STATE OF MICHIGAN

COURT OF APPEALS

JOHN L. HALFORD, Plaintiff-Appellant,	UNPUBLISHED March 13, 2012
v	No. 304068 Genesee Circuit Court
CITY OF FLINT, Defendant-Appellee.	LC No. 11-095586-NO

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We affirm.

On March 16, 2009, plaintiff was walking on a public sidewalk when the sidewalk below his feet collapsed, causing him to fall and suffer injuries. Plaintiff sent a notice to defendant, pursuant to MCL 691.1404, on April 29, 2009. Plaintiff's notice contained the following description:

> 2. Location of Occurrence: a sidewalk along White Street near the intersection of Martin Luther King Boulevard in the City of Flint.
>
> 3. Nature of Occurrence: Mr. Halford was walking on the sidewalk in question when it collapsed underneath his feet, causing him to fall to the ground.

Plaintiff commenced this action on March 14, 2011, alleging that defendant had a duty to maintain the area in reasonable repair and safe for travel under MCL 691.1402 and MCL 691.1402a, that defendant breached its duties when it failed to keep the area in safe condition, and that governmental immunity did not bar his claim because he had given defendant the required statutory notice under MCL 691.1404(1).

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8). Defendant argued that plaintiff's descriptions of the location of his fall and the nature of the defect were insufficient to provide adequate notice under MCL 691.1404(1). In response, plaintiff argued that his notice contained sufficient information to apprise defendant of the location of the incident. Alternatively, plaintiff argued that even if his notice was technically deficient, the circuit court should exercise its authority under MCL 600.2301 to allow an

amendment to cure the defect or to disregard the defect because it did not affect the substantial rights of defendant. The circuit court found that plaintiff's notice was impermissibly vague with regard to the location and nature of the sidewalk defect, and accordingly granted defendant's motion for summary disposition.

We review de novo the circuit court's grant of a defendant's motion for summary disposition. *Burise v Pontiac*, 282 Mich App 646, 650; 766 NW2d 311 (2009). MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law and requires consideration of all documentary evidence filed or submitted by the parties. *Id.* A plaintiff can overcome such a motion for summary disposition by alleging facts that support the application of an exception to governmental immunity. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001); see also *Burise*, 282 Mich App at 650.

The circuit court properly granted defendant's motion for summary disposition. The governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, provides broad immunity for government agencies when they engage in governmental functions. *Burise*, 282 Mich App at 652. However, there are narrowly drawn exceptions to governmental immunity, which include the highway exception. A government agency is required to maintain the area of a highway under its jurisdiction in reasonable repair and convenient for public travel. MCL 691.1402(1); *Burise*, 282 Mich App at 652. This includes sidewalks. MCL 691.1401(e).

To bring a claim under the highway exception, an injured person must timely notify the governmental agency with jurisdiction over the roadway of the occurrence of the injury, the injury sustained, the exact location and nature of the defect, and the names of the known witnesses. MCL 691.1404(1); *Plunkett v Dep't of Transportation*, 286 Mich App 168, 176; 779 NW2d 263 (2009). The injured party does not have to provide the notice in any particular form, but the notice must be timely and contain the requisite information. *Id.*; *Burise*, 282 Mich App at 654.

In *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007), our Supreme Court held:

> MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect. Accordingly, we conclude that it must be enforced as written. As this Court stated in *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002), "The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written." Thus, the statute requires notice to be given as directed, and notice is adequate if it is served within 120 days and otherwise complies with the requirements of the statute, i.e., it specifies 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 support of his argument, plaintiff cites several cases in which this Court rejected challenges to the sufficiency of the required notice. Plaintiff relies on *Plunkett*, 286 Mich App 175-179, *Burise*, 282 Mich App 653-655, *Hussey v Muskegon Heights*, 36 Mich App 264, 268-269; 193 NW2d 421 (1971), and *Jones v Ypsilanti*, 26 Mich App 574, 583-584; 182 NW2d 795

(1970). However, in all of these cases the plaintiffs described not only the nature of the defect, but also the location of the defect with reference to specific addresses or cardinal directions. In contrast, plaintiff's description in the present case lacked specificity with regard to both the nature and location of the defect.

In *Rule v Bay City*, 12 Mich App 503, 508; 163 NW2d 254 (1968), this Court noted that to be legally sufficient, a notice must contain a description of the place of the accident so definite as to enable the interested parties to identify it from the notice itself. In his notice, plaintiff failed to indicate which side of the street he was on or how far he was from the intersection when he fell. On appeal, plaintiff explains that he had just left the Liquor Plus Mini-Mart located at 2407 Martin Luther King Avenue, which was located at the corner of Martin Luther King Avenue and White Street. However, plaintiff failed to include this information in his pre-suit notice. We do not agree with plaintiff's contention that defendant's argument would require an injured individual to submit precise GPS coordinates. Indeed, plaintiff's late-provided description of the site of his fall in relation to the Liquor Plus Mini-Mart at 2407 Martin Luther King Avenue likely would have been sufficient to satisfy MCL 691.1404. As already noted, however, plaintiff failed to provide any such detail in his pre-suit notice to defendant. Plaintiff's notice was insufficiently detailed as a matter of law. *Jakupovic v Hamtramck*, 489 Mich 939; 798 NW2d 12 (2011); *Thurman v Pontiac*, ___ Mich App ___; ___ NW2d ___ (issued February 14, 2012; Docket No. 300396); *Smith v City of Warren*, 11 Mich App 449, 452-453; 161 NW2d 412 (1968); *Dempsey v Detroit*, 4 Mich App 150, 151-152; 144 NW2d 684 (1966). Neither the nature nor the location of the sidewalk defect was described with sufficient specificity in plaintiff's notice. See *Rule*, 12 Mich App at 508.

Plaintiff further argues that the circuit court erred by granting summary disposition without first inquiring into whether defendant had been prejudiced by plaintiff's defective notice. However, plaintiff's argument in this regard has already been rejected by our Supreme Court. *Rowland*, 477 Mich at 200. Under *Rowland*, defendant did not have to demonstrate that it had been prejudiced by plaintiff's deficient notice in order to have its motion for summary disposition granted.

Lastly, plaintiff argues that even if his notice was deficient, the circuit court should have allowed him to cure the defect or disregarded the defect because it did not affect defendant's substantial rights. MCL 600.2301. In *Bush v Shabahang*, 484 Mich 156, 160, 177; 772 NW2d 272 (2009), our Supreme Court held that defects in a timely notice of intent could be cured under MCL 600.2301. But this is not a medical-malpractice action, and *Bush* is of limited value in construing the relevant provisions of the GTLA. The right to recover for injuries arising from defective highways and sidewalks is purely statutory, and it is within the Legislature's discretion whether to confer upon injured persons a right of action and whether such a right should be subject to other statutory limitations. See *Rowland*, 477 Mich at 205. The Legislature clearly intended to permit recovery for defective highways and sidewalks *only* upon a plaintiff's exact compliance with the statutory notice requirements of MCL 691.1404. The circuit court properly declined to disregard the defects in plaintiff's notice or allow late amendment of the notice under MCL 600.2301.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Jane E. Markey