a friend, "Junior," to come and help him. Junior arrived shortly thereafter. Then Martinez's sister arrived, responding to plaintiff's cries for help. She

recruited Martinez to assist plaintiff. Finally, a neighbor enlisted by Martinez helped move plaintiff into a car. Plaintiff was taken to the hospital.

On March 21, 2023, plaintiff sent defendant a notice of injury letter stating the following:

> PLEASE TAKE NOTICE that, pursuant to the provisions of MCL 691.1404(1) notice is given to you that John Gonzales suffered personal injuries as a result of a defect in the sidewalk under your care and control on *March 2, 2023*. The incident occurred on Bagley St near West Grand Blvd. The injury occurred when the claimant was walking when he tripped and fell on the *defective sidewalk*. As a result of the accident, the claimant suffered injuries of the following nature: fractured left hip and shattered left knee. The coordinates for the exact location are 42.321546, -83.089438. The attached images identify the exact location and defect with a red circle as the exact location and defect that caused Claimant to trip and fall, resulting in serious injuries. There are no known witnesses at this time. [Emphasis added.]

Defendant received the notice on March 24. The date of plaintiff's injuries in plaintiff's notice (March 2, 2023) differs from the complaint (March 1, 2023). Included with the notice were two Google map images, including one satellite view and one street view. The images were dated six months before the incident and indicate the address as "3844 Bagley St," and "Bagley St & W Grand Blvd." The images show an empty lot with a sidewalk and grass road verge separating it from Bagley Street. In both images, there is blue circle and a smaller red circle over an area of sidewalk covering roughly two paving stones. The circled pavers are visibly a "cleaner" or "brighter" gray from those immediately adjacent to them, and there is a shaded area on the road verge directly next to them, presumably showing the tree stump.

On February 9, 2024, plaintiff filed a complaint against defendant in which he alleged counts of breach of statutory duty, premises liability, and gross negligence. Post-discovery, defendant moved for summary disposition, arguing that plaintiff's presuit notice was deficient because it did not sufficiently describe the nature of the defect or the known witnesses plaintiff later disclosed during his deposition. The trial court denied defendant's motion, holding that the description of the defect in plaintiff's notice was sufficient, and plaintiff was not obligated to identify witnesses in the notice because none saw his fall. This appeal followed.

II. APPLICABLE LAW

Defendant argues on appeal that the trial court should have granted its motion for summary disposition because plaintiff failed to meet the statutory requirements of MCL 691.1404(1) by not specifying the nature of the defect and not naming known witnesses. Defendant also argues that plaintiff's mistake as to the date of his fall added to the deficiency. We disagree.

A. STANDARD OF REVIEW

Defendant moved for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). The trial court did not specify in its oral opinion or accompanying order under which subrule it denied defendant's motion. When the trial court fails to specify the subsection of rule under which

it granted summary disposition, this Court assumes that summary disposition was granted under the subsection cited in the party's motion, and on which the movant's argument was based. *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000). The basis of defendant's motion was governmental immunity under (C)(7), which was based on its claim that plaintiff's notice of injury was legally insufficient. Therefore, review under this subrule is appropriate. This Court reviews de novo the trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

"Summary disposition under MCR 2.116(C)(7) is appropriate if a claim is barred because of immunity granted by law." *Pike v Northern Mich Univ*, 327 Mich App 683, 690; 935 NW2d 86 (2019).

> When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. [I]f a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Yoches v City of Dearborn*, 320 Mich App 461, 469; 904 NW2d 887 (2017) (quotation marks and citation omitted).]

We review de novo questions of government immunity, *Petersen Fin LLC v Kentwood*, 326 Mich App 433, 441; 928 NW2d 245 (2018), and statutory interpretation, *City of Grand Rapids v Brookstone Capital, LLC*, 334 Mich App 452, 457; 965 NW2d 232 (2020).

B. THE HIGHWAY EXCEPTION AND NOTICE UNDER MCL 691.1404

"The governmental tort liability act, MCL 691.1401 *et seq*., provides broad immunity from tort liability to governmental agencies whenever they are engaged in the exercise or discharge of a governmental function[.]" *Milot v Dep't of Transp*, 318 Mich App 272, 276; 897 NW2d 248 (2016) (quotation marks and citations omitted). There are, however, some narrowly drawn exceptions to governmental immunity, including the highway exception. MCL 691.1402(1). This exception provides that, "[a] person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency." *Madbak v City of Farmington Hills*, 349 Mich App 561, 568; 28 NW3d 809 (2023) (quotation marks and citations omitted).

However, "[a] claimant seeking recovery under the highway exception must comply with the notice requirements of MCL 691.1404 . . . . " *Wigfall v City of Detroit*, 504 Mich 330, 337; 934 NW2d 760 (2019). In relevant part, MCL 691.1404(1) provides:

> As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, . . . shall serve a notice on the governmental agency of the occurrence of

> the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

Failure to comply with this notice provision bars claims filed under the highway exception regardless of actual prejudice to the governmental agency. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 200; 731 NW2d 41 (2007).

Our Supreme Court "has established that 'MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect' and 'must be enforced as written.' " *Plunkett v Dep't of Transp*, 286 Mich App 168, 176; 779 NW2d 263 (2009), quoting *Rowland*, 477 Mich at 219. But "a notice of injury and defect will not be regarded as insufficient because of a failure to comply literally with all the stated criteria. Substantial compliance will suffice." *Plunkett*, 286 Mich App at 178 (quotation marks and citation omitted). "A plaintiff's description of the nature of the defect may be deemed to substantially comply with the statute when coupled with the specific description of the location, time and nature of the injuries. Some degree of ambiguity in an aspect of a particular notice may be remedied by the clarity of other aspects." *Madbak*, 349 Mich App at 570, citing *Plunkett*, 286 Mich App at 176-177.

"Notice need not be provided in any particular form and is sufficient if it is timely and contains the requisite information." *McLean v City of Dearborn*, 302 Mich App 68, 74; 836 NW2d 916 (2013) (citation omitted). "The required information does not have to be contained within the plaintiff's initial notice; it is sufficient if a notice received by the governmental agency within the 120-day period contains the required elements." *Id*. at 75. Information submitted more than 120 days after the injury occurs cannot be properly considered as part of the notice. *Madbak*, 349 Mich App at 561; *Thurman v City of Pontiac*, 295 Mich App 381, 386; 819 NW2d 90 (2012).

III. ANALYSIS

A. KNOWN WITNESSES

Defendant first argues that plaintiff should have included Martinez, Martinez's sister, Junior, and the next-door neighbor in the notice as witnesses and, since he did not, plaintiff's notice given was ineffective under MCL 600.1404(1). We disagree.

The purpose of the notice required under the statute is "to provide the governmental agency with the opportunity to investigate the claim while the evidentiary trial is still fresh and, additionally, to remedy the defect before other persons are injured." *Milot*, 318 Mich App at 277 (quotation marks and citation omitted). "If the plaintiff does not include the name of a known witness in the notice, the plaintiff's notice is defective, and the trial court should grant summary disposition in favor of the governmental agency." *Id*. (citation omitted). Because, however, the statute refers to "those who witnessed 'the occurrence of the injury and the defect,' " a plaintiff is only required to "list on his or her notice of intent the names of those witnesses who have pertinent information about the accident itself, not all witnesses who have knowledge of the subsequently revealed extent of the plaintiff's injuries." *Id*. at 278, quoting MCL 691.1404. Specifically, "under MCL 691.1404(1), 'the names of the witnesses' are the names of those persons who witnessed the occurrence." *Milot*, 318 Mich App at 279-280.

Defendant argues that plaintiff was required to include the names of Junior, Martinez, Martinez's sister, and Martinez's neighbor because they personally observed the sidewalk conditions when plaintiff fell and assisted him afterwards. But it is undisputed that none of these witnesses saw plaintiff fall or become injured. In his deposition, plaintiff testified that nobody was in the area when he fell two times on the sidewalk near Bagley Street. The record indicates that, since nobody was around, plaintiff called his friend Junior and cried out for help, which prompted other people to come outside and assist him. Plaintiff stated that he laid near the sidewalk for approximately five minutes before Junior arrived first to aid him. Plaintiff's notice did not violate MCL 691.1404(1) in this context.

Defendant principally relies on *Madbak*, but that case is distinguishable. There, the plaintiff was walking with her son, fell and injured herself, and her notice did not mention her son, despite him being with plaintiff when she fell. *Madbak*, 349 Mich App at 574-575. *Madbak* relied on this and other deficiencies in holding that the plaintiff's notice did not comply with the statute. Here, none of the other individuals were present when plaintiff fell, and they all arrived later. Because none of the witnesses subsequently identified by defendant observed the occurrence of plaintiff's injuries, MCL 691.1404(1) did not require him to identify them in his notice of injury. *Milot*, 318 Mich App at 280.

B. EXACT NATURE OF THE DEFECT

Defendant next argues that plaintiff's notice failed to specify the exact nature of the defect because he described the sidewalk in question as "the defective sidewalk" without further elaboration. It argues further that the photographs attached to his notice did not show an identifiable defect and, therefore, the notice did not substantially comply with MCL 691.1404(1)'s requirements. Again, we disagree.

MCL 691.1404(1) requires notice of both the "exact location" and "nature of the defect." While separate, the two requirements are related, as "[a] plaintiff's description of the nature of the defect may be deemed to substantially comply with the statute when coupled with the specific description of the location, time and nature of the injuries." *Madbak*, 349 Mich App at 570; see also *Milot*, 318 Mich App at 277 (noting that, given the statute's purpose of giving the government entity an opportunity to investigate the defect, the location and nature of the defect are intertwined). We have previously held that a plaintiff's notice "merely providing the intersection where the defect was located was insufficient as a matter of law because it did not specify at which of the four corners of the intersection the alleged defect was located." *Thurman*, 295 Mich App at 386, citing *Dempsey v City of Detroit*, 4 Mich App 150, 151-152; 144 NW2d 684 (1968). Likewise, we have held that a plaintiff's notice that describes the " 'defective road' as 'Near Intersection of Wilton Court and Wilton Drive, Farmington Hills MI,' standing alone, was not sufficiently specific to comply with MCL 691.1404(1) because it merely described a general area." *Madbak*, 349 Mich App at 571.

Here, plaintiff's notice was sufficient to provide notice to defendant regarding the nature of the defect that caused him injury, particularly given the specificity plaintiff provided as to the location. Although plaintiff did not use words like "buckled" or "uneven" in his notice, the phrase "defective sidewalk" that caused him to "trip and fall" along with the circled area of sidewalk in the Google map images brought to defendant's attention that there was an issue with the sidewalk

at this precise location. "Any deficiency in the written description is therefore remedied by the inclusion of the photographs." *McLean*, 302 Mich App at 76, citing *Plunkett*, 286 Mich App at 178-179. Moreover, plaintiff's notice provided geographic coordinates (i.e., "42.321546, -83.089438") for the exact location of the sidewalk along with the address "3844 Bagley St" to provide notice of the location and defect. The cases defendant cites lack the same specificity. Accordingly, we disagree with defendant's argument that plaintiff's notice did not describe the exact nature of the defect as required by the statute.

C. THE DATE OF THE INCIDENT

Lastly, defendant contends that a one-day discrepancy as to the date of the incident prevented a "timely and accurate opportunity to investigate" the alleged defect, and means the notice violates the statute. Although plaintiff's notice said that he was injured on March 2, 2023, he testified at his deposition and alleged in the complaint that he was injured on March 1, 2023. Plaintiff stated further that including March 2 was "wrong" and it "was supposed to be March the 1st."

The statute, however, does not require claimants to provide the date of injury in the notice, it only requires plaintiffs to provide notice within 120 days of injury. Moreover, while plaintiff had up to 120 days to submit his notice, he provided it about three weeks after the date of the fall, meaning defendant had more advanced notice of the alleged defect to investigate than required. Plaintiff also explained that the date discrepancy was a simple mistake; he testified that he was admitted to the hospital late at night, was discharged the next day (March 2), and did not obtain the medical records until after serving the notice.

Plaintiff's notice was "understandable and sufficient to bring the important facts" to defendant's attention. *Madbak*, 349 Mich App at 580, citing *Plunkett*, 286 Mich App at 176. We therefore disagree with defendant that plaintiff's notice failed to comply with MCL 691.1404(1), and the trial court properly denied defendant's motion for summary disposition.

Affirmed.

/s/ Michael J. Kelly
/s/ Colleen A. O'Brien
/s/ Andrew J. Lievense