

STATE OF MICHIGAN  
COURT OF APPEALS

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LARRY ANIEL,

Plaintiff-Appellant,

v

CITY OF PONTIAC,

Defendant-Appellee.

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UNPUBLISHED

July 26, 2011

No. 297901

Oakland Circuit Court

LC No. 2009-104197-NO

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

In this action involving an allegedly defective city sidewalk, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). The trial court held that plaintiff's notice did not provide the "exact location" of the alleged defect as required by MCL 691.1404(1). We reverse.

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred because of "immunity granted by law." Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." With respect to a motion filed under MCR 2.116(C)(10), the moving party must file supportive material, whereas with respect to a motion filed under MCR 2.116(C)(7), the moving party may, but is not required to, file supportive material. *Maiden*, 461 Mich at 119.

A governmental agency is generally immune from tort liability while engaged in the exercise or discharge of a governmental function. See MCL 691.1407(1); *Bennett v Detroit Police Chief*, 274 Mich App 307, 315; 732 NW2d 164 (2006). An exception to this broad grant of immunity is the public highway exception, MCL 691.1402, which imposes a duty on governmental agencies that have jurisdiction over a highway to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). The "highway" includes sidewalks. MCL 691.1401(e). A governmental agency's liability under the public highway exception is subject to the notice provision of MCL 691.1404(1), which provides:

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, except as otherwise provided in subsection (3) 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.

MCL 691.1404(1) is clear and unambiguous and, therefore, it must be enforced as written. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007).

In this case, plaintiff served defendant with notice of injury and defect. The notice identified the location of the defect as follows:

Sidewalk in Front of 200 East Montcalm  
Near Joslyn on South Side of Street

The notice further stated:

On or about May 2, 2009, Larry Aniel was riding his bicycle when he hit a sewer cover and crumbled uneven cement which caused him to fall forward landing on his right elbow.

On appeal, defendant argues, as it did below, that the notice was defective because it did not specify “the exact location” of the defect as required by MCL 691.1404(1). In making its argument, defendant does *not* contend that the description of the defect’s location is inaccurate, but rather maintains that inclusion of the words “near Joslyn” rendered the notice inexact. Defendant’s attempt to show vagueness in the description of the location is not persuasive.

The notice provided a street address, stated that the defect was “in [f]ront of” the address, on the south side of the street, and referenced a sewer cover. According to defendant, because of the phrase “near Joslyn,” the location of the defect could have been anywhere along the half-mile stretch of sidewalk between the specified address and Joslyn Road.<sup>1</sup> However, the notice stated that the defect is “in [f]ront of” the specified address, not “near,” “adjacent,” or “in the vicinity of” the address. Defendant does *not* contend that the frontage of the lot for 200 East Montcalm is itself too expansive to be considered an “exact location.” Defendant also does *not* contend that there are multiple metal utility covers in the sidewalk in front of 200 Montcalm on the south side of the street. Defendant’s insistence that the description of the defect’s location is inexact because it refers to the proximity of Joslyn Road ignores the limitations that are manifest in the description. Under the circumstances, we conclude that there is no inexactness in the notice’s description of the location of the alleged defect. Consequently, the trial court erred in holding

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<sup>1</sup> Evidence presented by defendant included Google maps showing that the distance between the specified address and Joslyn Road was approximately one-half mile and the affidavit of the Department of Public Works director that various manhole covers, stop valves, and water valves were located in or nearby this half-mile stretch of sidewalk.

that the notice did not comply with MCL 691.1404(1) and in granting defendant's motion for summary disposition.

Reversed.

/s/ Michael J. Talbot  
/s/ Joel P. Hoekstra  
/s/ Elizabeth L. Gleicher