# STATE OF MICHIGAN

# COURT OF APPEALS

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LYN BYKONEN and JEFF BYKONEN,

Plaintiffs-Appellees,

v

VILLAGE OF AKRON,

Defendant-Appellant,

and

AKRON-FAIRGROVE SCHOOL DISTRICT,

Defendant.

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UNPUBLISHED
November 17, 2011

No. 300057
Tuscola Circuit Court
LC No. 09-025471-NO

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this suit for damages arising from a defective sidewalk, defendant Village of Akron appeals as of right the trial court's order denying its motion to dismiss. On appeal, the sole question is whether plaintiffs Lyn Bykonen[1] and Jeff Bykonen gave notice, as required under MCL 691.1404, sufficient to avoid Akron's governmental immunity. We conclude that plaintiffs' notice did not meet the minimum requirements stated under MCL 691.1404. Accordingly, Akron had immunity and the trial court erred when it denied Akron's motion to dismiss. For that reason, we reverse the trial court's decision to deny Akron's motion and remand for entry of an order dismissing plaintiffs' suit against Akron.

In June 2007, Bykonen was walking with her son along a sidewalk when a school bus backed toward them. While trying to protect her son from the bus, Bykonen stepped into a crescent-shaped depression in the sidewalk and sprained her ankle.

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[1] For ease of reference, we shall use Bykonen to refer to plaintiff Lyn Bykonen alone.

Two weeks later, someone submitted a letter—addressed to the "Akron Village Clerk"—on Bykonen's behalf at an Akron Village council meeting. In the letter, Bykonen described the accident:

> I would like to notify you that I was walking my child home from school on June 5, 2007 when I moved over on the sidewalk to let the kids be by the grass due to the buses backing up on the road that day. When I moved over I caught the sidewalk wrong and sprained my ankle. Kim Blankenship and Lorna Bills came to me immediately after it happened. I did go to the emergency room and I have a major sprain.
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> The sidewalk from Beach to Lynn Street, between the church and Weihl's house on School Street is a hazard to the residents of this town and really needs to be fixed. Our children and parents walk this everyday and anyone could get injured on this sidewalk.

Plaintiffs sued Akron in June 2009 for damages arising from the defective sidewalk. In June 2010, Akron moved for summary disposition under MCR 2.116(C)(7) and (C)(10), arguing that it was immune from suit and that plaintiffs could not rely on the highway exception, MCL 691.1402, because they did not comply with the notice required under MCL 691.1404.

After hearing oral arguments, the trial court determined that there was a question of fact as to whether plaintiffs' notice complied with the notice required under MCL 691.1404. For that reason, it denied Akron's motion. Akron then appealed to this Court.

On appeal, we must determine whether the trial court properly denied Akron's motion to dismiss. This Court reviews de novo a trial court's decision to deny a motion for summary disposition. *State Farm Fire & Casualty Co v Corby Energy Services, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006). Likewise, this Court reviews de novo the proper interpretation of statutes. *Id.* at 483.

"Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). There are exceptions to this broad grant of immunity, including an exception for defective highways. See MCL 691.1402(1). Under the highway exception, a village can be liable for injuries arising from the village's failure to properly maintain its sidewalks. MCL 691.1401(a), (e); MCL 691.1402(1).

Although the Legislature waived immunity under the highway exception, the exception is "narrowly drawn" and there must be strict compliance with the conditions and restrictions of the statute. *Scheurman v Dep't of Transp*, 434 Mich 619, 630; 456 NW2d 66 (1990). One such condition is the notice of injury provision found under MCL 691.1404. There, the Legislature made notice a condition precedent to any recovery: "As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person . . . shall serve a notice on the governmental agency of the occurrence of the injury and the defect." MCL 691.1404(1). Further, the notice must "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." *Id.* The principal purpose

behind requiring notice "is to provide the governmental agency with an opportunity to investigate the claim while the evidentiary trail is still fresh and, additionally, to remedy the defect before other persons are injured." *Hussey v Muskegon Heights*, 36 Mich App 264, 268; 193 NW2d 421 (1971).

Here, the trial court determined that there was a question of fact as to whether the letter provided to Akron at the council meeting satisfied the notice requirements. Under MCL 691.1404(1), the injured person must specify "the exact location and nature of the defect." Bykonen arguably described the location of the defect with some specificity, but she did not describe the nature of the defect at all. She merely characterized the sidewalk as "a hazard." Further, there was nothing else within her description of the location and accident that would clarify the nature of the defect. See *Plunkett v Dep't of Transportation*, 286 Mich App 168, 177; 779 NW2d 263 (2009). This description was insufficient to place Akron on notice of the "exact . . . nature of the defect." MCL 691.1404(1). Because plaintiffs did not give Akron the required notice, it was entitled to governmental immunity and the trial court erred when it denied Akron's motion for summary disposition under MCR 2.116(C)(7).

Reversed and remanded for entry of an order granting Akron's motion for summary disposition. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell