

STATE OF MICHIGAN
COURT OF APPEALS

GREAT NORTHERN INSURANCE COMPANY,
Plaintiff-Appellee,

UNPUBLISHED
September 27, 2012

v

No. 304741
Wayne Circuit Court
LC No. 10-010276-NZ

CITY OF ALLEN PARK,
Defendant,

and

WAYNE COUNTY,
Defendant-Appellant.

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendant Wayne County appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7). We reverse and remand for entry of summary disposition in favor of Wayne County.

I. FACTS

On June 22, 2009, Rivers Edge Community Credit Union (Rivers Edge) discovered that its basement had sustained water damage because of a sewer backup. Rivers Edge filed a claim with plaintiff Great Northern Insurance Company (Great Northern), and Great Northern paid Rivers Edge \$154,044.94 under Rivers Edge's insurance policy.

On August 4, 2009, Great Northern mailed a letter to the address of the Wayne County Department of Environment. Great Northern addressed the letter to the "Wayne County Drain Commission," which does not exist. The letter stated the following, in pertinent part:

Rivers Edge Community Credit Union sustained a loss resulting from a sewer backup. The loss occurred over the weekend of June 20-21, 2009 and was discovered by employees of the Credit Union on the morning of June 22, 2009. It is believed that damages will amount to roughly \$145,000.00. Pursuant to MCL 691.1416 et. seq., I have been asked to place the City and County on notice of a

potential claim. I ask that you please forward the necessary forms so that both the Credit Union and the insurer may make a claim.

On August 6, 2009, a paralegal at the Department of Environment responded to Great Northern's letter. The paralegal sent Great Northern a letter by both fax and U.S. mail. The letter detailed the claim process and included the following notice:

Parties seeking compensation are also required to comply with the notice requirements of the [Government Tort Liability] Act. Any claim must be made in writing within 45 days after the date the damage or physical injury was discovered.

The letter also included a claim form that stated that “[f]ailure to provide proper notice will bar your claim.” The form indicated that Great Northern should return it to the Wayne County Clerk's office, and included the Wayne County Clerk's name and address. Great Northern did not return the claim form until December 14, 2009.

On March 18, 2011, Great Northern filed a complaint against the City of Allen Park, which is not a party to this appeal, and Wayne County to recover the money that it had paid to Rivers Edge under the insurance policy. Wayne County moved for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that governmental immunity barred Great Northern's claim because Great Northern had failed to notify Wayne County of the claim within 45 days, as the sewer disposal system event exception requires. Great Northern responded that its August 4 letter was sufficient notice. After hearing the motion, the trial court concluded that the August 4 letter provided “both the City of Allen Park and the Drain Commission notice,” and denied Wayne County's motion.

Wayne County argues on appeal that it was entitled to summary disposition because Great Northern did not comply with the statutory notice requirements of the sewer disposal system event exception, and therefore Great Northern cannot justify the application of an exception to governmental immunity.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews de novo questions of statutory interpretation, and a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7).¹ Whether an entity is entitled to governmental immunity is a question of law that we review de novo.² To survive a motion under MCR 2.116(C)(7), the plaintiff must allege facts that warrant applying an

¹ *Washington v Sinai Hosp*, 478 Mich 412, 417; 733 NW2d 755 (2007).

² *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

exception to governmental immunity.³ When reviewing a motion granted under MCR 2.116(C)(7), we accept as true the plaintiff's well-pleaded factual allegations, construing them in the plaintiff's favor.⁴

B. LEGAL STANDARDS

The governmental immunity act provides "broad immunity from tort liability to governmental agencies whenever they are engaged in the exercise or discharge of a governmental function[.]"⁵ This Court broadly construes the scope of governmental immunity, and narrowly construes its exceptions.⁶ When interpreting a statute, our goal is to give effect to the intent of the Legislature.⁷ The language of the statute itself is the primary indication of the Legislature's intent.⁸ If the language of the statute is unambiguous, we must enforce the statute as written.⁹ We must read the statute as a whole, and "statutory provisions are *not* to be read in isolation[.]"¹⁰

C. STATUTORY LANGUAGE

A governmental agency is immune from liability for the overflow or backup of a sewage disposal system, unless the claimant can show that it has met the requirements of the sewage disposal event exception under MCL 691.1416 through MCL 691.1419.¹¹ The sewage disposal event exception "provide[s] the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory."¹² This statute provides:

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a

³ *Linton v Arenac Co Rd Comm*, 273 Mich App 107, 111; 729 NW2d 883 (2006).

⁴ *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010).

⁵ MCL 691.1401 *et seq.*; *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 595; 363 NW2d 641 (1984).

⁶ *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

⁷ *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009).

⁸ *Id.*

⁹ *Id.* at 12-13.

¹⁰ *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010).

¹¹ MCL 691.1417.

¹² MCL 691.1417(2); *Linton*, 273 Mich App at 111.

governmental agency if the claimant shows that all of the following existed at the time of the event:

(a) The governmental agency was an appropriate governmental agency.

(b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. . . .

(b) The claimant complied with [MCL 691.1419].^[13]

Any claims for damages caused by a sewer disposal system event must comply with the procedures in MCL 691.1419.¹⁴ These procedures include the following notice provision:

(1) . . . [A] claimant is not entitled to compensation under [MCL 691.1417] unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2)(c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). . . .

(2) If a person who owns or occupies affected property notifies a contacting agency^[15] orally or in writing of an event before providing a notice of a

¹³ MCL 691.1417(3), (4).

¹⁴ MCL 691.1417(1).

claim that complies with subsection (1), the contacting agency shall provide the person with the following information in writing:

(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow a claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under [MCR 691.1417] against a governmental agency notified under subsection (2) if the claimant can show both of the following:

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirements of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).¹⁶

D. APPLYING THE STANDARDS

Wayne County argues that the trial court should have granted its motion for summary disposition under MCR 2.116(C)(7) because Great Northern failed to comply with the statutory notice requirements, and therefore could not allege facts to support applying the sewer disposal event exception. The parties do not dispute that Great Northern did not return the claim form to the Wayne County Clerk until December 14, 2009, clearly outside the 45 day period mandated by this exception.¹⁷ However, Great Northern argues that its August 4 letter sufficiently notified Wayne County within the 45 day period.

We conclude that Great Northern's August 4 letter did not notify Wayne County of its claim, because Great Northern did not send the letter to the proper entity. The sewer disposal

¹⁵ A "contacting agency" is defined as the clerk of a governmental agency; or if the agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency; or any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice. MCL 691.1416(d).

¹⁶ MCL 691.1419.

¹⁷ MCL 691.1419(1).

event exception provides that the notice of the claim “shall be sent to the individual within the governmental agency designated in [MCL 691.1419(2)(b)].”¹⁸ The term “shall” is mandatory.¹⁹ When read together, MCL 691.1419(1) and MCL 691.1419(2)(b) indicate that the claimant must send written notice of the claim to the individual that the contacting agency identifies when the contacting agency sends the complainant the notices that MCL 691.1419(2) requires.²⁰

Great Northern argues that the statute allows it to provide notice to other agencies, authorities, or departments that the agency authorizes to receive notice. Great Northern fails to draw any distinction between notifying a contacting agency of an *event*, and notifying the individual within the agency of the *claim*. An interpretation that the claimant’s notice of the *event* to the contacting agency is equivalent to notifying the agency of the *claim* would nullify MCL 691.1419(2) and (3). If notifying the contacting agency of the event simultaneously notified the appropriate individual within that agency of the claim, then the contacting agency would not need to send the claimant the information that MCL 691.1419(2) requires the contacting agency to send. Further, there would be no circumstance under which MCL 691.1419(3) could excuse a claimant. We must avoid this construction because it would render these parts of the statute a surplusage.²¹

Great Northern has not alleged or shown that the Department of Environment is a “contacting agency” within the meaning of MCL 691.1416(d). But assuming for the sake of argument that the Department of Environment is a contacting agency, Great Northern’s August 4 letter only triggered Wayne County’s duty to inform Great Northern of the proper individual for Great Northern to notify of its claim.²² The Department of Environment sent Great Northern an explanation of the statute’s requirements and a claim form that indicated that Great Northern must send written notice of its claim to the Wayne County Clerk. The notice included the Wayne County Clerk’s name and address. Thus, the Wayne County Clerk was “the individual within the governmental agency designated in [MCL 691.1419(2)(b)].”²³ Since the exception specifies that the claimant must provide notice to the individual within the governmental agency,²⁴ and that individual is the person provided to the claimant by the contacting agency,²⁵ the August 4 letter was not the notice of the *claim* required by the language of this exception.

¹⁸ MCL 691.1419(1).

¹⁹ *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008).

²⁰ MCL 691.1419(2)(b).

²¹ *Snead v John Carlo, Inc.*, 294 Mich App 343, 355; 813 NW2d 294 (2011).

²² MCL 691.1419(2).

²³ MCL 691.1419(1).

²⁴ MCL 691.1419(1).

²⁵ MCL 691.1419(2)(b).

Further, the statute does not excuse Great Northern's error because Great Northern does not meet *both* of the requirements that would excuse it from failing to provide notice to the Wayne County Clerk within the proper timeframe.²⁶ The statute only would excuse Great Northern for failing to comply with the notice provision if the Department of Environment had not informed it of the individual to notify.²⁷

Great Northern argues that it substantially complied with the requirements of these sections. We disagree. Our Supreme Court's recent decision in *McCahan v Brennan* determines this issue. We may not reduce Great Northern's statutory obligation to comply with the notice requirements of MCL 691.1419 by concluding that Great Northern substantially complied with those requirements.²⁸ Notice provisions, such as those of this section, "ensure that notice will be provided to the *proper* governmental entity, thereby protecting plaintiffs and defendants alike from having the wrong component of the government notified."²⁹ Thus, we must reject Great Northern's argument that it provided Wayne County notice of the event, sufficient information to allow Wayne County to investigate, and notice of its intent to bring a suit to resolve its claim.³⁰ Great Northern's notice of the event, sent to the Department of Environment, was not sufficient to notify the Wayne County Clerk—the proper governmental entity—of Great Northern's claim.

We conclude that Great Northern's August 4 letter did not notify Wayne County of Great Northern's claim. Because Great Northern did not send Wayne County notice within the 45 day period mandated by the statute, we reverse and remand for the trial court to enter an order of summary disposition in favor of Wayne County. In light of our resolution of this issue, we need not determine whether Great Northern failed to plead the necessary elements of the exception. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ William C. Whitbeck

²⁶ MCL 691.1419(3).

²⁷ MCL 691.1419(3)(b); see *Dybata v Wayne Co*, 287 Mich App 635, 642; 791 NW2d 499 (2010).

²⁸ *McCahan v Brennan*, ___ Mich ___, slip op p 17; ___ NW2d ___ (2012).

²⁹ *Id.* at slip op p 14.

³⁰ *Id.* at slip op p 13.