STATE OF MICHIGAN

COURT OF APPEALS

PASKA NUCULOVIC, Plaintiff-Appellant, v JOHNNY DEAN HILL and SMART BUS, INC., Defendants-Appellees.	FOR PUBLICATION January 5, 2010 No. 280216 Macomb Circuit Court LC No. 2006-003647-NI Advance Sheets Version

Before: FORT HOOD, P.J., and WILDER and BORRELLO, JJ.

BORRELLO, J. (*concurring in part and dissenting in part*).

I concur with the majority's analysis of plaintiff's claims of error on all issues except its analysis and conclusions regarding the notice and service of process requirements mandated by MCL 124.419. I respectfully dissent from the majority's conclusions that the police report and incident reports failed to satisfy the notice requirement of MCL 124.419 and that defendants were not properly "served" pursuant to the plain language of the statute. On the basis of my reading of the notice requirement stated in MCL 124.419, the police report and two incident reports, which defendants possessed, constituted legally sufficient notice under MCL 124.419 and, accordingly, I would reverse the granting of summary disposition and remand the matter to the trial court for further proceedings.

MCL 124.419 requires that a common carrier of passengers be served "written notice of any claim[.]" My disagreement with the majority's conclusion regarding whether notice was proper under MCL 124.419 is based on this Court's holding in *Chambers v Wayne Co Airport Auth*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2008 (Docket No. 277900), lv den 483 Mich 1081 (2009). Although unpublished opinions of this Court are not precedentially binding under the rule of stare decisis, MCR 7.215(C)(1), such opinions can be persuasive. I am persuaded by this Court's decision in *Chambers* because it is consistent with longtime legal precedent in this state, which recognizes that notice, when required of an average citizen for the benefit of a governmental entity, need only be understandable and sufficient to bring to the defendant's attention the important facts, *Brown v Owosso*, 126 Mich 91, 94-95; 85 NW 256 (1901), and that notice provided by an average citizen must be construed liberally in favor of the citizen. *Meredith v Melvindale*, 381 Mich 572, 579; 165 NW2d 7 (1969).

In *Chambers*, a panel of this Court held that an incident report taken by employee of defendant Wayne County Airport Authority satisfied the statutory notice requirement in the

public building exception to governmental immunity, MCL 691.1406. *Chambers*, unpub op at 3. In so ruling, this Court stated:

> [I]t has nevertheless long been the case in Michigan that "notice," particularly where demanded of an average citizen for the benefit of a governmental entity, need only be understandable and sufficient to bring to the defendant's attention the important facts. *Brown v City of Owosso*, 126 Mich 91, 94-95; 85 NW 256 (1901). The notice itself, therefore, should be liberally construed in favor of "the inexpert layman with a valid claim" who "should not be penalized for some technical defect." *Meredith v City of Melvindale*, 381 Mich 572, 579; 165 NW2d 7 (1969). What constitutes "a notice" is not, in fact, defined in the governmental tort liability act. MCL 24.205(4), MCL 462.107(3), and MCL 565.802(i) define the term in various ways that do not seem relevant except insofar as they are consistent with the dictionary definitions, all of which pertain to *bringing knowledge to the attention of another*. [*Chambers*, unpub op at 2 (emphasis in original).]

Although *Chambers* involved notice under the public building exception and this case involves notice under MCL 124.419, I find the analysis set forth by our Court in *Chambers* persuasive and would apply the same reasoning to the notice requirement contained in MCL 124.419. The majority asserts that *Chambers* is distinguishable from the present case because of distinctions in the notice required in MCL 691.1406 and MCL 124.419. I find that the statutes, while not identical, are sufficiently similar to apply the reasoning in *Chambers* to this case because both statutes concern an average citizen's providing notice. Moreover, the same concerns underlying this Court's rationale for liberally construing notice provided by an average citizen under the public building exception also apply to MCL 124.419. The notice provided by an inexpert layman with a valid claim should be liberally construed whether the layman is providing notice under the public building exception or notice under MCL 124.419.

As stated above, MCL 124.419 requires, quite simply, "written notice of any claim[.]" The majority suggests that in order to satisfy the "written notice of any claim" requirement of MCL 124.419, defendants must have known that plaintiff intended to file a legal claim. A "claim" is defined as "[t]he aggregate of operative facts giving rise to a right enforceable by a court[.]" Black's Law Dictionary (8th ed). Thus, the legal dictionary definition of the word "claim" refutes any suggestion that, in order to provide notice sufficient under MCL 124.419, plaintiff was required to explicitly inform defendants that she intended to take legal action. To the contrary, based on the definition of the word "claim," plaintiff's duty to provide "written notice of any claim" encompassed the duty to notify defendants of the operative facts giving rise to a right enforceable by a court. In this case, the police report and the incident reports informed defendants of the date and time of the injury, the nature of any injures, and myriad surrounding facts, all of which combined to provide legally sufficient notice of the aggregate of operative facts giving rise to a right enforceable by a court. The conclusion that a police report or an incident report satisfies the notice requirement of MCL 124.419, as long as they contain the operative facts giving rise to a right enforceable by a court, is consistent with the purpose of the notice provision in MCL 124.419, which, pursuant to the plain language of the statute, is to apprise a common carrier that a claim is being asserted against it arising from injuries to a person or property. Statutory notice provisions like the one in MCL 124.419 should not be so strictly

construed as to render it impossible for an average citizen to comply. See *Brown*, *supra* at 94-95. Therefore, I would hold that the trial court improperly concluded that plaintiff failed to satisfy the notice requirement in MCL 124.419.

I additionally dissent from the majority's implication that in order to effectuate legally sufficient service under MCL 124.419, an injured party must fulfill the requirements of the court rules outlined in the majority's opinion, or must serve the entity by registered mail. Again, the plain language of MCL 124.419 imposes no such requirements. The Legislature is presumed to have intended the meaning it plainly expressed. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). A court may not read something into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

As the panel in *Chambers* recognized, when a term is not defined in a statute, it is appropriate to refer to dictionary definitions. The dictionary definitions of the term "notice" all "pertain to *bringing knowledge to the attention of another*." *Chambers*, unpub op at 2 (emphasis in original). Black's Law Dictionary (8th ed) defines "serve" as "[t]o make legal delivery of (a notice or process)" or "[t]o present (a person) with a notice or process as required by law[.]" These definitions of "serve" are consistent with the notion of "*bringing knowledge to the attention of another*" and do not require, as the majority suggests, delivery of a summons and complaint or service by registered mail. Defendants do not contend, and the record does not support, a finding that defendants did not possess the police report and the two incident reports. Therefore, defendants' receipt of the police report, coupled with the incident reports, constituted legally sufficient service of notice pursuant to MCL 124.419.

On the basis of my analysis, because defendants' receipt of the police report or either incident report satisfied the written notice requirement and service of notice requirement set forth in MCL 124.419, I disagree with the majority that defendants were not properly "served" with legally sufficient notice of the incident under the plain language of MCL 124.419. Accordingly, I would reverse the grant of summary disposition in favor of defendants and remand the matter for further proceedings consistent with this opinion.

On all other issues, I concur with the analysis and conclusions stated in the majority's opinion.

/s/ Stephen L. Borrello