

STATE OF MICHIGAN
COURT OF APPEALS

CATHERINE KULHANEK and ROBERT
KULHANEK,

UNPUBLISHED
February 25, 2010

Plaintiffs-Appellees,

v

No. 288382
Court of Claims
LC No. 08-000897-NI

STATE OF MICHIGAN,

Defendant-Appellant.

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant the State of Michigan appeals as of right from the order of the Court of Claims denying its motion for summary disposition predicated on governmental immunity. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs were injured when their car struck an uncovered manhole on I-94 and collided with a median wall. Plaintiffs filed suit, invoking the highway exception to governmental immunity. See MCL 691.1402(1). Defendant moved for summary disposition on the ground that plaintiffs had failed to provide notice of their claim as statutorily required. See MCL 691.1404. The trial court denied the motion on the ground that plaintiffs had substantially complied with the statute. This appeal followed.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). When deciding a motion MCR 2.116(C)(7) the trial court must accept as true the allegations of the complaint unless contradicted by the parties' documentary submissions. *Patterson v Kleiman*, 447 Mich 429, 434 n 6; 526 NW2d 879 (1994). The motion is properly granted when the undisputed facts establish the moving party is entitled to immunity granted by law. *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 26; 703 NW2d 822 (2005). Statutory interpretation likewise presents a question of law, calling for review de novo. *Ardt, supra* at 690. The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Id.*

MCL 691.1404(1) states that as a condition to recovering for injuries stemming from a 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 must "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.” *Id.* Subsection (2) adds, “In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims.”

Plaintiffs filed no notice with the clerk of the Court of Claims. Instead, plaintiffs provided notice in the form of a letter from plaintiffs’ attorney to the Department of Transportation, accompanied by the police report of the accident. Those documents specified the nature and location of the defect, but did not specify the nature of plaintiffs’ injuries.

Our Supreme Court has made clear that the plain language of MCL 691.1404 must be enforced, not rough approximations of its provisions. “MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect. Accordingly, . . . it must be enforced as written.” *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). In arriving at this conclusion, the Court opined that, “inasmuch as the Legislature is not even required to provide a defective highway exception to governmental immunity, it surely has the authority to allow such suits only upon compliance with rational notice limits.” *Id.* at 212. These pronouncements militate against liberally excusing notice failures. Plaintiffs make no mention of *Rowland*, let alone attempt to distinguish it.

Instead, plaintiffs assert that appropriate state agencies were informed of the missing manhole cover within ten minutes of the accident and that this notice served as constructive notice of their claim. But, advising appropriate state agencies of a road defect so that the defect might be remedied promptly is different from advising the state or its agency of the need to prepare to defend a lawsuit relating to injuries allegedly caused by the defect.

For these reasons, the trial court erred in regarding a letter to the Department of Transportation as substantially complying with the statutory requirement of notice, in triplicate, filed with the clerk of the Court of Claims.

The trial court additionally erred in excusing plaintiff’s total failure in the notice provided to “specify . . . the injury sustained” as required by MCL 691.1404(1).

In light of those two serious defects in the notice actually provided, the trial court erred in regarding what notice plaintiffs did provide as substantially satisfying the requirements of MCL 691.1404. Because something approaching strict compliance with the terms of the statute is required, *Rowland*, the trial court erred in denying defendant’s motion for summary disposition.

We therefore reverse the judgment below and remand this case to the trial court with instructions to grant summary disposition to defendant. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Stephen L. Borrello