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

SUPREME COURT

NORMAN CHAMPINE,

Plaintiff-Appellant,

v No. 161683

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

ZAHRA, J. (*dissenting*).

I do not dispute the alleged facts claiming that on December 17, 2017, plaintiff was driving his vehicle on I-696 westbound near Hoover Road when a large chunk of concrete apparently dislodged from the roadbed, projected through plaintiff's windshield, and struck him. Plaintiff lost consciousness for a short period of time and woke to find himself safely exiting the freeway, from which he drove to a local gas station. He suffered significant injuries to his head and torso that were readily explained by the bloodied chunk of concrete recovered from his vehicle.

Plaintiff asserts a statutory right to recovery under the highway exception to the governmental tort liability act (GTLA).[1] Given that " 'the Legislature is not even required

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[1] The majority opinion asserts that "[t]his case concerns a negligence claim, governed by the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., brought against defendant under the highway exception to governmental immunity, MCL 691.1402(1)." I do not characterize plaintiff's claim as one grounded in common-law negligence. Rather, plaintiff's claim is purely statutory in nature; it is a claim brought under the highway exception to the GTLA.

to provide a defective highway exception to governmental immunity, it surely has the authority to allow such suits only upon compliance with rational notice limits.' "[2] Here, the GTLA expressly provides that "[c]laims against the state *authorized* under [the GTLA] *shall be brought* in the manner provided in"[3] the revised judicature act of 1961 (RJA). I conclude that this language means that a prospective highway-defect claim against the state must be separately "authorized" under the GTLA and separately "brought in the manner provided" in the RJA. A timely notice filed under the GTLA is required to "authorize" the filing of a claim under the RJA irrespective of when a plaintiff files this statutory claim. Plaintiff did not duly file a single document under the GTLA to have "*authorized*" the filing of a claim under the RJA. Since plaintiff's claim was not authorized under the GTLA, it could not be brought under the RJA. There is no statutory basis that permits an unauthorized RJA claim to become authorized if the claim contains content that arguably would have satisfied a GTLA notice had that notice been properly and timely filed. Accordingly, I would affirm the result of our lower courts and deny plaintiff's application.

I. BASIC FACTS AND PROCEEDINGS

Shortly after the incident giving rise to plaintiff's injuries, his counsel sent correspondence to defendant, the Michigan Department of Transportation, via certified mail; the correspondence was intended to constitute statutory notice as required under the

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[2] *Estate of Pearce v Eaton Co Rd Comm*, 507 Mich 183, 207; 968 NW2d 323 (2021) (ZAHRA, J. *dissenting*), quoting *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 212; 731 NW2d 41 (2007).

[3] MCL 691.1410(1) (referring to "[MCL] 600.6401 to [MCL] 600.6475") (emphasis added).

GTLA. On February 6, 2018, plaintiff filed a claim against defendant. The next day, plaintiff's counsel again sent defendant correspondence claiming to be an amended statutory notice.

Defendant moved for summary disposition on governmental immunity grounds under MCR 2.116(C)(7), arguing that plaintiff had failed to comply with the GTLA's statutory notice requirement before filing a claim under the RJA. The Court of Claims granted defendant's motion, and the Court of Appeals affirmed that decision in a divided unpublished opinion.[4] We directed the clerk to schedule oral argument on the application.[5]

II. ANALYSIS

MCL 691.1404(1) of the GTLA generally requires that a person injured because of a highway defect, within 120 days, serve a notice "[a]s a condition to any recovery for injuries . . . on the governmental agency of the occurrence of the injury and the defect." The following subsection, MCL 691.1404(2), plainly differentiates the above-described statutory notice, generally served on any governmental agency, from a specific statutory notice that is to be served on a defined entity, which, in this case, is "the *state*." Notice provided to the state "shall be filed in triplicate with the clerk of the court of claims."[6] In this case, this statutory notice was never properly filed. Had this notice been filed, the Court of Claims would have forwarded a copy to "the attorney general and to each of the departments, commissions, boards, institutions, arms, or agencies of this state designated

[4] *Champine v Dep't of Transp*, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2020 (Docket No. 347398).

[5] *Champine v Dep't of Transp*, 507 Mich 935 (2021).

[6] MCL 691.1404(2).

in the claim or notice."[7] "Provisions requiring notice to a particular entity, like the Court of Claims in this case, further ensure that notice will be provided to the *proper* governmental entity, thereby protecting plaintiffs and defendants alike from having the wrong component of government notified."[8]

The majority relies on the plain meaning of the term "notice," claiming that notice is not defined in MCL 691.1404. I disagree. First, MCL 691.1404(1) does define the notice in regard to its content, requiring that it "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." Second, MCL 691.1404(2) further defines the notice in terms of the place and manner of filing, stating that "[i]n case of the state, such notice shall be filed in triplicate with the clerk of the court of claims." These provisions reflect that the "notice" at issue here is not a common and ordinary notice but a defined "notice" that must contain particular content and must be filed in a particular place and in a particular manner.

I therefore strongly disagree with the majority's purported reliance on "the plain meaning of the word 'notice' in this context [to] only suggest[] that the state must be made aware of the injury and the defect in accordance with MCL 691.1404(2)." Here, the GTLA expressly provides that "[c]laims against the state *authorized* under [the GTLA] *shall be brought* in the manner provided in" the RJA.[9] The state's awareness of the injury and the defect alone does not authorize a claim to be filed under the RJA. Further, there is no legal

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[7] MCL 600.6431(3).

[8] *McCahan v Brennan*, 492 Mich 730, 744; 822 NW2d 747 (2012).

[9] MCL 691.1410(1) (referring to "[MCL] 600.6401 to [MCL] 600.6475") (emphasis added).

or logical basis to conclude that an unauthorized claim filed under the RJA can authorize itself to be filed without having complied with the GTLA. A prospective highway-defect claim against the state must be "authorized" under the GTLA and "brought in the manner provided" in the RJA. Plaintiff did not duly file a single document under the GTLA to have "*authorized*" the filing of a claim under the RJA. Because plaintiff's claim was not authorized under the GTLA, it could not be brought under the RJA.[10]

Accordingly, I agree with the lower courts that plaintiff failed to comply with the GTLA and that plaintiff's claim should be dismissed.

Brian K. Zahra

[10] I agree with the majority that "[t]he text of the statute does not indicate that there must be some temporal gap between the filing of a notice and the initiation of a lawsuit . . . ." None of the requirements of the notice discussed above expressly stipulates that the notice be filed in advance of the claim. Still, even in the very rare instance, such as in this case, when a plaintiff files a claim before filing a notice, the plaintiff must still afterwards file a proper and timely notice that would render the claim "authorized."