

STATE OF MICHIGAN
COURT OF APPEALS

VERNA SPAYTH,

Plaintiff-Appellee,

v

CITY OF ANN ARBOR,

Defendant-Appellant.

UNPUBLISHED
December 7, 2010

No. 292460
Washtenaw Circuit Court
LC No. 08-001000-NO

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

GLEICHER, P.J. (*concurring*).

I concur in the result reached by the majority, but write separately to delineate my reasons for doing so.

The statutory notice provision, MCL 691.1404(1) dictates:

As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, . . . shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

In *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 200; 731 NW2d 41 (2007), the Supreme Court emphasized the “plain” nature of the statute’s requirement that “notice of the injuries sustained and of the highway defect must be served on the governmental agency within 120 days of the injury.” This Court subsequently observed that MCL 691.1404(1) “does not delineate the form of the notice or when the proper notice is provided except that it must be within 120 days of the injury and contain the identified information.” *Burise v Pontiac*, 282 Mich App 646, 654; 766 NW2d 311 (2009). The plaintiff in *Burise* sent the defendant an initial notice omitting the name of a known witness, and later submitted a timely claim form containing more detailed information, including the witness’s name. *Id.* at 648, 651-652. This Court held that the second claim form sufficed to meet the statutory notice prerequisites, and specifically disregarded the initial, defective notice. *Id.* at 654-655.

Here, plaintiff’s September 22, 2008 letter notified defendant that plaintiff had suffered an injury on August 25, 2008, due to defendant’s failure “to maintain/construct/design

sidewalks” “located near street address 700 Packard, Ann Arbor, Michigan.” On October 8, 2008, 44 days after the accident, plaintiff filed her complaint in the Washtenaw Circuit Court. The complaint alleged, in pertinent part:

5. That on August 25, 2008, Plaintiff was traveling on the public sidewalks located within the City of Ann Arbor, specifically, sidewalk located near the cross section of Packard and State Streets.

6. That as Plaintiff was attempting to navigate her power chair down a curb and into the street, she was thrown from her chair due to uneven portions of concrete, steep incline and slope.

In later paragraphs, the complaint specifically described plaintiff’s injuries. Neither the complaint nor the September 22, 2008 letter identified any witnesses to plaintiff’s fall.

The September 22, 2008 letter does not specifically identify either the location of the sidewalk defect or the nature of the defect. Nevertheless, a sufficiently detailed complaint filed within the 120-day statutory notice period constitutes notice under the statute. See MCL 691.1404(2) (“The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency . . .”). However, plaintiff’s complaint amounts to a defective notice because it likewise fails to “specify the exact location” of the defect and omits mention of any witnesses. MCL 691.1404(1).

I respectfully disagree with the majority’s conclusion that plaintiff’s complaint inadequately described the nature of the sidewalk defect. The complaint identified the defect as “uneven portions of concrete, steep incline and slope.” Regardless whether uneven concrete is “ubiquitous,” as the majority finds, plaintiff’s depiction of the sidewalk’s condition fulfills the statutory mandate by specifying the exact nature of the defect. *Ante* at 4. But because both of plaintiff’s efforts to supply statutory notice fell short of the level set forth in MCL 691.1401(1) in multiple other respects, I concur that the circuit court erred when it denied defendant summary disposition.

/s/ Elizabeth L. Gleicher