Michigan Supreme Court
Lansing, Michigan

Syllabus

This syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

WIGFALL v CITY OF DETROIT
WEST v CITY OF DETROIT

Docket Nos. 156793 and 157097. Argued on application for leave to appeal April 11, 2019. Decided July 16, 2019.

In Docket No. 156793, Dwayne Wigfall brought an action in the Wayne Circuit Court against the city of Detroit for injuries he sustained in a motorcycle accident allegedly caused when he hit a pothole on a city street. On advice from the city's Law Department, Wigfall sent a notice via certified mail addressed to the Law Department that included a description of the pothole, its location, and a description of plaintiff's injuries. An adjuster from the Law Department acknowledged receipt of Wigfall's claim. After Wigfall filed his complaint, the city moved for summary disposition under MCR 2.116(C)(7), arguing that Wigfall's claim was barred by governmental immunity because Wigfall failed to serve notice of his claim on the mayor, the city clerk, or the city attorney as required by MCL 691.1404(2) and MCR 2.105(G)(2). The court, Daniel A. Hathaway, J., denied the city's motion, and the city appealed. The Court of Appeals, SAAD, P.J., and CAVANAGH and CAMERON, JJ., reversed and remanded for entry of an order granting the city's motion for summary disposition. 322 Mich App 36 (2017). Wigfall applied for leave to appeal in the Supreme Court, which ordered and heard oral argument on whether to grant the application or take other action. 501 Mich 1089 (2018).

In Docket No. 157097, Faytreon O. West brought an action in the Wayne Circuit Court against the city of Detroit, for injuries she allegedly suffered when she tripped on a pothole and fell while walking on a city street. West's counsel sent notice of the injury and highway defect to the city's Law Department via certified mail, instructing the city to immediately contact West's counsel if it believed that the notice did not comply with any applicable notice requirements. The Law Department received the letter, and an adjuster from the Law Department acknowledged receipt of West's claim. After West filed her complaint, the city moved for summary disposition under MCR 2.116(C)(7), arguing that West had failed to comply with the notice requirement in MCL 691.1404(2) because she had not served an individual who may lawfully be served with civil process. The trial court, John A. Murphy, J., granted summary disposition in favor of the city and denied West's motion for reconsideration. West appealed, and the Court of Appeals, JANSEN, P.J., and CAVANAGH and CAMERON, JJ., affirmed in an unpublished per curiam opinion issued December 12, 2017 (Docket No. 335190). West applied for leave to appeal in the Supreme Court, which ordered and heard oral argument on whether to grant the application or take other action. 501 Mich 1089 (2018).

In a unanimous opinion by Justice VIVIANO, in lieu of granting leave to appeal, the Supreme Court *held*:

Plaintiffs complied with the requirements of MCL 691.1404(2) by serving their notices on the city's Law Department, because the Law Department is an agent of defendant's city attorney—also known as the Corporation Counsel—and is charged with receiving notice under the city's charter and ordinances.

1. Under the governmental tort liability act, MCL 691.1401 *et seq*., unless one of five exceptions applies, governmental agencies are immune from tort liability when they are engaged in a governmental function. One such exception is the highway exception, MCL 691.1402(1), which provides in part that a person who sustains bodily injury by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. A claimant seeking recovery under the highway exception must comply with MCL 691.1404(1), which requires the injured person to serve a notice on the governmental agency that 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. MCL 691.1404(2) provides that the notice may be served upon any individual, either personally or by certified mail, who may lawfully be served with civil process directed against the governmental agency. In turn, MCR 2.105(G)(2) provides that service of process on a municipal corporation may be made by serving a summons and a copy of the complaint on the mayor, the city clerk, or the city attorney.

2. Plaintiffs complied with the statute's notice requirement because the city authorized its Law Department to receive notices of injuries sustained and of highway defects. Under the common law of agency, the Law Department is an agent of the Corporation Counsel. The city acknowledged that the Corporation Counsel is the administrative head of its Law Department, and the city's charter provides that the Law Department "is headed by the Corporation Counsel who is the duly authorized and official legal counsel for the City of Detroit and its constituent branches, units and agencies of government." As the head of the Law Department, the Corporation Counsel has the right to control the Law Department. Consequently, the Law Department and its members are agents of the Corporation Counsel. That the Law Department has the authority to receive the notice required by MCL 691.1404(2) on behalf of the Corporation Counsel is supported by the practical reality that the Corporation Counsel is not individually capable of receiving notice for every claim filed against the city. Further, a city ordinance provides that all claims of whatever kind against the city, excluding certain claims not relevant here, shall be first submitted to and reviewed by the Law Department. Because receiving notice is necessary for the Law Department to exercise its express authority to receive and review claims, the Law Department had implied authority to receive service of the notices of injury and highway defects required by MCL 691.1404(2). Moreover, the Law Department's receipt of these notices was the usual practice to which the Corporation Counsel had knowingly acquiesced.

Reversed and remanded to the Wayne Circuit Court for further proceedings.

Chief Justice MCCORMACK, joined by Justice BERNSTEIN, concurred in full with the majority but wrote separately to state that the Corporation Counsel and the Law Department are

functionally interchangeable barring exceptional circumstances not present in this case. She further stated that advancing such a false technical argument ill served both lawyers generally and their clients specifically.

Michigan Supreme Court
Lansing, Michigan

OPINION

FILED July 16, 2019

S T A T E O F M I C H I G A N

SUPREME COURT

DWAYNE WIGFALL,

Plaintiff-Appellant,

v No. 156793

CITY OF DETROIT,

Defendant-Appellee.

FAYTREON ONEE WEST,

Plaintiff-Appellant,

v No. 157097

CITY OF DETROIT,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

VIVIANO, J.

The issue in these cases is whether plaintiffs, Dwayne Wigfall and Faytreon West, properly served their notices of injuries sustained and of highway defects. MCL 691.1404(2) provides that this notice "may be served upon any individual . . . who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding." MCR 2.105(G)(2) states that service may be made upon a city by leaving the summons and a copy of the complaint with "the mayor, the city clerk, or the city attorney . . . ." Here, West and Wigfall served their notices on the Law Department of the city of Detroit (the City). We hold that plaintiffs complied with the requirements of MCL 691.1404(2) by serving their notices on the Law Department, which is an agent of the Corporation Counsel.[1] Therefore, we reverse the Court of Appeals in both cases and remand to the trial court for further proceedings not inconsistent with this opinion.

I. FACTS

A. *WIGFALL v DETROIT*

Wigfall alleges that he was driving his motorcycle on Algonac Street in Detroit when he hit a pothole. As a result, Wigfall fell off his motorcycle and sustained multiple injuries. Through counsel, Wigfall contacted the City's Law Department and was informed that his notice of injury and highway defect should be addressed to "City of Detroit Law Department -- Attention Claims." Consequently, Wigfall sent notice via certified mail to "City of Detroit Law Department – CLAIMS." The notice stated, "Pursuant to MCL

[1] The Corporation Counsel is an "officer having substantially the same duties as" a city attorney. MCL 600.1925.

600.6431, this letter is intended to provide you with statutory notice that our client, Dwayne Wigfall, suffered personal injuries as a result of a defect under the City of Detroit's care and control on June 9, 2014 at approximately 9:00 p.m." The notice also included a description of the pothole, its location, and a description of plaintiff's injuries. The Law Department received the notice on September 22, 2014.

An adjuster from the Law Department contacted Wigfall's attorney via a letter dated December 3, 2014. The letter stated, "The filing of your client's claim regarding the above-referenced incident is hereby acknowledged." The adjuster also requested additional documents to proceed with processing the claim.

Wigfall later filed the instant complaint against the City. The City sought summary disposition under MCR 2.116(C)(7), asserting that Wigfall's claim was barred by governmental immunity because the statutory notice was not served upon an individual who may lawfully be served with civil process, as MCL 691.1404(2) requires. The trial court denied the City's motion for summary disposition. The City appealed, and the Court of Appeals reversed, holding that Wigfall failed to comply with MCL 691.1404(2).[2] Wigfall applied for leave to appeal in this Court. We scheduled oral argument and requested briefing on the following issue, among others: "[W]hether an individual described in MCR 2.105(G)(2) can delegate the legal authority to accept lawful process under MCL 691.1404(2), see 1 Mich Civ Jur Agency § 1 (2018)."[3]

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[2] *Wigfall v Detroit*, 322 Mich App 36, 44-45; 910 NW2d 730 (2017).

[3] *Wigfall v Detroit*, 501 Mich 1089 (2018).

B. *WEST v DETROIT*

West alleges that she was walking on Mansfield Street in Detroit when she tripped on a pothole and fell, suffering injuries as a result. West's counsel sent notice of the injury and highway defect to the City's Law Department via certified mail. It instructed the City, "If you believe that this notice does not comply in any way with any applicable notice requirements, immediately contact the undersigned and any additional information required by statu[t]e, ordinance, rule, or regulation will be promptly furnished." The Law Department received the letter on August 8, 2014. As with Wigfall, a municipal adjuster responded with a letter stating, "The filing of your client's claim regarding the above-referenced incident is hereby acknowledged" and requesting additional documentation.

West later filed the instant complaint, and the City filed a motion for summary disposition under MCR 2.116(C)(7), arguing—as it did in *Wigfall*—that West had failed to comply with the notice requirement in MCL 691.1404(2) by failing to serve an individual who may lawfully be served with civil process. The trial court granted summary disposition in favor of defendant.

West moved for reconsideration, arguing that the trial court erred because the notice statute, MCL 691.1404(2), states that "the notice may be served upon any individual" and the word "may" is permissive and not mandatory. The trial court denied the motion. West appealed, and the Court of Appeals affirmed in an unpublished per curiam opinion, citing its earlier decision in *Wigfall v Detroit*.[4] West then filed an application for leave to appeal in this Court. This Court scheduled oral argument and requested briefing on the following

[4] *West v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2017 (Docket No. 335190), p 3.

issue, among others: "[W]hether an individual described in MCR 2.105(G)(2) can delegate the legal authority to accept lawful process under MCL 691.1404(2), see 1 Mich Civ Jur Agency § 1 (2018)."[5]

II. STANDARD OF REVIEW

"This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law."[6] " 'When a motion is filed under [MCR 2.116(C)(7)], the court must consider not only the pleadings, but also any affidavits, depositions, admissions or documentary evidence that is filed or submitted by the parties.' "[7] "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant."[8] A question of statutory interpretation is a question of law that we also review de novo.[9]

III. ANALYSIS

Under the governmental tort liability act, MCL 691.1401 *et seq.*, unless one of five exceptions applies, governmental agencies are immune from tort liability when they are

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[5] *West v Detroit*, 501 Mich 1089, 1090 (2018).

[6] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[7] *Bauserman v Unemployment Ins Agency*, 503 Mich ___; ___ NW2d ___ (2019) (Docket No. 156389); slip op at 8, quoting *Kerbersky v Northern Mich Univ*, 458 Mich 525, 529; 582 NW2d 828 (1998). See also MCR 2.116(G)(5).

[8] *Maiden*, 461 Mich at 119.

[9] *Detroit Fire Fighters Ass'n, IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008).

engaged in a governmental function.[10] One such exception is the highway exception, MCL 691.1402(1), which provides that "[a] person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency."

A claimant seeking recovery under the highway exception must comply with the notice requirements of MCL 691.1404, which provides, in relevant part:

> (1) 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.
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> (2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding.

Finally, to determine the "individual[s] . . . who may lawfully be served with civil process directed against the governmental agency," we look to MCR 2.105(G)(2). That court rule provides, in relevant part, as follows:

> Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body may be made by serving a summons and a copy of the complaint on:

[10] See MCL 691.1407(1) ("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.").

* * *

(2) the mayor, the city clerk, or the city attorney of a city[.][11]

Plaintiffs complied with the statute's notice requirement because they sent their notices to the agent of the Corporation Counsel. As noted above, MCL 691.1404(2) provides that "[t]he notice may be served upon any individual who may lawfully be served with civil process against the governmental agency." While MCR 2.105(G)(2) says that cities may be served with process by leaving a summons and a copy of the complaint with the "the mayor, the city clerk, or the city attorney," "whatever a person may lawfully do if acting in his own right and on his own behalf he may lawfully delegate to an agent."[12] For

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[11] MCL 600.1925 similarly provides that

> [s]ervice of process upon public, municipal, quasi-municipal, or governmental corporations, unincorporated boards, or public bodies, may be made by leaving a summons and a copy of the complaint with
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> * * *
>
> (2) the mayor, city clerk, or city attorney, in the case of cities[.]

Ordinarily the court rules would take precedence, *McDougall v Schanz*, 461 Mich 15, 26; 597 NW2d 148 (1999) ("It is beyond question that the authority to determine rules of practice and procedure rests exclusively with this Court."); 1 Longhofer, Michigan Court Rules Practice, Text (7th ed), § 2105.2, pp 213-214 ("Since there can be little doubt that the means of service of process is procedural, the rules must control when they are in conflict."). But because the Legislature duplicated what were then the proposed court rules regarding service of process when it enacted Chapter 19 of the Revised Judicature Act, MCL 600.1901 through MCL 600.1974, there is no conflict between the pertinent provisions here. 1 Honigman & Hawkins, Michigan Court Rules Annotated, pp 76-77.

[12] *Link, Petter & Co v Pollie*, 241 Mich 356, 359-360; 217 NW 60 (1928) (citation omitted). Notably, the Court of Appeals has already applied agency principles to MCL 691.1404(1), which states, in relevant part, that "the injured person . . . shall serve a notice on the governmental agency . . . ." In *Russell v Detroit*, 321 Mich App 628, 646; 909 NW2d 507 (2017), the Court of Appeals rejected the City's argument that the "injured person" himself or herself had to send the notice required by Subsection (1). Instead, the Court of Appeals

the reasons below, we conclude that the City authorized its Law Department to receive notices of injuries sustained and of highway defects.[13]

"Under the common law of agency, in determining whether an agency has been created, we consider the relations of the parties as they in fact exist under their agreements or acts and note that in its broadest sense agency includes every relation in which one person acts for or represents another by his authority."[14] "Fundamental to the existence of an agency relationship is the right of the principal to control the conduct of the agent."[15]

An agent's actual authority may be express or implied.[16] Implied authority consists of the power " 'to do all things which are reasonably necessary or proper to efficiently

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concluded, "Given the legal relationship between agents and principals, and, in particular, between attorneys and their clients, it follows that an injured person may serve a governmental agency through the acts of an agent, including an attorney." *Id*. at 641. Just as "established agency principles" apply to MCL 691.1404(1), *Russell*, 321 Mich App at 641, such principles also apply to MCL 691.1404(2).

[13] Because we conclude that, under traditional agency principles, the Corporation Counsel delegated the authority to receive the notice required by MCL 691.1404(2) to the Law Department, we need not address whether the Law Department was authorized to receive such notice because it was delegated the authority to receive service of process under MCR 2.105(H)(1) or MCL 600.1930. See MCR 2.105(H)(1) ("Service of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process."); MCL 600.1930 ("Service of process upon any defendant may be made by leaving a summons and a copy of the complaint with an agent authorized by written appointment or by law to receive service of process."). That rule and statute only impose restrictions on delegation of the authority to receive *service of process*, not delegation of the authority to receive the requisite notice under traditional agency principles.

[14] *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 557; 581 NW2d 707 (1998) (quotation marks and citations omitted).

[15] *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 80; 780 NW2d 753 (2010).

[16] See, e.g., *Stephenson v Golden*, 279 Mich 710, 734; 276 NW 849 (1937) (" 'An agent is

carry into effect the power conferred, unless it be a thing specifically forbidden.' "[17] "[I]mplied authority must rest upon acts and conduct of the alleged agent known to and acquiesced in by the alleged principal prior to the incident at bar."[18] "Whether the act in question is within the authority granted depends upon the act's usual or necessary connection to accomplishing the purpose of the agency."[19]

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a person having express or implied authority to represent or act on behalf of another person, who is called his principal.' "), quoting Bowstead on Agency (4th ed), p 1. We focus on actual authority because we believe that in this case the Law Department had actual authority to accept notice. However, we recognize that agents may have apparent authority as well. See, e.g., *Shinabarger v Phillips*, 370 Mich 135, 140; 121 NW2d 693 (1963) (" 'As between the master and servant, the master is liable only when the servant acts within the actual scope of his authority, but as between defendant and third persons injured by the acts of the servant, defendant may be liable when the servant is acting within the apparent scope of his authority.' "), quoting *Anderson v Schust Co*, 262 Mich 236, 239; 247 NW 167 (1933).

[17] *Kerns v Lewis*, 249 Mich 27, 29; 227 NW 727 (1929), quoting *Emery v Ford*, 234 Mich 11, 28; 207 NW 856 (1926). See also *Grossman v Langer*, 269 Mich 506, 510; 257 NW 875 (1934) ("The general rule is that the powers of an agent are *prima facie* coextensive with the business intrusted to his care."); *Smith, Hinchman & Grylls Assocs, Inc v Riverview*, 55 Mich App 703, 706; 223 NW2d 314 (1974) ("Agents have the implied power to carry out all acts necessary in executing defendant's expressly conferred authority."); 1 Michigan Civil Jurisprudence (2009 rev), Agency, § 53, pp 254-255 ("It is a fundamental principle of agency that every delegation of power carries with it authority to do all things reasonably necessary or proper to efficiently carry into effect the power conferred, unless an act is specifically forbidden."); 1 Michigan Civil Jurisprudence (August 2018 cum supp), Agency, § 53, p 14 (" Agents have the implied power to carry out all acts necessary in executing the principal's expressly conferred authority.").

[18] *Shinabarger*, 370 Mich at 139. See also *Field v Jack & Jill Ranch*, 343 Mich 273, 279; 72 NW2d 26 (1955) ("[T]he authority of an agent includes not only those things he is expressly told to do, but those things the principal knowingly acquiesces in his doing.").

[19] *Smith*, 55 Mich App at 706. See also *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992) ("An agent has implied authority from his principal to do business in the principal's behalf in accordance with the general custom, usage and procedures in that business. However, the principal must have notice that the customs, usages and procedures

Implied authority is not without limits: " 'The apparent or implied authority of an agent cannot be so extended as to permit him to depart from the usual manner of accomplishing what he is employed to effect. Nor can he enlarge his powers by unauthorized representations and promises.' "[20] "An implied agency cannot exist contrary to the express intention of an alleged principal although it may spring from acts and circumstances permitted by the principal over a course of time through acquiescence."[21]

In this case, it is clear that the Law Department is an agent of the Corporation Counsel. Indeed, defendant acknowledges that the Corporation Counsel is the administrative head of its Law Department. This truism is also made clear by the Detroit Charter, which provides, "The Law Department is headed by the Corporation Counsel who is the duly authorized and official legal counsel for the City of Detroit and its constituent branches, units and agencies of government."[22] As the head of the Law Department, the

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exist.") (citation omitted); 1 Michigan Civil Jurisprudence (2009 rev), Agency, § 53, p 255 ("However, an agent's implied authority cannot be so extended as to permit the agent to depart from the usual manner of accomplishing that which he or she is employed to effect, or to enter into a transaction, the only possible result of which would be to work a fraud on a client of the firm for which he or she is an agent.").

[20] *Modern Globe, Inc v 1425 Lake Drive Corp*, 340 Mich 663, 667; 66 NW2d 92 (1954), quoting 2 Am Jur, Agency, § 103, p 85. See also *Shinabarger*, 370 Mich at 139 ("[I]mplied authority must rest upon acts and conduct of the alleged agent known to and acquiesced in by the alleged principal prior to the incident at bar. . . . 'An implied agency must be based upon facts, and facts for which the principal is responsible; and upon a natural and reasonable, but not a strained, construction of those facts.' "), quoting 2 CJ, Agency, § 32, p 436.

[21] *Flat Hots Co, Inc v Peschke Packing Co*, 301 Mich 331, 337; 3 NW2d 295 (1942).

[22] Detroit Charter, § 7.5-201. The Law Department's website also states on its home page:

Corporation Counsel has the right to control the Law Department and consequently, the Law Department and its members are agents of the Corporation Counsel.[23]

That the Law Department has the authority to receive the notice required by MCL 691.1404(2) on behalf of the Corporation Counsel is supported by the practical reality that the Corporation Counsel is not individually capable of receiving notice for every claim filed against the City. In *Brown v Dep't of State*,[24] the Court of Appeals explained this reasoning in a similar context:

> To interpret the Vehicle Code to require the "commissioner" to personally reexamine every driver whose competence to drive can be reasonably questioned and to personally recommend the suspension or revocation of licenses would be in defiance of the obvious purpose of Chapter III of the Code. Michigan has over 5,000,000 licensed drivers residing in 83 counties. Each year approximately 100,000 of those drivers are summoned for reexamination in their home counties. One man cannot possibly do the task. Were the law as plaintiff states it, thousands of drivers, whose competence to operate a motor vehicle can be reasonably questioned, would not be reexamined and thousands of drivers who should not be on the highway would still be driving and endangering others. The courts will not assume that a legislature passed an act that serves no useful purpose, if the act can be interpreted in a way which avoids such a consequence.

> Established by the Detroit City Charter, the Law Department is an independent agency that represents the interests of the City of Detroit as a corporate body. The Department is headed by the Corporation Counsel, whose mission is to provide a variety of legal services to the City, its elected officials, departments, agencies, offices, commissions, and boards, as well as its individual employees, in their official capacity. [Detroit, *Law Department* <https://detroitmi.gov/departments/law-department> (accessed June 13, 2019) [https://perma.cc/8SXE-8VDN].]

[23] *Briggs Tax Serv*, 485 Mich at 80.

[24] *Brown v Dep't of State*, 45 Mich App 322, 326; 206 NW2d 481 (1973).

On the basis of such reasoning, and considering the relevant portion of the Michigan Vehicle Code, the Court of Appeals in *Brown* rejected an argument that the commissioner could not delegate his duty to examine drivers' competency.[25]

The Detroit Ordinances provide further support that receiving notice was within the scope of the Law Department's authority. Detroit Ordinances, § 2-4-18 states, "All claims of whatever kind against the city, excluding claims by city employees arising out of the employment relationship, claims against the department of water and sewerage and undisputed claims for services, labor and materials furnished to city departments shall be first submitted to and reviewed by the law department." "Claim" is defined as " '[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional' and 'a demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.' "[26] This broad definition of "claim" necessarily encompasses the notice required by MCL 691.1404.[27] The notice must be submitted "[a]s a condition to recovery for injuries," and it must "specify the exact location and nature of the defect, the injury

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[25] *Id*. at 324-325, 328.

[26] *Bauserman*, 503 Mich at ___; slip op at 10, quoting *Black's Law Dictionary* (10th ed).

[27] The City argues that "claims," as used in the ordinance, does not include legal claims. We are unpersuaded by this argument. According to the above definition, the term "claims," as used in the ordinance, is broad enough to encompass both legal and nonlegal claims, particularly given that the ordinance refers to "all claims of whatever kind." Additionally, when acknowledging plaintiffs' notices, the municipal adjuster referred to the notices as claims: "The filing of your client's *claim* regarding the above-referenced incident is hereby acknowledged." (Emphasis added.)

sustained and the names of the witnesses known at the time by the claimant."[28] The notice includes such facts to establish that a plaintiff is entitled to monetary relief, in other words to "assert[] . . . an existing right" to monetary relief.

It is difficult to understand how "[a]ll claims of whatever kind against the city" can be submitted to and reviewed by the Law Department if the Law Department has no authority to receive the notice required by MCL 691.1404(2). Service of such notice is the primary way the City will know of a claim against it. If notice were sent to an outside party and the Law Department only received a copy in order to review the claim, the Law Department could accomplish only one of its two required tasks under the ordinance—the ordinance requires not only that claims be reviewed by the Law Department but also that claims be submitted to, and therefore received by, the Law Department. Consequently, receiving notice is necessary for the Law Department to exercise its express authority to receive and review claims.[29] Thus, the Law Department had implied authority to receive service of the notices of injury and highway defects required by MCL 691.1404(2).

Moreover, the Law Department's receipt of these notices was the usual practice to which the Corporation Counsel knowingly acquiesced. The plaintiff's attorney in *West* explained during oral argument that he had sent notices to the Law Department for several years prior to this case without incident. The City has only recently begun claiming that the Law Department cannot receive notice.[30] Under traditional agency principles, the Law

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[28] MCL 691.1404(1).

[29] *Slocum v Littlefield Pub Sch Bd of Ed*, 127 Mich App 183, 194; 338 NW2d 907 (1983).

[30] In 2011, the Court of Appeals addressed an argument of this type for the first time, holding that the plaintiff's notice did not comply with MCL 691.1404 because it was

Department had authority to receive claims because the Corporation Counsel, at a minimum, knowingly acquiesced in this practice.[31]

IV. CONCLUSION

Because the Law Department is the agent of the Corporation Counsel and is charged with receiving notice under the City's charter and ordinances, we conclude that West and Wigfall complied with the requirements of MCL 691.1404(2) by mailing their notices of injury and highway defect to the Law Department.[32] We therefore reverse the Court of

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mailed to the City's Risk Management Division rather than the mayor, city clerk, or city attorney. *Carroll v Flint*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2011 (Docket No. 296134). It appears that it was not until a few years later that the City began to raise this defense. See, e.g., *Withers v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued February 18, 2016 (Docket No. 324009); *Powell v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued August 8, 2017 (Docket No. 332267); *Church v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued December 12, 2017 (Docket No. 335413); *Garza v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued January 18, 2018 (Docket No. 334342); *Sadler v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued March 6, 2018 (Docket No. 336117); *Sykes v Detroit*, unpublished per curiam opinion of the Court of Appeals, issued September 11, 2018 (Docket No. 339722).

[31] See *Field*, 343 Mich at 279 ("Clear it is also, on plainest principles of agency, that the authority of an agent includes not only those things he is expressly told to do, but those things the principal knowingly acquiesces in his doing.").

We realize that *McLean v Dearborn*, 302 Mich App 68, 80; 836 NW2d 916 (2013), rejected an agency argument because there was "no record evidence [that the third party] was authorized by *written appointment* or *law* to accept service on behalf of defendant." (Emphasis in original.) But *McLean* is distinguishable. There, the plaintiff argued for the first time on appeal that that the city could delegate the authority to receive service of process under MCR 2.105(H)(1) ("Service of process on a defendant may be made . . . on an agent authorized by written appointment or by law to receive service of process."). Therefore, unlike here, the Court did not address traditional agency principles.

[32] Though MCL 691.1404(2) requires service upon an "individual," plaintiffs may comply with the statute by serving an agent of that individual, even if the agent, like the Law

Appeals' judgments in both cases, and we remand both cases to the Wayne Circuit Court for further proceedings not inconsistent with this opinion.[33]

David F. Viviano
Bridget M. McCormack
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Megan K. Cavanagh

Department, is not an individual.

[33] Because we determine that the Law Department is the agent of the Corporation Counsel, we need not decide whether the word "may" in MCL 691.1404(2) is permissive, such that service of notice may be permitted on individuals other than those named in MCR 2.105(G)(2). We also do not decide whether equitable estoppel may apply.

STATE OF MICHIGAN

SUPREME COURT

DWAYNE WIGFALL,

Plaintiff-Appellant,

v No. 156793

CITY OF DETROIT,

Defendant-Appellee.

FAYTREON ONEE WEST,

Plaintiff-Appellant,

v No. 157097

CITY OF DETROIT,

Defendant-Appellee.

MCCORMACK, C.J. (*concurring*).

I concur in the majority opinion in full. I write separately because it should not take all that.

The city of Detroit, through its lawyers, has taken the position that a notice of injury and defect that complies with all the substantive statutory requirements and which the city acknowledged receiving is nevertheless insufficient because it was mailed to the city's Law Department and not the Corporation Counsel—the person himself. The city takes this

puzzling position even though the Corporation Counsel is the Law Department's administrative head and the Law Department is his agency.

The notice rules require service on "the mayor, the city clerk, or the city attorney of a city[.]" MCR 2.105(G)(2); see MCL 691.1404(2). The city attorney in Detroit is the Corporation Counsel. The Corporation Counsel has a staff and that staff works in the city's Law Department; they work in the same building with their boss, together representing the city's legal interests. They all receive mail at the exact same address.

In these cases, the Law Department received timely notice, acknowledged receiving it, and had no complaints about its contents. There is no dispute that all the purposes of notice were satisfied; the Law Department makes no claim that it would have processed the notice any differently had the words "Corporation Counsel" appeared at the top of the address on the envelope. And indeed for years the Law Department accepted notice in cases just like these, as acknowledged (unsurprisingly) during oral argument before this Court.

But at some point after acknowledging notice in these cases, one of the lawyers on the Corporation Counsel's staff came up with a wacky idea to get the lawsuit dismissed: argue that the plaintiff's notices were not compliant after all, because, instead of mailing them to the Corporation Counsel personally, at 2 Woodward Avenue, Suite 500, Detroit, MI, 48226, the plaintiffs mailed them to the Corporation Counsel's staff, the Law Department, at that same address.

And with no sense of irony, attorneys in the Law Department then wrote and filed with a court a motion to dismiss, advancing this theory. They submitted the motions on behalf of the Corporation Counsel. The Corporation Counsel personally did not sign the

motion, nor did he come to court to argue it. His staff did so, acting, as usual, on behalf of his office. Same again in the Court of Appeals, and again in this Court.

Apparently, it is the city's position that when the lawyers from the Law Department file motions and appellate briefs and show up in court to make arguments they do so on behalf of the Corporation Counsel, but not so when they receive and acknowledge notices from litigants. The city's argument reduces to: "On behalf of Corporation Counsel, we, the Law Department, submit that serving notice on us is insufficient because we do not act on Corporation Counsel's behalf for *that* purpose."

This kind of pseudo technicality can give lawyers a bad name. Notice to the "City Attorney" is satisfied by notice to the Corporation Counsel or to the Law Department. These are functionally interchangeable, barring exceptional circumstances not relevant here (such as a suit against the Corporation Counsel in his individual capacity).

The city has every right to insist that litigants follow the rules when they file a claim. But the Corporation Counsel and his Law Department have done themselves and their client little service in advancing the argument made here.

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