

STATE OF MICHIGAN
COURT OF APPEALS

MARC CHAMBERS,

Plaintiff-Appellee,

v

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant/Cross-Plaintiff-
Appellant,

and

KNIGHT FACILITIES MANAGEMENT, INC.,

Defendant/Cross-Defendant.

UNPUBLISHED

June 5, 2008

No. 277900

Wayne Circuit Court

LC No. 05-531729-NO

Before: Davis, P.J., and Murray and Beckering, JJ.

MURRAY, J. (*dissenting*).

In my de novo review of the trial court's denial of defendant's motion for summary disposition, *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007), it is clear that plaintiff did not comply with the notice provision set forth in MCL 691.1406, and therefore cannot maintain a tort claim against defendant, a governmental entity. Accordingly, I respectfully dissent.

MCL 691.1406 states, in pertinent 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. . . .

There can be no doubt that compliance with this notice provision is mandatory, and that failure to do so precludes a plaintiff from recovering for his injuries. For one, the statute says exactly that, and the *Rowland* Court reinforced that plain understanding. See *Rowland, supra* at 204.

In this case, there is no dispute that plaintiff did not serve notice as required by this statute, as the incident report was not completed by plaintiff, but by a Joseph Phillipson, who plaintiff alleges is associated “with the Wayne County Division of Airports.” Thus, plaintiff did not personally serve this written notice on defendant. Instead, defendant filled out its own internal form. Additionally, even if plaintiff had served the report on Phillipson, plaintiff did not establish that Phillipson was a person who may lawfully be served with civil process directed at defendant. See MCR 2.105(G) and (H). And, although the report indicates that Phillipson notified “Wayne County Operations Agent” James Power of the incident, plaintiff did not establish that *he* served Powers with the notice, or that Powers could lawfully be served with civil process directed at defendant. Whether defendant was actually prejudiced by any failure to comply with the statutory notice requirement is immaterial to whether the claim is barred. See *Rowland, supra*.¹

In light of plaintiff’s failure to provide the notice required by MCL 691.1406, the trial court erred in denying defendant’s motion for summary disposition. I would therefore reverse.

/s/ Christopher M. Murray

¹ Any argument that the notice provision’s purpose was satisfied does not alter this conclusion, for satisfying the general purpose of a statute does not allow a party to escape the requirements found in the words of the statute. *Noble v McNerney*, 165 Mich App 586, 613; 419 NW2d 424 (1988), citing *Becker v Detroit Savings Bank*, 269 Mich 432, 436; 257 NW2d 853 (1934).