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STATE OF MICHIGAN
IN THE SUPREME COURT

BRIAN ZEZULA,

Plaintiff/Appellee,

v.

INDEPENDENCE TOWNSHIP OF OAKLAND COUNTY,

Defendant/Appellant,

and

KALTZ EXCAVATING COMPANY, INC.,

Defendant/Appellee,

and

~~NINA BROWN~~, DTE ENERGY COMPANY,

Defendants.

Supreme Court No.

COA Docket No. 368261

Circuit Court No. 22-197937-NZ
Hon. Cheryl A. Matthews

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ANSWER BY PLAINTIFF / APPELLEE BRIAN ZEZULA TO DEFENDANT / APPELLANT INDEPENDENCE TOWNSHIP'S APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review a case by appeal after a decision by the MI. Court of Appeals has been rendered pursuant to Const. 1963, Art 6, §4; MCL 600.212; MCL 600.215(3); and MCR 7.301(A)(2).

Defendant / Appellant Independence Township's filed its Application for Leave to Appeal after a published decision was ruled on by the Michigan Court of Appeals on May 11th, 2025, as directly related to *Zezula v. Nina Brown, et al*, COA Docket No. 368261. The Defendant / Appellant filed it application for leave to appeal to this Honorable Court on May 07, 2025, in a timely manner pursuant to MCR 7.302(C)(2). Even so, Plaintiff / Appellee asserts to this Honorable Court that such an application is not warranted to be reviewed or accepted by this Court as Defendant / Appellant has failed to set forth proper grounds for such an application to be granted.

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. Is the Defendant / Appellant a proper party to this immediate case for violation of MCL 691.1417 pursuant to the 'sewage disposal system event exception' defect wherein Defendant / Appellant's operations failed in its duty to properly mark its facilities prior to a third-party excavating company engaging in boring procedures that damaged Plaintiff's underground sewage system lines?

Plaintiff / Appellee answers:	Yes.
Defendant / Appellee answers:	Yes.
Defendant / Appellant Independence Twsp. answers:	No.
Trial Court answers:	Yes.
MI. Court of Appeals answers:	Yes.
This Honorable Court should answer:	Yes.

II. Does the Governmental Liability for Negligence Act (GTLA) 170 of 1964, MCL 691.1407(7) allow for an exception to governmental immunity pursuant to the MISS DIG (Underground Facility Damage Prevention and Safety) Act?

Plaintiff / Appellee answers:	Yes.
Defendant / Appellee Kaltz Excavating answers:	Yes.
Defendant / Appellant Independence Twsp. answers:	No.
Trial Court answers:	Yes.
MI. Court of Appeals answers:	Yes.
This Honorable Court should answer:	Yes.

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III. Does the MISS DIG Act (MCL 691.1407(7)) mandate a singular administrative remedy under the GTLA pursuant to MCL 460.732 that restricts a Plaintiff from filing a lawsuit against a government entity?

Plaintiff / Appellee answers: No.

Defendant / Appellee Kaltz Excavating answers: No.

Defendant / Appellant Independence Twsp. answers: Yes.

Trial Court answers: No.

MI. Court of Appeals answers: No.

This Honorable Court should answer: No.

IV. Is the trial court's Order allowing Plaintiff to amended his Complaint in violation of the Michigan Court Rules or is it futile for Plaintiff / Appellee in this specific case?

Plaintiff / Appellee answers: No.

Defendant / Appellee Kaltz Excavating answers: No.

Defendant / Appellant Independence Twsp. answers: Yes.

Trial Court answers: No.

MI. Court of Appeals answers: No.

This Honorable Court should answer: No.

V. Did Plaintiff / Appellee comply with proper notice given to a governmental entity pursuant to MCL 691.1419(1) where Plaintiff gave both verbal and written notice to Defendant / Appellant Independent Township representative(s) of the adverse event involving Plaintiff's basement damage?

Plaintiff / Appellee answers: Yes.

Defendant / Appellee Kaltz Excavating answers: Yes.

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Defendant / Appellant Independence Twsp. answers: No.

Trial Court answers: Yes.

MI. Court of Appeals answers: Yes.

This Honorable Court should answer: Yes.

VI. Is Defendant / Appellant's Request for Leave to Appeal ripe for review by this Court when no discovery has been conducted to clarify the truth of the matter in this case?

Plaintiff / Appellee answers: No.

Defendant / Appellee answers: No.

Defendant / Appellant Independence Twsp. answers: Yes.

Trial Court answers: No.

MI. Court of Appeals answers: No.

This Honorable Court should answer: No.

- Plaintiff / Appellee concurs with, adopts and relies on the legal theories and arguments made by Defendant / Appellee Kaltz as found in Kaltz's filed Answer titled, "**COUNTER-STATEMENT OF FACTS, SECTION III, DISCOVERY REQUESTS TO INDEPENDENCE TOWNSHIP REGARDING INDEPENDENCE TOWNSHIP FACILITIES IN THE AREA OF THE BORE JOB**."

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COUNTER-STATEMENT OF FACTS

Plaintiff / Appellee Brian Zezula is a longtime resident of Independence Township in Oakland County, Michigan and resides with his family at 5116 Forrest View Dr. The few homes in his remote cul-de-sac area all have their water main and connectors supplied by Independence Township with underground sewage lines and appurtenances branching off of the main water line.

In December of 2020, Mr. Zezula's neighbor, Ms. Nina Brown, requested the services of DTE to bury overhead electrical wires underground for her. DTE agreed and subcontracted the job to Defendant / Appellee Kaltz Excavating Co., Inc. (Kaltz). In order to complete the job, Kaltz had to bore into Ms. Brown's residence land at 5122 Forrest View Dr. Defendant / Appellant has provided this Court with a map that has not been part of submitted discovery at the trial court level (there has been no discovery at the trial court level at this point) wherein Defendant / Appellant Independence Township asserts that the public "right-of-way" ends before Mr. Zezula and Ms. Brown's property. This is not accurate as the public "right-of-way" continues all the way up to each resident's property line as evidenced by the Register of Deeds. (Defendant / Appellee Kaltz's Brief in Support to this Court, P. 26)

During the excavation for Ms. Brown, mechanical boring conducted by Defendant / Appellee Kaltz struck, punctured and damaged Plaintiff / Appellee's underground sewage line. Subsequently, this puncture led to the sewage back-up and flooding on two separate occasions causing long-term adverse harm and damage to Mr. Zezula's basement, personal property and the use & enjoyment of his basement that well exceed one-hundred thousand dollars ($100,000.00).

Prior to the boring, Defendant / Appellant Kaltz requested MISS DIG report to the site and mark all the underground facilities that may be adverse to a excavating project. MISS DIG reported to the site and after completing its inspection, submitted a report back to Kaltz stating that

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there was, "NO CONFLICT" (Appellant APPX_130-133) in the area designated to be dug. With this report, Kaltz began digging and Mr. Zezula's underground sewage lead was struck, punctured and damaged, which caused him to suffer raw sewage back-up and flooding into his basement. (Appellant APPX_42-52).

In December of 2022, Plaintiff Zezula filed his Complaint before the Honorable Judge Cheryl Matthews in Oakland County, MI. naming Ms. Nina Brown, DTE and Kaltz Excavating Co, Inc. as defendants. (Kaltz Appx 1, ¶¶ 20-21; 31-32). Shortly thereafter, Plaintiff filed his First Amended Complaint to better clarify the underground sewer lead being punctured and not the water main line being punctured. On June 8th, 2023, Plaintiff filed a Second Amended Complaint naming Independence Township as a liable party to the case after Defendant / Appellee Kaltz had filed its non-party at fault pleading naming Independence Township alleging the township failed to properly mark the underground facilities at the job site, but instead issued a MISS DIG report stating there was "NO CONFLICT." (Appellant APPX_42-52)

On the sad and depressingly unfortunate 46th anniversary of the passing of our King of Rock & Roll – Mr. Elvis A. Presley – August 16th, 2023, Defendant / Appellant filed its motion for summary disposition before the Hon. Cheryl Matthews in the Oakland County Circuit Trial Court alleging government immunity pursuant to MCR 2.116(C)(7) and (C)(8). (Appellant APPX_57-108). Briefs were submitted and then oral arguments made on October 11th, 2023 to which Judge Matthews denied Defendant / Appellant Independence Township's motion for summary disposition for the reasons stated on the record. (Appellant APPX_294-295). Defendant / Appellant Independence Township then filed its timely Claim of Appeal to the Michigan Court of Appeals in Detroit, MI. in November of 2023. (Appellant APPX_1-7). On May 11th, 2025, the MI. Court of Appeals issued its published opinion and ruling that upheld the trial court's denial of

Independence Township's motion for summary disposition stating that governmental immunity is not a remedy for the township pursuant to the GTLA Sewer Exception mandating the township remain in the case. (Appellant APPX_8-14). Defendant / Appellant Independence Township then timely filed its Application for Leave to Appeal before this Honorable Court.

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LAW AND ARGUMENTS

I. AFTER A MISS DIG REQUEST, DEFENDANT / APPELLANT VIOLATED MCL 691.1407(7) AND MCL 691.1417 BY FAILING TO PROPERLY MARK ITS FACILITIES THAT CAUSED HARM TO PLAINTIFF / APPELLEE

Plaintiff / Appellee concurs with, adopts and relies on the legal theories and arguments made by Defendant – Appellee Kaltz as found in Kaltz's filed Answer before this Court titled, **"COUNTER-STATEMENT OF FACTS, SECTION IV, ARGUMENT OF INDEPENDENCE TOWNSHIP'S MOTION FOR SUMMARY DISPOSITION AND TRIAL COURT OPINION" and "SECTION V, COURT OF APPEALS OPINION, ARUGMENTS I & II** and all its subsections. (Kaltz's Answer to Defendant / Appellant's Application for Leave to Appeal to this Honorable Court).

Plaintiff / Appellee further asserts his legal theories and arguments by highlighting the following bullet points:

- Michigan's GTLA (as found in MCL 691.1407(7)) allows for a MISS DIG exception beyond the six (6) other governmental immunity exceptions. Specifically, Exception (7) states, "The immunity provided by this Act **does not apply** to liability of a governmental agency under the MISS DIG Underground Facility Damage Prevention and Safety Act. (*Emphasis added*).
- Pursuant to MCL 691.1407(7), Defendant / Appellant violated MCL 691.1417(3)(b) which outlines that a "defect" for a water / sewage disposal system operated and in the control of a government entity includes the "defect" of the government entity's failure to properly mark all underground facilities prior to a boring excavation. That is exactly what happened in this immediate case. Both the trial court and the Michigan Court of Appeals ruled that

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Defendant / Appellant was not entitled to immunity pursuant to filed violations of MCL 691.1407(7) and MCL 691.1417.

- Section 12 of the MISS DIG ACT, MCL 460.732(1) and (2) provides an alternative remedy for a facility owner and/or facility operator, but does not designate the alternative remedy as an exclusive, compulsory and singular remedy only. A Plaintiff may file a civil lawsuit against a government agency if that agency is in violation of a defective operation, to include failure to properly mark an excavation site after a MISS DIG request was made. If so, government immunity does not apply. This is what both the trial court and the Michigan Court of Appeals held in this immediate case. The Court of Appeals opined, "We affirm the trial court's holding that the GTLA has a broad exception to governmental immunity for alleged violations of the MISS DIG Act. Because Zezula alleges Independence Township violated MISS DIG, Independence Township cannot claim government immunity." (Township APPX 1, P. 5).
- Defendant / Appellant asserts to this Court that even if an exception to government immunity is applicable, Independence Township should still be allowed to be dismissed from the case because the township's "facilities" (main water line) was located far from the boring site. This assertion is misleading for two reasons:
    1) This explanation does not define what a "facility" is when just considering the water main. The township has control of the connecting water lines and "appurtenances" that tie in both the public and private sewer / water lines. Thus, there is a 'but for' reasoning begging the question, had the township marked the main water line and its connecting lines & appurtenances, Defendant / Appellant Kaltz would have been properly informed of hazardous underground events that could have been avoided

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upon boring. But for the area not being marked – and instead – written notification given to Kaltz proclaiming, "NO CONFLICT" (Appellant APPX_130-133) for the boring site, Plaintiff / Appellee would not have suffered the harm and damaged incurred.

2) Because discovery has not been conducted in this case, it makes it difficult for this Court, as well as the Court of Appeals, to know all the facts, what definitions and lingo or jargon are involved, depositions and affidavits from underground facility experts, and other information that may or may not make a party's case. Such information would better clarify, educate, and guide the judiciary with a more complete and comprehensive picture involved to determine the truth of the matter. There are some specific definitions stated in the MISS DIG ACT when one questions what a "facility" is. Pursuant to MCL 460.723(o), a "facility" or "underground facility" means an underground or submerged conductor, pipe, or structure including, but not limited to, a conduit, duct, line, pipe, wire or other device and its appurtenances used to produce, store, transmit or distribute a utility service including … sewage … water…" Ther is no dispute, nor can there be, that the damages Plaintiff / Appellee suffered included an underground sewage pipeline that was an appurtenance and conduit to the township's main water line, leads, and connectors.

- The legislative immunity exception in MISS DIG defines who a facility operator is, who a facility owner is, and who a person is, to include a person being a governmental agency, and further, a governmental agency includes "townships." (MCL 460.723(t)). These

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definitions confirm the legislative intent that every governmental entity is required to comply with MISS DIG pursuant to MCL 460.727.

- As the MI. Court of Appeals ruled, Defendant / Appellant waived its right to possible dismissal under MCR 2.116(C)(10) as that argument was "abandoned." It was not advanced by Defendant / Appellant to the Court of Appeals; only MCR 2.116(C)(7) and (C)(8) were.
- Plaintiff / Appellee humbly asserts to this Honorable Court that Defendant / Appellant's submitted "demonstrative map" has not been authenticated (no discovery has been conducted in this case) and at best is hearsay. This is the first time a map is being introduced with the allegations that Defendant / Appellant is now asserting. The argument being that the "right-of-way" for the township ends prior to Mr. Zezula's property line, making everything up to that point and after (the "grey area" on Defendant / Appellant's demonstrative map) private property that the township is not liable for. This is - at a minimum – a question of fact because the Register of Deeds for both Mr. Zezula and Ms. Nina Brown dispute Defendant / Appellant's "grey area" and "right-of-way." (Defendant / Appellee Kaltz's Brief in Support to this Court, P. 26).
- Senate Bill 539 provides that, "…the bill provides that immunity under the law does not apply to liability of a governmental agency under the MISS DIG Underground Facility Damage Prevention and Safety Act. (Def. Appellee Kaltz Appx 16, pp 143-44).

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I. WITHIN THE GTLA, THERE IS A SEWEAGE DISPOSAL SYSTEM EVENT EXCEPTION TO GOVERNMENT IMMUNITY PER MCL 691.1417(7)

The Appellant claims, rather incredibly, that "[t]he GTLA does not create a private cause of action or 'seventh exception' for a violation of MISS DIG."[1] It then concludes that "[a] complaint to the Commission is the exclusive remedy against the Township for an alleged violation of the act."[2] Precedents would disagree with the Appellants contention. As the MI. Court of Appeals has held:

> The GTLA provides immunity for governmental agencies where "the governmental agency is engaged in the exercise or discharge of a governmental function," except where otherwise provided within the act. MCL 691.1407(1). The term 'governmental function' is to be broadly construed, and the statutory exceptions are to be narrowly construed. *Among the statutory exceptions to governmental immunity is the 'sewage disposal system event' exception, MCL 691.1416 through MCL 691.1419*. "To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in" MCL 691.1418 and MCL 691.1419. MCL 691.1417(1). "A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency." MCL 691.1417(2),

Alley v. Charter Twp. of Mundy, Mich. App. No. 341501, 2018 WL 6037218, at *3 (Nov. 15, 2018) (internal quotations omitted) (internal citations omitted) (emphasis added). Plaintiff's allegations as were derived from the underlying event certainly qualifies as a "sewage disposal system event."

Independence Township's pursuit for governmental immunity asserts that there are only six (6) exceptions to governmental immunity without including MCL 691.1407(7) which reads:

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[1] Appellant's COA Brief on Appeal, p. 8.
[2] *Id.*

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> (7) The immunity provided by this Act does not apply to liability of a governmental agency under the MISS DIG Underground Facility Damage Prevention and Safety Act.

The above passage and law are in direct alignment with this case and Defendant / Appellant's defective operation over its sewage disposal system when the township failed to mark all of its underground facilities is what had both the trial court and the court of appeals deny Independence Township's motion for summary disposition. To the contrary, Independence Township instead issued a report via MISS DIG stating there was "NO CONFLICT" for the boring project to proceed. Defendant / Appellee Kaltz argues that there is a specific government immunity exception for liability under the Miss Dig Act per the 04/01/2014 amendment to the Governmental Tort Liability Act along with similar amendments made at that time to the Miss Dig Act and within the very township. Further, Kaltz correctly points out that in regard to MCL 691.1417 and the Township's failure to mark its facilities, the MI. Court of Appeals opined in *State Farm v Corby Energy*, 271 Mich App 480, 484 n2; 722 NW2d 906 (2006), that failing to mark an area requested for boring is considered an "operation" and thus a "defect" pursuant to MCL 691.1416 and 1417. (Township COA Appx 12, pp 264-67). The statutory language (and specific wording) found in MCL 691.1417(7) is not confusing, ambiguous or misleading. It is not open to interpretation. It is, indeed, straight forward and not complicated. In its basic and plain meaning clearly states, "The immunity provided by this Act **does not apply** to liability of a governmental agency under the **MISS DIG Underground Facility Damage Prevention** and Safety Act. (*Emphasis added*). As such, the MI. Court of Appeals correctly affirmed the trial court's ruling by stating:

> "We affirm the trial court's holding that the GTLA has a broad exception to governmental immunity for ***alleged*** violations of the MISS DIG Act. Because Zezula ***alleges*** Independence Township violated MISS DIG, Independence Township cannot claim governmental immunity."
> (Township APPX 1, p 5, *emphasis added*)

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I. THE MISS DIG ACT (MCL 691.1407(7)) DOES NOT MANDATE A SINGULAR ADMINISTRATIVE REMEMDY UNDER GTLA MCL 460.732; A PLAINTIFF IS ENTITLED TO FILE A TORT LIABILITY LAWSUIT AGAINST A GOVERNMENT ENTITY

Defendant / Appellant asserts that MCL 460.732 (Section 12 of the Miss Dig Act), only allows for a singular exclusive remedy for Plaintiff in these type events. This is not true. Defendant / Appellant interprets the meaning of MCL 460.732 in a manner that would only allow any Plaintiff to file a "complaint" with the Commission seeking a civil fine if applicable. That is not the only remedy. The language itself that the Defendant / Appellant relies on uses the term "***may***" and not "**shall**." The excerpt states, "...a facility operator ***may*** file a complaint with the Commission seeking a civil fine and, if applicable, damages from a governmental agency under this section." (*emphasis added*). It does not state this is the only exclusive remedy and that Plaintiff is barred from filing his lawsuit in tort. Both the trial court and the MI. Court of Appeals understood and ruled on the word "***may***" as opposed to restricting Plaintiff to the term '**shall**' when considering Plaintiff's possible remedies.

The Township has failed to establish the proper grounds required by MCR 7.305(B) to justify granting its application for leave to appeal.

II. THE TRIAL COURT'S ORDER ALLOWING PLAINTIFF TO AMENDED HIS COMPLAINT IS NOT IN VIOLATION OF THE MICHIGAN COURT RULES NOR IS IT FUTILE IN PLAINTIFF'S CAUSE OF ACTION

The Defendant / Appellant contends it was not given requisite notice, but the record stands in sharp contrast to this contention. Plaintiff / Appellee first reported that the incident transpired to the Defendant / Appellant two days after it first happened. The Defendant / Appellant informed Plaintiff that it was not liable. Defendant / Appellee Kaltz's Court of Appeals Brief is replete with instances where Plaintiff reported the issue to the Defendant / Appellant. Most importantly, the

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Defendant / Appellant was to have provided the notice requirements to Plaintiff under MCL 691.1419(2) in writing. Defendant / Appellant Independence Township entirely failed to do so, and cannot now allege that Plaintiff / Appellee has failed to comply with notice requirements which the Defendant / Appellant deliberately failed to disclose to Mr. Zezula.

Mr. Zezula is a homeowner who is not well-versed on the intricacies of the interplay between the Defendant / Appellant, Defendant / Appellee Kaltz and DTE Energy Company's responsibility for the debacle that led to his house getting flooded with raw sewage. When Kaltz filed a Motion for Nonparty at Fault, prudence dictated that Plaintiff Amend his Complaint under MCR 2.112(K)(4) to add the Defendant / Appellant as the courts do not reward Plaintiffs who sleep on their rights. It cannot be overemphasized that Plaintiff / Appellee lacks the technical knowledge possessed by the Defendants as to which entity to ascribe fault in the event of a sewage incursion into a home. The Defendant / Appellant contends that Plaintiff / Appellee cursorily added it to the Complaint.[1] When Plaintiff amended his Complaint to add the Defendant / Appellant, he was not entirely aware of the respective liabilities of the DTE Energy Company, Kaltz and the township. He relied upon discovery to ascertain the facts. Discovery has not even taken place yet in this case, which is now four and a half years old since the date of loss. Of saliency is this: Plaintiff's Complaint was plead in avoidance of governmental immunity. The facts of this case indicate that Plaintiff can make out a case against the Defendant / Appellant which falls under the MISS DIG Underground Facility Damage Prevention and Safety Act embodied in MCL 460.721.

"A plaintiff pleads in avoidance of governmental immunity *by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function.*" *Yono v. Dep't of*

[1] Appellant's COA Brief on Appeal, p. 10.

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Transportation 306 Mich. App. 671, 682, 858 N.W.2d 128, 135 (2014).[2] Pleading in avoidance of governmental immunity does not require a Plaintiff to name the pertinent statute, but merely to set forth facts which indicate as much. The general allegations set forth in Plaintiff's Complaint, when applied to the Appellant are sufficient to divest the Appellant of immunity as envisioned by MCL 691.1416 *et seq.* and MCL 460.721. Moreover, even if it is determined that Plaintiff did not provide sufficient facts or guidance in his Complaint, the appropriate remedy would not be to dismiss his case, when it can easily be amended to add the statute, if required.

Granting leave to amend a complaint is within the trial court's discretion. *Weymers v. Khera*, 454 Mich. 639, 654; 563 N.W.2d 647 (1997). Such motions are ordinarily to be granted "in the absence of any apparent or declared reason, such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment." *Cole v. Ladbroke Racing Michigan*, Inc., 241 Mich. App. 1, 9–10, 614 N.W.2d 169, 174 (2000) citing *Ben P. Fyke & Sons, Inc. v. Gunter Co.*, 390 Mich. 649, 656, 213 N.W.2d 134 (1973). Plaintiff has at all times been diligent, responding to the developments in this case with alacrity. To the extent that this Court decides that his Complaint was not replete with sufficient facts to avoid governmental immunity, Plaintiff would beg leave to amend his Complaint, yet again. There has been no repeated failures to cure deficiencies by Plaintiff, nor would amendment be futile and the trial court has, indeed, already ordered that such an amendment to Plaintiff's Complaint is allowed and as the Michigan Court Rules state, shall be freely and liberally granted.

[2] Rev'd sub nom. *Yono v. Dep't of Transportation*, 499 Mich. 636, 885 N.W.2d 445 (2016).

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III. PLAINTIFF / APPELLEE COMPLIED WITH PROPER NOTICE PURSUANT TO MCL 691.1419(1) WHEREAS DEFENDANT / APPELLANT FAILED TO COMPLY WITH MCL 691.1419(2) REGARDING ITS DUTY TO PROVIDE PLAINTIFF WITH NOTICE REQUIREMENTS

Defendant / Appellant asserts that Plaintiff / Appellee failed to comply with MCL 691.1419's notice requirements. Plaintiff complied with the notice provision of MCL 691.1419(1) even though Defendant / Appellant failed to comply with the requirements of MCL 691.1419(2). The township was required to advise Plaintiff / Appellee of exactly what type notice had to be provided after Mr. Zezula had properly notified the township of his damaged sewer line by both verbal phone calls and in writing within forty-eight (48) hours of the damaged sewer back-up sewage flooding his basement. And yet, the township now boldly asserts that Plaintiff / Appellee did not comply when in reality the township has no right to assert any such allegation when it is in violation of MCL 691.1419(3). MCL 691.1419(1) requires that a claimant seeking recovery for an MCL 691.1417 sewage disposal system event must provide notice to the governmental agency within 45 days after the date of the damage. Plaintiff / Appellee agrees with Defendant / Appellee Kaltz's summation of the following as found in Kaltz's Brief in Support to this Court:

MCL 691.1419(2) provides duties on the part of the governmental agency, that upon being notified of a claim by a claimant who owns or occupies affected property, the governmental agency "shall" respond in writing providing the claimant with all of the listed specific information required for MCL 691.1419(1) notice:

MCL 691.1419(2)

> (2) If a person who owns or occupies affected property and notifies a contacting agency orally or in writing of an event before providing notice of a claim that complies with subsection (1), the contacting agency ***shall provide*** the person with all of the following information ***in writing***:

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(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow the claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

Any failure of the claimant to comply with the notice requirements of MCL 691.1419(1) does ***not*** bar the claimant from bringing a civil action against the governmental agency:

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under section 17 against the governmental agency notified under subsection (2) if the claimant can show both of the following:

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirement of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).

The record is clear in this case that the plaintiff provided notice in writing to the Township within 45 days of the date of the damage in compliance with MCL 691.1419(1), but the Township failed to comply with MCL 691.1419(2) to provide the plaintiff with the specified information to provide notice, which thus bars the Township from raising the notice defense per MCL 691.1419(3).

According to plaintiff's complaint, the incident occurred on 12/02/2020. (Appx 1, p 3, ¶ 9). The plaintiff reported the event to the Township two days later per the emails the Township produced in response to Kaltz' subpoena (Kaltz Appx 18, pp 151-59), which provided notice to

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David McKee of the Township by email of 12/04/2020, two days after the event, which included photos of the damage to Zezula's basement and of the repairs by Kaltz with the response by David McKee of Independence Township on 12/04/2020: "Thanks Brian! Will keep you informed as we move forward . . ." (Appx 18, pp 151-59). There were further emails from David McKee and David Ziegler of the Township on 12/28/2020 instructing the plaintiff to follow-up with the Township's attorney regarding Kaltz and the sewer line. (Appx 18, pp 160-61). There were letters of 12/30/2020 from the Township's attorney to Kaltz and to DTE describing the event in detail and denying any liability of the Township and blaming Kaltz and DTE. The letters included the address of the affected property, the date of discovery of the damage, a brief description of the claim, and the claimant's name and address. (Appx 18, pp 162-165). These communications were all within 45 days after the damage per MCL 691.1419(1). Pursuant to these communications, the plaintiff had clearly provided notice to the Township per MCL 691.1419(1) and the Township had all of the notice information required by MCL 691.1419(2) as indicated by the correspondence of 12/30/2020 from the Township's attorney to DTE and Kaltz. (Appx 18, pp 162-65).

Further, the Township is barred from raising this defense by its failure to comply with MCL 691.1419(2) by failing to provide the plaintiff with any of the MCL 691.1419(2) requirements set forth above, thus barring the Township from raising this defense per MCL 691.1419(3). Per MCL 691.1419(3) as quoted above, any failure by the claimant to comply with the notice requirements of MCL 691.1419(1) "does not bar the claimant from bringing a civil action" if the claimant can show both of the following:

(a) "The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1)." It is undisputed from Appx 18 that the plaintiff notified the Township two days after the event well within the 45 days allowed.

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(b) "The claimant's failure to comply with the notice requirement of subsection (1) resulted from the contacting agency's failure to comply with subsection (2)." The record is clear that if there was any additional information the Township needed, it would have been provided by the claimant. Moreover, as indicated above, the Township's own 12/30/2020 letters to Kaltz and DTE (Appx 18, pp 162-165) establish that the Township had ***all*** of the information required by MCL 691.1419(2) including the address of the affected property, the date of discovery of the property damage, a brief description of the claim and the name and address of the claimant within 45 days of the damage per MCL 691.1419(1).

The Township's argument is directly contrary to the Court of Appeals decision in *Dybata v County of Wayne*, 287 Mich App 635; 791 NW2d 499 (2010), which held that the defendant County of Wayne was barred from raising the lack of notice defense by its failure to comply with MCL 691.1419(2):

> Despite receiving the list, which constituted the notice of an event sufficient to trigger its obligation under section 19(2), it is undisputed that the county's "contacting agency" never provided the affected individuals with any written information concerning where and how to file a claim as required by § 19(2).
>
> We conclude that plaintiffs have made the necessary showing required by § 19(3)(a) and (b) namely, that the county received timely notice of an event that affected plaintiff's properties as envisioned by § 19(2), that the county failed to provide plaintiff any information concerning where and how to file a claim as required by § 19(2), and that plaintiff's failure to file a notice of their claims under § 19(1) was caused by the county's failure to provide the information required by § 19(2). Accordingly, plaintiffs' failure to comply with the notice requirements of subsection (1)(d) [Id] not bar [plaintiffs] from bringing a civil action under Section 17 against [the county] . . . ." MCL 691.1419(3). (287 Mich App at 646-47).

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See also: *Wheeler v City of Livonia,* 2018 Mich App LEXIS 3525 (unpublished per curiam decision of the Michigan Court of Appeals Docket No. 338704) (Appx 19) ("Thus, to the extent that plaintiffs failed to comply with the notice requirement of subsection (1), their claim is not barred because defendant was in fact notified almost immediately of the sewage backup event and failed to apprise plaintiff that they had only 45 days to submit a written claim in that regard or they would forfeit that right – a right they obviously had no intention of forfeiting considering their prior claim related to a 2014 sewer backup event.") (Appx 19, p 171); *Detroit Invest Corp v Detroit Water and Sewage Department,* 2020 Mich App LEXIS 7069 (unpublished per curiam decision of the Michigan Court of Appeals Docket No. 348675) (Appx 20)[1] ("Plaintiff immediately notified defendant of the October 2017 flooding event, which was sufficient to trigger defendant's obligation under MCL 691.1419(2). However, defendant did not inform plaintiff that it was required to file another written claim or provide any other information required by subsection (2). Because defendant failed to provide that information, plaintiff could proceed with a suit as to damages for the October 2017 event pursuant to MCL 691.1419(3)." (Appx 20, pp 180-81).

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CONCLUSION AND PRAYER FOR RELIEF

Plaintiff / Appellee Mr. Brian Zezula respectfully requests this Honorable Court find that Defendant / Appellant Independence Township has failed to show the required legal merit in its request for leave to appeal to this high Court. Further, the township's request for dismissal based on governmental immunity is without legal merit as the Oakland County trial court and MI. Court of Appeals have already opined and ruled on in unison.

Respectfully Submitted,
DANIEL A. GROVES

JUNE 04. 2025

/s/ Daniel A. Groves
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CERTIFICATE OF CONFORMITY

Pursuant to MCR 7.205(B)(1) and MCR 7.212(B), the undersigned certifies that this Brief contains 5,621 words, as determined by the word-counting function in Microsoft Word.

/s/ Daniel A. Groves
Attorney for Plaintiff /Appellee

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing pleading(s) has been electronically filed with the Clerk of the Court via the Electronic Case Filing system on the date shown below, which will send notice of filing to all attorneys of record.

/s/Daniel A.Groves
DANIEL A. GROVES (P-74026)

DATED: June 04, 2025