STATE OF MICHIGAN

COURT OF APPEALS

VIVIAN ATKINS,

Plaintiff-Appellant,

v

SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, d/b/a SMART,

Defendant-Appellee.

UNPUBLISHED
October 22, 2009

No. 288461
Wayne Circuit Court
LC No. 07-721025-NI

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when one of defendant's buses collided with another of defendant's buses on September 15, 2006. On August 7, 2007, plaintiff filed a four-count complaint, alleging third-party claims for negligence resulting in serious impairment of bodily function, negligent entrustment, vicarious liability (respondeat superior), and first-party no-fault benefits. The Metropolitan Transportation Authorities Act, MCL 124.401 *et seq*. (MMTA), 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. At issue here is whether defendant had timely notice of plaintiff's third-party claims.

Defendant investigated the accident immediately after the buses collided. At that point, plaintiff did not feel any pain. Plaintiff and some other passengers got off to catch the next bus, rather than be delayed by the investigation. While plaintiff was on the second bus, she began to feel pain in her back and shoulder, for which she received medical treatment. She telephoned defendant's agent on September 25, 2006, to report her injury. She said she was in pain and the doctor restricted her from work and prescribed medication. Defendant sent plaintiff an application for no-fault benefits, which she completed and returned. She identified her medical providers and described her injury as: "My shoulders, mid & lower back was hurt. Stomach felt like it had dropped." Defendant received the attending physician's report, and defendant's file on the case noted on October 30, 2006, that plaintiff was on a short leave of absence from work

due to pain. The last entry before the 60-day notice period expired, dated November 10, 2006, noted that plaintiff's mother and daughter were performing some of her household services and added, "[E]xaminer should keep an eye on this." The note then stated, "With anticipate[d] wage loss, treatment and household services, current reserve will not cover expected costs." Plaintiff's condition continued to worsen and a December MRI showed disc herniations and degenerative changes in her spine. Eventually, plaintiff brought this suit, but the trial court agreed with defendant that, with regard to her tort claim, plaintiff had provided only notice of the *injury*, not the *claim*, within 60 days. The trial court also held that under *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007), defendant did not need to show it was prejudiced by the absence of timely notice.

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). Statutory interpretation is a question of law that we also consider de novo. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

There is no dispute that plaintiff timely notified defendant of her injuries and applied for benefits. The only question is whether the information she provided before expiration of the 60-day period was sufficient to give defendant written notice of her tort claim as required by statute. 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.

Thus, MCL 124.419 requires "written notice of any claim based upon injury to persons or property" within "60 days from the occurrence through which such injury is sustained . . . ." The statute does not contain any specific requirements of elements that must be included in the notice; it plainly and unambiguously requires only "written notice[.]" The statute clearly does not delineate between notice of a claim for first-party no-fault benefits and notice of a third-party tort claim. As stated above, MCL 124.419 requires, quite simply, "written notice" of a "claim." A "claim" has been defined by our Supreme Court as:

> 1. The aggregate of operative facts giving rise to a right enforceable by a court . . . . 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional . . . . 3. A demand for money or property to which one asserts a right . . . . [*CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 554-555; 640 NW2d 256 (2002), quoting Black's Law Dictionary (7th ed).]

See also, *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 100; 718 NW2d 784 (2006) (Cavanagh, J, dissenting) (summarizing the Court's historical treatment of "claim" and concluding, "In short, then, a claim means a 'demand[] of a pecuniary nature,' a 'right to payment,' and a 'demand for money'"); *Central Wholesale Co v Chesapeake & O R Co*, 366 Mich 138, 149; 114 NW2d 221 (1962) ("'"Claim" is defined to be "a demand of a right or alleged right; a calling on another for something due or asserted to be due; as, a claim of wages for services." Century Dictionary'" (quoting *Allen v Bd of State Auditors*, 122 Mich 324, 328; 81 NW 113 (1899)).

The statute does not require any specific information, as long as the defendant has notice of a "claim": i.e., notice of the aggregate of operative facts giving rise to an enforceable right or notice of a demand for payment. Moreover, in general, substantial compliance may be sufficient to satisfy a statutory notice provision. *Meredith v Melvindale*, 381 Mich 572, 579-580; 165 NW2d 7 (1969); *Mullas v Secretary of State*, 32 Mich App 693, 697-698; 189 NW2d 141 (1971). "Although mandatory notice provisions cannot be ignored . . . substantial compliance is sufficient." *Livonia v Dep't of Social Services*, 423 Mich 466, 513; 378 NW2d 402 (1985) (citation omitted).

Here, defendant had timely notice of an accident between two buses. The only vehicles involved in the accident were owned by defendant, and plaintiff was a passenger on one of the vehicles. Defendant also had timely notice that plaintiff was injured, and it knew that, 60 days after the accident, she continued to require medical treatment, provision of household services, and restriction from work. While plaintiff had no proof that she had suffered permanent disfigurement or serious impairment of body function,[1] by the expiration of the 60-day period, defendant had notice of the operative facts needed to anticipate plaintiff's tort claim, and plaintiff had demanded payment for her injuries. The statute does not require a defendant to know what legal theory a plaintiff will pursue, only that it have notice of facts giving rise to a right to seek damages or payment. Therefore, we hold that the information defendant had before the expiration of the 60-day period was sufficient to provide written notice of plaintiff's third-party claim.

However, we note that not all applications for first-party no-fault benefits would satisfy the statute, even when made directly to the defendant. For example, if the plaintiff's injury was something that apparently would be quickly resolved (like an abrasion or bruise), or if the circumstances of the accident were such that there was no apparent negligence by the defendant (such as a hit-and-run driver running into the defendant's vehicle), a defendant would not necessarily have notice that a tort claim would follow. For this reason, defendant is correct in its argument that merely having notice of the accident is insufficient. But here, defendant had notice of all the facts that would support plaintiff's third-party claim.

[1] As plaintiff argues, it may be only in extreme cases, such as immediate loss of a limb, where a plaintiff would know and be able to prove serious impairment of body function or permanent, serious disfigurement within 60 days of being injured.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio