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STATE OF MICHIGAN

COURT OF APPEALS

BRITTANIE KUPRAS,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

FOR PUBLICATION
November 10, 2026
3:31 PM

No. 376789
Wayne Circuit Court
LC No. 24-007805-NO

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

KOROBKIN, J.

This appeal concerns MCL 691.1404(1), the notice requirement under the highway exception to governmental immunity. Plaintiff, Brittanie Kupras, alleges that she suffered an injury caused by an uneven sidewalk maintained by defendant, the City of Detroit. The trial court denied defendant's motion for summary disposition under MCR 2.116(C)(7) (immunity granted by law), and defendant appeals by right. On appeal, defendant contends that plaintiff's notice to defendant was insufficient under MCL 691.1404(1) because the notice failed to identify a known witness. For the reasons stated in this opinion, we conclude that because the name of the witness in question was not known to plaintiff, the notice was not insufficient. Consequently, the trial court did not err by denying defendant's motion for summary disposition and its order is affirmed.

I. BACKGROUND AND FACTS

Plaintiff alleges that she was walking alongside Woodward Avenue in downtown Detroit on October 28, 2023, when she stepped into a large depression in the sidewalk, causing a serious injury to her left ankle that required medical treatment and resulted in pain, suffering, and other damages and losses. At her deposition, plaintiff testified that when the incident occurred, she was approaching the Fillmore, an entertainment venue, to attend a country music concert. It was approximately 6:00 p.m. on a Saturday and the sidewalks were crowded with pedestrians. Plaintiff was accompanied by Cody Sulla, her boyfriend. Plaintiff spotted someone whom she recognized, a rap artist she knew as Delano, and as she was approaching Delano to say hello, she fell and injured her ankle. Other pedestrians surrounded her after she fell, and Sulla as well as some strangers helped her to her feet.

After the fall, plaintiff was assisted by Sulla the rest of the way to the Fillmore, where she immediately asked to see paramedics who were at that location. Plaintiff later received additional medical attention at two urgent care centers, from a primary care physician and at least two specialists, and she underwent surgery. She testified that she was unable to obtain relief from pain and that her injury was debilitating.

Plaintiff provided defendant with a timely presuit notice pursuant to MCL 691.1404. The notice included the following:

> **Witnesses**
>
> The Claimant is aware of the following witnesses at this time:
>
> Cody Sulla, [address redacted], Otisville, MI 48463
>
> Delano (last name is potentially DiLion, however that has not been confirmed. Address is unknown at this time; Last known email is [email address redacted])
>
> Delano's girlfriend (name and address unknown at this time)
>
> The employees of the adjacent commercial properties, residents and other owners/renters in the neighborhood may be witnesses and/or witnesses to the condition of the sidewalk.

At plaintiff's deposition, she testified that Delano's girlfriend's son, who was approximately ten years old, was also present. Plaintiff does not know his name. Additionally, plaintiff testified, "there was a homeless guy right there" who "saw me fall." There is no indication in the record that plaintiff knew the homeless man's name either.

Following discovery, defendant moved for summary disposition. As relevant to this appeal, defendant argued that it was entitled to governmental immunity under MCR 2.116(C)(7) because plaintiff did not strictly comply with the statutory notice requirements for identifying witnesses under MCL 691.1404.[1] Specifically, at plaintiff's deposition, plaintiff identified two witnesses who had not been mentioned in her presuit notice: Delano's girlfriend's son, and the homeless individual. Because MCL 691.1404 conditions recovery on the disclosure of all known witnesses within 120 days of the injury and these two witnesses were not disclosed, defendant argued, dismissal was required.

At a hearing on defendant's motion, the trial court concluded that plaintiff's notice was sufficient. Beginning with Delano's girlfriend's son, the trial court explained that the record failed to establish that he actually saw plaintiff fall, so he was not a witness who was required to be listed in the notice. As for the homeless man, because plaintiff testified that he did see her fall, the trial

[1] Defendant also argued that it was entitled to summary disposition under MCR 2.116(C)(10) because the allegedly hazardous condition of the sidewalk was open and obvious. The trial court denied summary disposition on that issue, and it is not before us in this appeal.

court stated that he should have been listed in the notice. However, the trial court determined that plaintiff was nonetheless in "substantial compliance" with the notice requirements under MCL 691.1404 because the notice was timely, "listed the four witnesses,"[2] and complied with all other notice requirements. Accordingly, the trial court denied defendant's motion for summary disposition.

Defendant now appeals.[3]

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision on a motion for summary disposition. The applicability of governmental immunity and the statutory exceptions to immunity are also reviewed de novo on appeal." *Moraccini v Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012) (citation omitted). Matters of statutory interpretation necessary to decide a motion for summary disposition are questions of law that are likewise reviewed de novo. See *Plunkett v Dep't of Transp*, 286 Mich App 168, 174; 779 NW2d 263 (2009).

"Summary disposition under MCR 2.116(C)(7) is appropriate when a claim is barred by immunity granted by law." *Seldon v Suburban Mobility Auth for Regional Transp*, 297 Mich App 427, 432; 824 NW2d 318 (2012). "The moving party may submit affidavits, depositions, admissions, or other documentary evidence in support of the motion if substantively admissible." *Moraccini*, 296 Mich App at 391. "We consider all documentary evidence in a light most favorable to the nonmoving party . . . ." *Short v Mich State Police*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 375823); slip op at 3. "If there is no factual dispute, whether a plaintiff's claim is barred . . . is a question of law for the court to decide. But when a relevant factual dispute does exist, summary disposition is not appropriate." *Id.* (quotation marks and citations omitted).

III. ANALYSIS

Defendant contends that the trial court erred by denying its motion for summary disposition. Specifically, defendant argues that plaintiff's failure to disclose the homeless man as a witness in the presuit notice rendered the notice insufficient, thereby entitling defendant to governmental immunity.[4] We disagree.

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[2] The trial court was counting plaintiff herself as one of the four witnesses listed.

[3] This Court has jurisdiction over defendant's appeal by right under MCR 7.203(A)(1) because an order denying governmental immunity is defined as a "final order" under MCR 7.202(6)(a)(*v*).

[4] Defendant's brief contains a footnote stating that it also disagrees with the trial court's ruling regarding Delano's girlfriend's son but that "in the interests of brevity, discussion on this issue has been omitted." We therefore treat the issue regarding the girlfriend's son as abandoned and focus our analysis on whether plaintiff was required to include the homeless man as a witness in the presuit notice. See *Mack v Natural Way, Inc*, ___ Mich App ___, ___ n 3; ___ NW3d ___ (2025) (Docket No. 367998); slip op at 6 n 3; *In re Indiana Mich Power Co*, 349 Mich App 654, 681 n 15; 28 NW3d 393 (2024).

"Except as otherwise provided, the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function." *Moraccini*, 296 Mich App at 391. "One such governmental function is the maintenance of sidewalks." *Buhl v Oak Park*, 507 Mich 236, 243; 968 NW2d 348 (2021). "A governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions." *Moraccini*, 296 Mich App at 392. And one such exception is the "highway exception, MCL 691.1402(1)." *Robinson v Lansing*, 486 Mich 1, 6; 782 NW2d 171 (2010). Under that statutory provision, "[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." MCL 691.1402(1). A "highway" is defined by the GTLA, under certain circumstances and with respect to certain government agencies, to include a "sidewalk." MCL 691.1401(c). The relevant caselaw explains that the GTLA "exempts state and county road commissions from liability for injuries resulting from defective sidewalks," but "municipalities are not exempt; municipalities do have a duty to maintain sidewalks in reasonable repair." *Moraccini*, 296 Mich App at 393, quoting *Robinson*, 486 Mich at 7; see also MCL 691.1402a.

"All plaintiffs seeking to recover under the highway exception to governmental immunity must comply with the notice requirements of MCL 691.1404 . . . ." *Champine v Dep't of Transp*, 509 Mich 447, 453; 983 NW2d 741 (2022). That statute provides, in relevant part:

> 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. [MCL 691.1404(1).]

"Accordingly, before the highway exception can apply, the plaintiff must timely notify the governmental defendant of [their] claim in accordance with MCL 691.1404(1)." *Madbak v Farmington Hills*, 349 Mich App 561, 569; 28 NW3d 809 (2023) (quotation marks and citation omitted). Our Supreme Court has held that MCL 691.1404 "must be enforced as written." *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). "Failure to provide adequate notice under this statute is fatal to a plaintiff's claim against a government agency." *McLean v Dearborn*, 302 Mich App 68, 74; 836 NW2d 916 (2013).

This case requires us to discern the meaning of the requirement in MCL 691.1404(1) that the notice "specify . . . the names of the witnesses known at the time by the claimant." Plaintiff argues that because she did not know the homeless man's name, there was no requirement under MCL 691.1404(1) that he be disclosed as a witness in the notice. Defendant, by contrast, argues that because plaintiff knew that the homeless man was a witness, her failure to include some reference to him in the notice violated the statute and thereby precludes recovery. Plaintiff has the better argument.

As in all cases involving statutory interpretation, our duty is "to discern and give effect to" the intent of the Legislature. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

"In determining the intent of the Legislature, this Court must first look to the language of the statute." *Bush v Shabahang*, 484 Mich 156, 166-167; 772 NW2d 272 (2009). "The fair and natural import of the terms employed, in view of the subject matter of the law, should govern." *Knauff v Oscoda Co Drain Comm'r*, 240 Mich App 485, 490; 618 NW2d 1 (2000). "Every word or phrase of a statute is given its plain and ordinary meaning unless it is defined in the statute or has a technical meaning." *San Marino Iron, Inc v Haji*, 341 Mich App 634, 639; 991 NW2d 828 (2022). "Courts must give effect to every word, phrase, and clause in a statute, and must avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). "Moreover, when considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme." *Bush*, 484 Mich at 167 (footnote omitted).

Viewed in isolation, the relevant language of the statute—that the notice must "specify . . . the names of the witnesses known at the time by the claimant," MCL 691.1404(1)—could have two possible meanings. One possibility is that the phrase "known at the time by the claimant" modifies the phrase "the names of the witnesses." Under this interpretation, if the name of a witness is known at the time by the claimant, then that name must be specified in the notice. Conversely, if the name of a witness is not known at the time by the claimant, then the name need not be specified in the notice. This interpretation favors plaintiff.

A second possibility is that the phrase "the witnesses known at the time by the claimant" modifies "names." Under this interpretation, if the existence of a witness is known at the time by the claimant, then the name of that witness must be specified in the notice. Such a requirement would apply even if the claimant does not know the witness's name. Failing to specify the witness's name, even if the name is unknown, would render the notice inadequate under the statute.

Although either interpretation is linguistically possible, we think it is highly implausible that the Legislature intended the latter. Such an interpretation would completely bar recovery by a plaintiff who knows *of* a witness but does not know the witness's name. "The principal purposes to be served by requiring notice are simply (1) to provide the governmental agency with an opportunity to investigate the claim while it is still fresh and (2) to remedy the defect before other persons are injured." *Plunkett*, 286 Mich App at 176-177. Requiring the notice to specify the name of a witness if the claimant knows the witness's name is consistent with that purpose; barring the claimant from recovery if the claimant does not know the witness's name is not. As stated, it is the "fair and natural import of the terms employed, *in view of the subject matter of the law*," that should govern our interpretation of the statute. *Knauff*, 240 Mich App at 490 (emphasis added). In "the context of the entire legislative scheme," *Bush*, 484 Mich at 167, we have little difficulty in concluding that, under MCL 691.1404(1), the notice must specify the name of a witness only when the witness's *name* is known at the time by the claimant.

Defendant, for its part, does not argue that the statute requires a notice to include the name of a known witness if the claimant does not know the witness's name. Rather, defendant argues that if a claimant knows that a witness exists but does not know the witness's name, the notice must include an attempt to identify the witness by some other means, such as by description.

Failing to require such an attempt, defendant argues, would "discourage full and candid disclosure" and lead to the omission of witnesses such as security guards, valet attendants, construction workers, and other witnesses "whose legal names are unlikely to be known by an injured party, but who could be identified by even a modest investigation by a municipality."

Defendant's proposed interpretation of the notice requirement may have substantial appeal from a policy perspective, but it finds no support in the language of MCL 691.1404(1)—and that is where we must look to discern the Legislature's intent. Reading the "names" requirement out of the statute would fail to "give effect to every word, phrase, and clause in [the] statute," and would fail to "avoid an interpretation that would render any part of the statute surplusage or nugatory." *Koontz*, 466 Mich at 312. And requiring that a notice contain a description or other means of identifying a witness *other* than a name would violate the principle that we "read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts*, 466 Mich at 63. "In order to interpret the statute as defendant desires us to do, this Court would have to read into the statute a provision that is clearly not there. This we cannot do." *Burise v Pontiac*, 282 Mich App 646, 654; 766 NW2d 311 (2009).

At the same time, defendant appears to slightly overstate plaintiff's position by arguing that the notice statute would function poorly if claimants could refrain from listing any witnesses whose "legal names" are unknown to them. MCL 691.1404(1) uses the word "names," not "legal names." So the statute requires that the notice specify "names" known by the claimant, even if the claimant knows only a first name, a last name, a stage name, or a nickname. What the plain language of the statute does not require is that a notice identify or include reference to a witness if the claimant does not know the witness's name.

Defendant also points out that plaintiff's notice includes reference to Delano and Delano's girlfriend as witnesses, despite not knowing their legal names. Again, MCL 691.1404(1) does not require that a notice specify "legal names," so identifying Delano in the notice was required insofar as Delano is the name by which plaintiff knew the rap artist who witnessed the accident. As for Delano's girlfriend, the fact that plaintiff disclosed in the notice that she was a witness sheds no light on whether the statute required that plaintiff do so, and a private party's behavior in attempting to comply with a statute cannot alter the statute's meaning.

Neither party points us to any binding caselaw that squarely addresses the issue before us, and we have found none. Defendant calls to our attention several unpublished opinions, but they do not purport to answer the question before us. For example, in *Kosis v Livonia*, unpublished per curiam opinion of the Court of Appeals, issued May 12, 2016 (Docket No. 326211), the plaintiff was injured when his motorized minibike hit a pothole, and a "stranger" provided him with assistance. *Id*. at 1. The defendant argued that the plaintiff's notice was deficient because "it failed to provide the name of a known witness—the stranger." *Id*. at 3. This Court acknowledged that "the stranger was known to [the] plaintiff," but held that the stranger was not a "witness" within the meaning of the statute because the stranger did not actually see the accident take place. *Id*. at 3-4. Therefore, the Court held, the "plaintiff's notice was not insufficient for failing to include the name of the stranger as a known witness." *Id*. at 4. Similarly in *Key v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued December 17, 2025 (Docket No. 373470), the plaintiff was injured when his motorcycle struck something in the road, and a "bystander" helped him to his feet. *Id.* at 1. The plaintiff stated that he did not know whether the bystander actually

witnessed the accident. *Id*. at 4. Therefore, this Court held, the plaintiff "was not required to identify the bystander" in his notice. *Id*.

Unpublished opinions, of course, are not binding. MCR 7.215(C)(1). "In some instances, they may be persuasive." *Olin v Mercy Health Hackley Campus*, 328 Mich App 337, 342 n 2; 937 NW2d 705 (2019). But we do not find *Kosis* or *Key* to be persuasive in this case because they do not squarely address the question of statutory interpretation that we must confront. In both cases, this Court held that the notice was not required to disclose the individuals in question because they were not actually witnesses to the accidents that caused the injuries. Consequently, it was unnecessary for the Court to decide whether, had those individuals seen the accidents take place, the plaintiffs' notices would have been insufficient for failure to specify their names or otherwise disclose them as witnesses. This case, by contrast, requires that we decide that question. Consistent with the plain language of MCL 691.1404(1), and the mandate that it "be enforced as written," *Rowland*, 477 Mich at 219, we hold that the notice required by that statute must specify the names of the witnesses, but only the names that are known at the time by the claimant. If a claimant does not know the name of a witness, there is no requirement under the statute that the notice disclose, include, list, identify, or refer to the witness in some other way.

IV. CONCLUSION

The notice required under MCL 691.1404(1) must specify the name of a witness if the claimant knows the witness's name. The statute does not require that the notice disclose the existence of witnesses whose names are unknown to the claimant. In the present case, the evidence does not establish that plaintiff knew the name of the homeless man who saw her fall. Accordingly, plaintiff's notice was not insufficient and the trial court did not err by denying defendant's motion for summary disposition.[5]

Affirmed.

/s/ Daniel S. Korobkin
/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello

[5] In light of our analysis, it is unnecessary to address the issue of "substantial compliance." See *Madbak*, 349 Mich App at 569-570; *Burise*, 282 Mich App at 655 n 4.