STATE OF MICHIGAN

COURT OF APPEALS

EUGENE ROSE,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION and HENRY THOMAS,

Defendants-Appellees,

and

NINA MARIA MADISON and RAYMOND GOEBORO,

Defendants.

UNPUBLISHED
March 30, 2010

No. 289769
Wayne Circuit Court
LC No. 06-633687-NH

Before: SERVITTO, P.J., and BANDSTRA and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants'[1] motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts relevant to this appeal are not at issue. Plaintiff was injured on April 23, 2006, when he was riding in a bus owned by defendant Suburban Mobility Authority for Regional Transportation (SMART). Plaintiff was astride his three-wheeled, motorized wheelchair, but the chair was not secured. When the bus turned a sharp corner, the chair tipped over. Plaintiff was

[1] Defendant Madison was erroneously named in the complaint as the bus driver; defendant Goeboro was the driver of an automobile allegedly involved in a collision with the bus. These two individuals have been dismissed and are not parties to this appeal. Therefore "defendants" shall refer to defendants-appellants Suburban Mobility Authority for Regional Transportation (SMART) and Henry Thomas.

thrown from the chair and suffered a fractured hip and left femur. He was taken to the hospital by ambulance. Two written reports were generated as a result, one by Fairlane Town Center, on whose property the incident occurred, and one by the bus driver, defendant Henry Thomas. On July 31, 2006, more than three months after he was injured, plaintiff sent written notice of the claim to SMART.

Plaintiff filed a three-count complaint against SMART and Henry alleging "negligence/gross negligence." The trial court granted defendants' motion for summary disposition based on lack of statutory notice, but only as to plaintiff's third party claims. Subsequently, plaintiff's first-party claims were dismissed by stipulation.

We review a trial court's decision to grant or deny a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). Questions of law, such as construction of a statute, are also reviewed de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008); *Morden v Grand Traverse Co*, 275 Mich App 325, 340; 738 NW2d 278 (2007).

> When construing a statute, we use well-established principles, and begin by consulting the specific statutory language. This Court gives effect to the Legislature's intent, as expressed in the statute's terms, giving the words of the statute their plain and ordinary meanings. When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written. This Court does not interpret a statute in a way that renders any statutory language surplusage or nugatory. [*Nuculovic v Hill*, ___ Mich App ___, ___; ___ NW2d ___ (2010), slip op at 3 (citations and internal quotation marks omitted).]

The Metropolitan Transportation Authorities Act, MCL 124.401 *et seq.*, requires that written notice of any claim based on injury to persons or property be served upon the authority no later than 60 days from the occurrence that resulted in the injury. MCL 124.419. Specifically, MCL 124.419 provides:

> All claims that may arise in connection with the transportation authority shall be presented as ordinary claims against a common carrier of passengers for hire: Provided, That written notice of any claim based upon injury to persons or property shall be served upon the authority no later than 60 days from the occurrence through which such injury is sustained and the disposition thereof shall rest in the discretion of the authority and all claims that may be allowed and final judgment obtained shall be liquidated from funds of the authority: Provided, further, That only the courts situated in the counties in which the authority principally carries on its function are the proper counties in which to commence and try action against the authority.

"Shall" is mandatory. *Roberts v Farmers Ins Exch*, 275 Mich App 58, 68; 737 NW2d 332 (2007). As this Court explained in *Nuculovic*, ___ Mich App at ___, slip op at 2:

> The Metropolitan Transportation Authorities Act of 1967 (the Act) does not define "claim." However, in *Woodman v Kera, LLC*, 280 Mich App 125, 163 n. 3; 760 NW2d 641 (2008), this Court, relying on Black's Law Dictionary, defined the term "claim" as the aggregate of operative facts giving rise to a right enforceable by a court. The statute at issue in this case requires that a claim be "based upon injury to persons or property." MCL 124.419.

Thus, plaintiff was required to serve SMART with written notice of a court-enforceable right based on a personal injury within 60 days of the date of the accident. That SMART was provided an incident report by its own employee, and by the shopping center where the injury occurred does not suffice to meet this requirement. *Nuculovic*, ___ Mich App at ___, slip op at 5. In *Nuculovic*, this Court rejected the plaintiff's assertion that SMART's receipt of an incident report from its bus driver and his supervisor and of the police report for an accident resulting in the plaintiff's injuries was not sufficient to meet the statutory requirement. The Court explained:

> MCL 124.419 requires that "written notice of any claim based upon injury" be served upon the authority within 60 days of the date of the accident.
>
> The term "service" is not defined in MCL 124.419, but the concept of service of process is well clarified in our court rules. Service of process is addressed in MCR 2.202, 2.103, and 2.104. Where service is to be made on a public corporation, MCR 2.105(G) provides that "[s]ervice of process ... may be made by serving a summons and a copy of the complaint on" various officials, officers, or members. When process is served on an individual, it may be done by "*delivering* a summons and a copy of the complaint. . . . " MCR 2.105(A)(1) (emphasis added). The requirements for proof of service include a description of the facts of service, including the time, place, and manner of service. MCR 2.104(A)(3). Thus, under our court rules, where service is not done by mailing, service means delivery at a particular time and place. MCR 2.105(A)(1); MCR 2.104(A)(3). And such service is usually done by a process server. MCR 2.103. Plaintiff has no evidence of any delivery of her claim, much less formal delivery such as by a process server. And plaintiff has no "proof of service" as that term is used in the law.
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> Under MCR 2.105(H)(1), "[s]ervice of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process." Under subrule (2), "[w]henever, pursuant to statute or court rule, service of process is to be made on a nongovernmental defendant by service on a public officer, service on the public officer may be made by registered mail addressed to his or her office." MCR 2.105(H)(2). Here, there is no evidence that SMART received any notice by registered mail.
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> Furthermore, while the process in which service is made is well-specified in the court rules, the word "service" is not defined in either our court rules or in the statute at issue here. Therefore, we may consult a legal dictionary to define an undefined term that has a specific legal meaning. *Snyder v Advantage Health Physicians*, 281 Mich App 493, 502; 760 NW2d 834 (2008). In Black's Law

> Dictionary, the word service is defined as "[t]he *formal delivery* of a writ, summons, or other legal process. . . ." *Black's Law Dictionary*, at p. 1399 (8th edition, 2008) (emphasis added).
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> As the trial court observed, while SMART had in its possession the police report and the reports prepared by [the driver] and his supervisor, plaintiff did not "serve" (formally deliver to) SMART notice of plaintiff's claim for injury as service is defined in our court rules. [*Id.*, slip op at 4-5.]

The same is unequivocally true here. While SMART had in its possession the incident report prepared by Henry and a report generated by Fairlane Town Center, plaintiff did not "serve (formally deliver to) SMART," *id.*, any notice of his claim for injury within 60 days as mandated by MCL 124.419. Therefore, the trial court did not err by granting defendants' motion for summary disposition.

Plaintiff asserts that, in the event that SMART's receipt of the incident reports was not sufficient under the statute, the 60-day time period for providing notice to SMART was tolled pursuant to MCL 600.5851(1), because the effect of medications he was taking for his injuries rendered him insane. We disagree.

As previously noted, we review questions of statutory interpretation de novo, *Ambassador Bridge Co*, 481 Mich at 35; *Morden*, 275 Mich App at 340, giving "effect to the Legislature's intent, as expressed in the statute's terms, giving the words of the statute their plain and ordinary meanings." *Nuculovic*, ___ Mich App at ____, slip op at 3. "When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written," and, this Court will not interpret a statute "in a way that renders any statutory language surplusage or nugatory." *Id.*, quoting *McManamon v Redford Charter Twp*, 273 Mich App 131, 136; 730 NW2d 757 (2006).

MCL 600.5851(1) provides in relevant part:

> Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or *bring an action* under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or *bring the action although the period of limitations has run* . . . . [Emphasis added.]

A statutory notice provision is not the same as a statute of limitations; they have different objectives and serve different purposes. *American States Ins Co v Dep't of Treasury*, 220 Mich App 586, 599; 560 NW2d 644 (1996); *Davis v Farmers Ins Group*, 86 Mich App 45, 47; 272 NW2d 334 (1978). Statutory notice provisions provide time to investigate and appropriate funds for settlement purposes, while statutes of limitations prevent stale claims and put an end to the fear of litigation. *Blackwell v Borstein*, 100 Mich App 550, 554-555; 299 NW2d (1980); *Davis*, 86 Mich App at 47. The 60-day notice provision of MCL 124.419 is not a statute of limitation or repose. The plain language of MCL 600.5851(1) unequivocally provides that it pertains only to "period[s] of limitation." Therefore, we conclude that the savings provision set forth in MCL 600.5851(1) does not apply to the notice provision set forth in MCL 124.419.

We affirm.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood