

STATE OF MICHIGAN  
COURT OF APPEALS

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CATHERINE CURRY,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

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UNPUBLISHED

March 24, 2009

No. 283523

Wayne Circuit Court

LC No. 06-624755-NO

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she fell on stairs in the Herman Keifer Hospital Building in Detroit. The only issue presented in this appeal is whether plaintiff gave proper notice to defendant as required by statute. At the time of the accident, an Incident Investigation Report was filled out with her employer, Health Services Technical Assistance, which contracts with defendant. The form is undated and gives no identification of the location of the accident other than "North Stairwell-Bldg #one." In an affidavit submitted after defendant raised the issue of notice, plaintiff stated that she personally hand-delivered a copy of the report to the City of Detroit City Clerk approximately one week after her fall. The record also includes a "Security Incident Report" completed by a member of the City's Department of Health and Wellness Promotion six days after the accident.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) (governmental immunity), (C)(8) (failure to state a claim), and (C)(10) (no genuine issue of material fact). The trial court agreed with defendant that plaintiff had failed to follow the proper procedures for giving notice to a city defendant and granted the motion.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Under the "public building" exception to governmental immunity, a governmental agency may be liable for injuries occurring in a public building over which it has ownership or

control. MCL 691.1406. The public building exception contains a knowledge requirement. Concomitant to that requirement is a notice requirement. MCL 691.1406 provides in part (emphasis added):

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. 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.*

MCR 2.105(G)(2) governs service of process on cities. It provides that service of process is made by serving the summons and complaint on “the mayor, the city clerk, or the city attorney of a city.” Compliance with the notice requirement is mandatory. See *Chambers v Wayne Co Airport Auth*, 482 Mich\_\_\_; 758 NW2d 302 (2008), adopting the reasoning of the dissenting judge in *Chambers v Wayne Co Airport Auth*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2008 (Docket No. 277900) (Murray, J., dissenting), slip op at 2. Whether the defendant was actually prejudiced by any failure to comply with the statutory notice requirement is immaterial to whether the claim is barred. *Id.* Nor is it enough for the plaintiff to argue that the notice provision’s purpose was satisfied, because satisfying the general purpose of a statute does not allow a party to escape the requirements found in the words of the statute. *Id.* at 2 n 1.

The trial court did not err in granting defendant’s motion for summary disposition. Even accepting as true plaintiff’s affidavit that she gave a copy of the incident report to the city clerk, plaintiff did not meet the statutory requirements for service because the incident report does not specify “the exact location . . . of the defect” as required by statute.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Alton T. Davis