STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY GARZA,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED
January 18, 2018

No. 334342
Wayne Circuit Court
LC No. 15-015952-NO

Before: MURRAY, P.J., and FORT HOOD and GLEICHER, JJ.

GLEICHER, J. (*concurring*).

The majority holds that the outcome in this case is dictated by this Court's recent decision in *Wigfall v Detroit*, __ Mich App _ ; __ NW2d __ (2017), and I concur. Were I writing on a blank slate, however, I would hold that service of Garza's notice on the City of Detroit Law Department sufficed.

Of this there can be no doubt: Garza timely informed the City of Detroit of her claim. She used certified mail to send her notice within the applicable time period, and the City received it. The City then assigned an adjuster to gather more information. The adjuster sent a letter to Garza's counsel acknowledging receipt of the notice and seeking signed medical releases. In the fullest sense, notice was achieved. The purpose of the notice statute was fulfilled.

But as the majority observes, the Supreme Court has held that an injured plaintiff must *precisely* comply with the requirements of MCL 691.1404 to perfect notice of a claim under the highway exception to the governmental immunity act. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). *Rowland* holds that a notice must perfectly meet each and every requirement of the statute, regardless of whether failure to do so causes any prejudice. *Id*. at 219. And as *Wigfall* holds, MCL 691.1404 requires service on a city's mayor, clerk, or city attorney; it does not authorize service on the "Law Department." Under *Rowland*, the exact language text of the statute controls.

But neither *Rowland* nor *Wigfall* mention another statutory text, MCL 600.2301, addressing errors in the proceedings "which do not affect the substantial rights of the parties." That statute provides:

> The court in which any action or proceeding is pending, has power to amend any process, pleading or proceeding in such action or proceeding, either in form or substance, for the furtherance of justice, on such terms as are just, at any time before judgment rendered therein. The court at every stage of the action or proceeding shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties.

I would hold that MCL 600.2301 means exactly what it says, which is that an otherwise inconsequential error shall be disregarded unless it affects "the substantial rights of the parties." This law expresses the intent of our Legislature that trifling technicalities precipitating no prejudice should not stand in the way of allowing a litigant to have her day in court. In other words, access to the courts is more important than enforcing formalities that do not interfere with "the substantial rights of the parties."

Here, the City of Detroit knew exactly what it needed to know to defend against Garza's claim. The idea that serving the initial notice on the mayor, the city clerk, or the city attorney somehow would have aided the City's defense is almost laughable. If our courts truly revere the text of the statutes enacted by our Legislature, the answer to a case like this is simple. MCL 600.2301 commands that Garza's error of process or proceeding must be disregarded because it had no effect on the City's rights. Were it not for this Court's decision in *Wigfall*, I would affirm on that ground.

/s/ Elizabeth L. Gleicher