STATE OF MICHIGAN

COURT OF APPEALS

RICHARD C. JONES and CORA S. JONES, Plaintiffs-Appellants,	UNPUBLISHED October 25, 2007
v	No. 275076 Court of Claims
DEPARTMENT OF TRANSPORTATION, Defendant-Appellee.	LC No. 05-000204-MZ

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the Court of Claims' order granting defendant's motion for summary disposition in this governmental immunity case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Richard Jones, an employee of the Cheboygan County Road Commission, went to Rest Stop 407 on I-75 to perform maintenance duties.[1] He entered the maintenance room, and observed fluids on the floor. The fluid had seeped from pipes that drained urinals in the men's restroom to the septic system. Richard Jones attempted to mop up the fluids, and while doing so, slipped on the wet floor. He grabbed a pipe to prevent himself from falling to the floor, and sustained an injury to his rotator cuff.

Plaintiffs filed suit alleging that that the condition, i.e., the leaking of fluids onto the floor of the maintenance room, constituted a defective and dangerous condition.[2] Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that it was entitled to governmental immunity because the public building exception to governmental immunity, MCL 691.1406, was not applicable. Defendant emphasized that plaintiffs had not filed the pre-suit notice required by MCL 691.1406, and contended that while it was not required to show prejudice stemming from plaintiffs' failure, it had in fact suffered prejudice because the boots

[1] The Road Commission contracted with the State of Michigan to maintain rest stops located in Cheboygan County.

[2] Plaintiff Cora Jones sought damages for loss of consortium.

worn by Richard Jones on the day of the accident were no longer available for inspection. Furthermore, defendant argued that the public building exception did not apply under the specific facts of this case because Richard Jones did not lose his footing and fall due to a defect in the actual physical structure of the building, i.e., a defect in the floor itself.

The trial court granted defendant's motion for summary disposition. The trial court found that plaintiffs' failure to file notice as required by MCL 691.1406 and MCL 600.6431(1)[3] resulted in prejudice to defendant in that defendant was unable to inspect the boots worn by Richard Jones on the day of the accident.

We review a trial court's decision on a motion for summary disposition de novo. When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pled allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

The public building exception, MCL 691.1406, provides in pertinent part:

> Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. 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.

Liability under this statute can be imposed for an injury resulting from a physical defect or a dangerous condition of a building caused by a failure to repair or maintain, rather than by a defect in design. *Renny v Dep't of Transportation*, 478 Mich 490; ___ NW2d ___ (Docket No. 131086, decided July 11, 2007), slip op at 18-19.

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[3] This statute provides that a claim cannot be maintained against the state in the Court of Claims "unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims" either a claim or a written notice of intention to file a claim. The claim or notice must be signed and verified by the claimant.

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. Plaintiffs rely on *Brown v Manistee Co Rd Comm*, 452 Mich 354, 366; 550 NW2d 215 (1996), and *Hobbs v Dep't of State Hwys*, 398 Mich 90, 96; 247 NW2d 754 (1996), which dealt with the notice provision in MCL 691.1404 that applies to MCL 691.1402, the highway exception to governmental immunity, for the proposition that failure to provide notice within 120 days of an injury does not bar suit against a governmental agency unless the agency has been prejudiced by the lack of such notice. Plaintiffs continue to assert that defendant was not prejudiced by the lack of access to the boots that Richard Jones was wearing when the accident occurred because other, similar boots could be used for testing and comparison.

We affirm the trial court's decision, albeit on alternative grounds. No appellate decision has determined that the pre-suit notice provision in MCL 691.1406 does not require a demonstration of prejudice before it can be enforced. However, in *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007), our Supreme Court held that the notice provision in MCL 691.1404(1) is constitutionally valid and must be satisfied regardless whether the failure to do so resulted in prejudice. 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, except as otherwise provided in subsection (3) 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.

In *Rowland*, *supra*, our Supreme Court held that the plain language of this statute must be enforced as written, and that *Brown*, *supra*, and *Hobbs*, *supra*, which required a showing of prejudice before the notice provision could be enforced, were wrongly decided. The *Rowland* Court gave its decision full retroactive effect. *Rowland, supra* at 219-223.

The notice provisions in MCL 691.1404(1) and MCL 691.1406 are identical in all relevant respects, and are both part of the governmental tort liability act, MCL 691.1401 *et seq*. Statutes containing identical language should be interpreted in the same manner, particularly when they are found in the same act. See *Empire Mining P'ship v Orhanen*, 455 Mich 410, 426 n 16; 565 NW2d 844 (1997). Therefore, MCL 691.1406 should be interpreted as barring a claim under the public building exception if pre-suit notice was not filed within 120 days after the injury occurred, even if the governmental agency was not prejudiced by the failure to file such a claim. *Rowland*, *supra*; *Empire Mining*, *supra*. The trial court based its decision to grant defendant's motion for summary disposition on a finding that defendant was prejudiced by the lack of notice; however, if the trial court reached the right result, we will affirm the decision, even we it do so under alternative reasoning. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis