STATE OF MICHIGAN

COURT OF APPEALS

KYLE SPEELMAN, Plaintiff-Appellant,	UNPUBLISHED November 8, 2012
v CITY OF LANSING, Defendant-Appellee.	No. 306532 Ingham Circuit Court LC No. 11-000226-NO

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

Riordan, J. (*dissenting*)

For the following reasons, I respectfully dissent from the majority's opinion.

At issue in this case is the mandatory language of MCL 691.1404(1), regarding the notice requirement in the highway exception to governmental immunity. MCL 691.1404(1) states that "[t]he 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." (Emphasis added). This Court has repeatedly recognized that "shall" is a mandatory and imperative term. *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008); *Burton v Reed City Hosp Corp*, 471 Mich 745, 752; 691 NW2d 424 (2005); *Janer v Barnes*, 288 Mich App 735, 737; 795 NW2d 183 (2010). Moreover, as the majority recognizes, the Michigan Supreme Court in *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007), held that "MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect[,]" so "must be enforced as written." "When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case." *People v McIntire*, 461 Mich 147, 153; 599 NW2d 102 (1999) (emphasis in original).

Plaintiff has failed to satisfy the requirements of MCL 691.1404(1). Instructive is the Michigan Supreme Court's order in *Jakupovic v City of Hamtramck*, 489 Mich 939; 798 NW2d 12 (2011). Reversing this Court's opinion, our Supreme Court held that because the plaintiff provided the wrong address in referencing the location of the defect, the notice was insufficient. *Id.* The Court stated that this Court "erred by excusing this error, rather than enforcing the notice requirement . . . as written" because "[t]he statute requires notice of 'the exact location' of the defect, and in this case, the plaintiff failed to specify the correct address where the defect was allegedly located." *Id.*

Likewise in this case, plaintiff failed to specify the exact location of the defect. In his attempted notice, plaintiff erroneously stated that the defect was in the eastbound lane when, in reality, the alleged defect was in the westbound lane. This is analogous to writing the wrong address, as it provides the incorrect reference location for the alleged defect. The attached pictures and map only serve to augment the confusion, as they directly conflict with the written description. The pictures are so close in perspective that they could be pictures of any road, in any city, with no distinguishing landmarks or road signs. Further, the imprecise nature of the computer generated "bubble" on the attached map likewise fails to satisfy the "exact location" requirement in MCL 691.1404(1), and conflicts with the written description.[1]

Because plaintiff's notice failed to specify the *exact location* of the alleged defect within the meaning of MCL 691.1404(1), the notice was insufficient, and plaintiff was not entitled to proceed against defendant. See *Thurman v City of Pontiac*, 295 Mich App 381, 386-387; 819 NW2d 90 (2012). I would affirm the trial court's order granting summary disposition to defendant.

/s/ Michael J. Riordan

[1] Furthermore, the deficiency of the alleged notice also fails the substantial compliance test. See *Plunkett v Dep't of Transp*, 286 Mich App 168, 177; 779 NW2d 263 (2009).