STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM POLLARD,

Plaintiff-Appellee,

v

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

Defendant-Appellant.

UNPUBLISHED
November 24, 2009

No. 288851
Wayne Circuit Court
LC No. 07-729771-NI

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying 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).

At issue is whether defendant had sufficient notice of plaintiff's third-party claim that MCL 124.419 was satisfied.[1] Plaintiff[2] alleged that on August 5, 2007, he fell and broke his hip and suffered other injuries resulting in serious impairment of body function when he was a passenger on defendant's bus and the driver erratically sped up and braked. The driver called for an ambulance, and plaintiff was taken to the hospital. Defendant's claims administrator sent plaintiff an Application for Benefits, but it was not returned. On November 7, 2007, 94 days after the accident, plaintiff filed suit; it was served on defendant on November 12, 2007. This was the first written notice defendant had of the claim. Defendant moved for summary disposition, arguing that the claim was barred by MCL 124.419:

> 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:

[1] Plaintiff also filed a claim for first-party benefits (PIP), which is not included in this appeal.

[2] Plaintiff died in August 2008 and is now represented by his son, Dean Pollard. "Plaintiff" will be used in this report to refer to William Pollard.

> 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. [Emphasis added.]

The trial court stated that the purpose of the notice provision was to make the agency aware of a potential claim "so that they can make an investigation." There was no dispute that defendant had actual notice of the incident because the driver called an ambulance and defendant's agent sent plaintiff a claim form. The court denied the motion, concluding, "I think you had actual 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 on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). As noted in *USAA Ins Co v Houston Gen Ins Co*, 220 Mich App 386, 389-390; 559 NW2d 98 (1996):

> The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. [Internal citations omitted.]

The notice statute clearly requires *written notice of any claim* be given within 60 days. The trial court's finding that actual notice sufficed was contrary to the statute. Moreover, all defendant had notice of was that plaintiff had been injured and, inferentially, that he was injured badly enough to require ambulance transport. Defendant had no information concerning the true extent of plaintiff's injuries, and when plaintiff did not return the Application for Benefits, had no notice of any serious injury, since not even first-party benefits were claimed.

However, this does end our inquiry. Previously, this Court in *Trent v Smart*, 252 Mich App 247; 651 NW2d 171 (2002), indicated that the failure to comply with the statutory 60-day notice provision was not fatal, unless SMART could demonstrate that it suffered actual prejudice from plaintiff's failure to provide timely notice. *Id.* at 253. However, this ruling relied on *Hobbs v Dep't of State Hwys*, 398 Mich 90; 247 NW2d 754 (1976), which was subsequently overruled in *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 200; 731 NW2d 41 (2007). The *Rowland* Court rejected the "actual prejudice" requirement based on the absence of any such language within the relevant statute, thereby requiring the statutory language to be enforced as written. *Id.* at 219. However, both *Hobbs* and *Rowland* dealt with governmental liability for injuries resulting from highway defects, under a different statutory provision in the Government Tort Liability Act (GTLA). MCL 691.1401 *et seq.* Recent decisions by our Supreme Court have called into question the applicability of *Rowland* to cases dealing with different statutory provisions, noting that "the Court was not bound to extend *Rowland* to the statute at issue in

Chambers [*v Wayne Co Airport Authority*, 483 Mich 1081; 765 NW2d 890 (2009)]." *Potter v McLeary*, 484 Mich 397, 428-429; ___ NW2d ___ (2009) (Kelly, CJ, concurring). However, the Court is not in full agreement regarding the holding in *Rowland* necessarily being restricted to its particular factual circumstances and lack of broad applicability to other statutory notice provisions. See *Chambers, supra* at 1084-1085 (Corrigan, J., dissenting). While we are cognizant of this trend regarding "actual prejudice" and acknowledge these recent decisions, it is not the role of this intermediary appellate Court to involve itself in this dispute. Rather we are restricted to enforcing the actual statutory language at issue, pending a resolution or clear mandate from our Supreme Court to the contrary.

Therefore, based on the clear, unambiguous and mandatory language of the subject statutory provision 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*" we find that plaintiff failed to comply with the notice requirement. As such, the trial court erred in failing to grant summary disposition to defendant on this claim.

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

/s/ Michael J. Talbot
/s/ Peter D. O'Connell