STATE OF MICHIGAN

COURT OF APPEALS

JOHNNY POWELL JR.,

Plaintiff-Appellee,

v

DETROIT METROPOLITAN WAYNE COUNTY AIRPORT and WAYNE COUNTY,

Defendants,

and

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant-Appellant.

UNPUBLISHED
June 20, 2024

No. 364684
Wayne Circuit Court
LC No. 22-008554-NO

Before: YATES, P.J., and BORRELLO and GARRETT, JJ.

PER CURIAM.

Generally, under the Governmental Tort Liability Act (GTLA), government entities are immune from tort liability if they are engaged in the discharge of a governmental function, unless an exception applies. MCL 691.1407; see also *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 203; 731 NW2d 41 (2007). One such exception is the public building exception, which imposes a duty on governmental agencies to repair and maintain public buildings under their control when they are open for use by the public. MCL 691.1406; see also *Tellin v Forsyth Twp*, 291 Mich App 692, 699; 806 NW2d 359 (2011). But for this exception to apply, a plaintiff must also abide by his duty to adhere to any necessary statutory requirements before bringing an action. In this case, plaintiff, Johnny Powell Jr., failed to comply with the notice requirements of MCL 691.1406, entitling defendant, Wayne County Airport Authority (WCAA), to summary disposition. Accordingly, we reverse the trial court's order denying WCAA's motion for summary disposition.

I. BACKGROUND

Powell worked as a flight attendant for Delta Airlines, which operates out of the McNamara Terminal at the Detroit Metropolitan Wayne County Airport (DMWCA). The DMWCA is operated by WCAA. In February 2022, while walking through the DMWCA on his way to work, Powell slipped and fell, injuring himself. In connection with his fall, a police report was prepared. WCAA sent a redacted version of the police report to Powell after he made a request under the Freedom of Information Act (FOIA) for the document. The report, received by Powell on March 2, 2022, states, in relevant part:

> On 02/17/2022 at 1450 hrs, I responded to the Delta BSO to meet with Delta Flight Attendant Johnny Powell in reference to a slip and fall that occurred on the IT Arrivals level. Delta Flight Attendant Katrina Graham was with Johnny Powell and she witnessed the slip and fall.
>
> Johnny Powell stated on today's date at approximately 1445 hrs, he was attempting to enter through the sliding doors on the IT Arrivals level when he slipped and fell on the ground area in front of the doors. NOTE: This set of sliding doors is located next to the bus stop area. He stated that the ground was slippery due to it being wet, but he did not see or feel any icy conditions. He stated that he landed on his left hand and tailbone. He complained of pain in his back and shoulder area.

On March 24, 2022, Powell's counsel sent a letter ("the letter"), generally addressed to WCAA's legal department. In the letter, counsel advised that he had been retained by Powell "for injuries and losses sustained as a result of an accident" occurring on February 23, 2022. The letter suggested that the matter be referred to WCAA's insurance carrier otherwise counsel "may be forced to proceed with litigation." Although the letter stated that "[p]resently, we are investigating the exact nature and extent of our client's injuries and losses," it did not include the specific nature of any injuries, the exact location and nature of any defect in the DMWCA, or provide the names of any known witnesses. There were no attachments included with the letter. In April 2022, WCAA acknowledged receipt of the letter in an e-mail sent to Powell's attorney.

In July 2022, Powell filed a complaint against WCAA, the DMWCA, and Wayne County[1] (collectively "defendants"), alleging claims of general and gross negligence. Powell asserted that defendants were not entitled to governmental immunity because the public building exception, MCL 691.1406, applied. In lieu of filing an answer, WCAA moved for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(8), arguing that because Powell failed to meet the notice requirements of MCL 691.1406, the public building exception could not apply.

The trial court denied WCAA summary disposition, finding that Powell provided notice as required by MCL 691.1406. The trial court held that, although the letter did not describe the location or nature of the defect, because the necessary information was contained in the police

[1] Defendant Wayne County was dismissed by stipulation in August 2022.

report, which was in WCAA's possession at the time the letter was sent, WCAA was not entitled to summary disposition. This appeal followed.

II. STANDARDS OF REVIEW

Although WCAA moved for summary disposition under both MCR 2.116(C)(7) and (C)(8), it is unclear under what grounds the trial court denied summary disposition. Because the trial court considered evidence beyond the pleadings, we review the motion as though it were granted under MCR 2.116(C)(7). See *Nuculovic v Hill*, 287 Mich App 58, 61-62; 783 NW2d 124 (2010).

"A decision on a motion for summary disposition and the interpretation of a statute are reviewed de novo." *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494; 948 NW2d 452 (2019). Additionally, "the applicability of governmental immunity and the statutory exceptions to immunity," are reviewed de novo. *Moraccini v Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012). On de novo review, "we give respectful consideration, but no deference" to the trial court's legal rulings. *Wasik v Auto Club Ins Assoc*, 341 Mich App 691, 695; 992 NW2d 332 (2022).

> MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law. 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. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010) (cleaned up).]

Resolution of this appeal turns on the proper interpretation of MCL 691.1406. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature," and "[t]he most reliable evidence of legislative intent is the plain language of the statute." *Le Gassick*, 330 Mich App at 495 (citation omitted). "If the language of the statute is clear and unambiguous, it is presumed that the Legislature intended the meaning plainly expressed in the statute." *Id.* We "give effect to every word, phrase, and clause," avoiding "an interpretation that would render any part of the statute surplusage or nugatory." *Id.* We also give common words and phrases their plain meaning "as determined by the context in which the words are used, and a dictionary may be consulted to ascertain the meaning of an undefined word or phrase." *Id.*

III. NOTICE

WCAA argues it is entitled to summary disposition because Powell failed to abide by the notice requirement of MCL 691.1406.

MCL 691.1406 states, in relevant part:

> As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible 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.*
>
> The notice may be served *upon any individual*, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. [Emphasis added.]

MCL 691.1406 specifies that recovery from a governmental agency is conditional on notice. Failure to provide a compliant notice is fatal to a claim against a government agency. *Goodhue v Dep't of Transp*, 319 Mich App 526, 535; 904 NW2d 203 (2017) (cleaned up).

Thus, as established by the statute, to provide sufficient notice to WCAA, Powell was required to: (1) serve a notice; (2) within 120 days from when his injury occurred; (3) either personally or by certified mail; (4) on any individual who may be lawfully served with civil process directed against WCAA; (5) specify the exact location and nature of any defect; (6) specify any injuries that were sustained; and (7) specify the name of any known witnesses. MCL 691.1406 "patently implies that these elements of the required notice must be in writing." *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 81; 782 NW2d 514 (2010). It is undisputed that WCAA is a governmental agency, and WCAA concedes that Powell's letter was sent through certified mail by the injured person within 120 days from the date of his injury. WCAA claims, however, that the letter was insufficient notice under MCL 691.1406 because it: (1) was not served on an individual who may lawfully be served with civil process directed against WCAA; (2) did not specify the exact location or nature of the defect; (3) did not state the injury sustained; and, (4) did not list any known witnesses. We will address each of these issues in turn.

A. SERVICE ON ANY INDIVIDUAL WHO MAY BE LAWFULLY SERVED

WCAA first claims that Powell did not comply with MCL 691.1406 because he failed to serve the letter on an individual capable of accepting service on behalf of WCAA. In *Ward*, 287 Mich App at 83-84, this Court found that notice was not properly served where "letters that plaintiffs' counsel mailed were not sent to a particular individual but were addressed to defendant's ice arena." Similarly, in *McLean v Dearborn*, 302 Mich App 68, 78-79; 836 NW2d 916 (2013), this Court held that service upon an individual who, although a high-ranking government official, was not designated as an individual upon whom service could lawfully be served was insufficient to meet the statute. Here, Powell sent the letter generally to WCAA's legal department, rather than serving it on an *individual* who may lawfully receive service on WCAA's behalf. Although the result seems harsh, because Powell failed to serve the letter on a qualifying individual, the trial court erred in finding he satisfied this statutory notice requirement. See *id.*; MCR 2.105(G).

B. EXACT LOCATION AND NATURE OF THE DEFECT

WCAA next claims that Powell failed to specify the exact location and nature of the defect in the letter. Before sending the letter, Powell submitted a FOIA request to WCAA, which sent Powell a copy of the police report. The letter makes no mention of the exact location or nature of the defect, and Powell did not attach the police report with that information or refer to it in the letter. Even so, the trial court held that WCAA had sufficient notice because the location and nature of the defect were stated in the police report prepared after the accident, and the report was in WCAA's possession. This is error.

MCL 691.1406 requires a notice must "*specify* the exact location and nature of the defect." MCL 691.1406 (emphasis added). The use of "specify" indicates that the *notice itself* must actually state the location and nature of the defect. MCL 691.1406. Because MCL 691.1406 is clear and unambiguous, its plain language must be enforced as written. *Ward*, 287 Mich App at 81. Nothing in the clear, unambiguous statutory language of MCL 691.1406 allows a police report, unattached to and unreferenced in the notice, to substitute for compliance with the notice requirement. As reasoned in *Atkins v Suburban Mobility Auth for Regional Transp*, 492 Mich 707, 721; 822 NW2d 522 (2012):

> By providing that the accumulated information obtained by SMART from other sources, in addition to a no-fault application, substantially met the requirement that plaintiff provide written notice of her tort claims, the Court of Appeals replaced a simple and clear statutory test with a test based on apparent or imputed knowledge. The Court of Appeals' holding would require SMART and its counterparts to anticipate when a tort claim is likely to be filed on the basis of the underlying facts. In short, it would require a governmental agency to divine the intentions of an injured or potentially injured person and then notify itself that the person may file a suit in tort. This approach entirely subverts the notice process instituted by the Legislature. And the legislative purpose behind this process is clear: it requires specific statutory notice of any claim so that a common carrier defendant does not have to anticipate or guess whether a claim will be filed at some point in the future. Instead, the common carrier must simply be told of the claim within 60 days and through service of a notice.

WCAA may have had possession of the police report, but the parties responsible for assessing tort liability may not have been aware of it. As noted by our Supreme Court, large governmental bodies need more specific notice that a suit is impending and should not be required to search for the sources. Under the clear and unambiguous language of the statute, Powell was required to provide this information in the notice to WCAA. Thus, the trial court erred by finding WCAA's possession of the police report satisfied this condition.

C. INJURY SUSTAINED

WCAA also contends that Powell failed to meet the requirements of MCL 691.1406 because the letter fails to specify the injury he sustained. In *Brown v Sault Ste Marie*, 501 Mich 1064; 910 NW2d 300 (2018), our Supreme Court held a notice, which stated that the plaintiff

suffered "severe and permanent injuries," was insufficient under MCL 691.1404. Similarly, in *McLean*, 302 Mich App at 77-78, this Court held that a notice stating that the plaintiff had "a significant injuries [sic]," was insufficient under MCL 691.1404. These conclusions make sense, given that the statute expressly states a notice must *specify* the injury sustained.

Here, the letter states that "we are investigating the exact nature and extent of our client's injuries and losses," but does not provide any additional description of Powell's injury. The trial court held Powell's notice was sufficient because injuries were mentioned in the letter, and the extent of injuries were unknown at the time the letter was sent. But what the trial court failed to acknowledge is that the police report, which Powell received on March 2, 2022, stated that Powell "complained of pain in his back and shoulder area" at the time of his injuries. Powell's letter was sent on March 24, 2022, after Powell received the police report. Even if the full extent of Powell's injuries were unknown, the letter could have, at a minimum, stated that he suffered injuries to his back and shoulder area. See *McLean*, 302 Mich App at 77-78. By finding that a vague mention of injuries in the letter satisfied the requirements under MCL 691.1406, the trial court erred.

D. KNOWN WITNESSES

Finally, Powell claims that there were no known witnesses when the letter was sent. The trial court found that Powell satisfied this requirement of MCL 691.1406 because the only known witness was Powell, who was named in the letter. WCAA contends that Powell's notice was insufficient because, if there were no known witnesses, the letter should have stated so. However, the plain language of MCL 691.1406 does not require any specific language be used if no witnesses are known. Thus, there is no merit to this argument. But a closer look at the record reveals that this does not end our analysis. The police report, which was in Powell's possession when the letter was sent, states: "Delta Flight Attendant Katrina Graham was with Johnny Powell and she witnessed the slip and fall." Powell was aware Katrina Graham witnessed the incident, but she is not named anywhere in the letter. Accordingly, the trial court erred by finding that Powell's letter listed all known witnesses.

Because Powell's notice failed to comply with the notice requirement of MCL 691.1406, and his ability to invoke the public building exception to governmental immunity was conditioned on his compliance, *Rowland*, 477 Mich at 219-223, we reverse the trial court's order denying WCAA summary disposition, and remand to the trial court for entry of summary disposition under MCR 2.116(C)(7) in favor of defendant. We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Stephen L. Borrello
/s/ Kristina Robinson Garrett