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IN THE
COURT OF APPEALS OF INDIANA

MACKEY S. GRIFFIN and KAREN GRIFFIN,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 10A05-0507-CV-384
EARL SPAULDING and GREATER CLARK COUNTY SCHOOLS,	)	
Appellees-Defendants.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable James D. Kleopfer, Special Judge
Cause No. 10D01-0408-CT-168

March 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Mackey and Karen Griffin appeal the trial court's order granting Greater Clark County

Schools' ("the School") motion for partial summary judgment on Karen's loss of consortium claim. We affirm.

Issue

The Griffins raise one issue for our review, which we restate as whether the trial court properly granted the School's motion for partial summary judgment on Karen's loss of consortium claim.

Facts and Procedural History

On September 23, 2002, Mackey was stopped at a red traffic light on Highway 62 near Charlestown, Indiana, when his vehicle was rear-ended by a school bus driven by Earl Spaulding, an employee of the School who was acting within the scope of his employment. At the time of the impact, it is believed that the school bus was traveling at fifty miles per hour. Mackey sustained personal injuries as a result of the accident, and his vehicle was significantly damaged.

In January of 2003, Mackey filed a tort claim notice with the School and the Indiana Political Subdivision Risk Management Commission. Mackey's tort claim notice states:

> Comes now Mackey Griffin who resides in Charlestown, Indiana, and tenders this written notice in compliance with the Indiana Tort Claims Statutes, and asserts that he has a claim against a governmental unit, that is, the Greater Clark School Corporation . . . and as grounds for such claim asserted says:
>
> 1. That Plaintiff, Mackey Griffin, was involved in a motor vehicle accident on approximately September 23, 2002[,] on Highway 62 near Charlestown, Indiana . . . in which he was the victim of the negligent driving of the employee, contractor, and or agent of the Defendants.
> 2. That the Defendants owed the Plaintiff a duty to hire qualified and careful drivers and to monitor same once hired.
> 3. That the Defendants breached their duty to Plaintiff in that

> Defendants employed Earl E. Spaulding as a school bus driver with the knowledge, actual or constructive, that Earl E. Spaulding was taking prescription medication which impaired his ability to drive a motor vehicle and then allowed Earl E. Spaulding to drive the Defendants' school buses.
>
> 4. That, as a direct and proximate result of the Defendants' breach, the Plaintiff was gravely injured when the school bus driven by Earl E. Spaulding, the employee of the Defendants, smashed into the rear end of the stopped pick-up truck being driven by the Plaintiff.
> 5. That as a direct and proximate result of the Defendants' breach of duty, the Plaintiff has suffered substantial damages, including, but not limited to, severe physical injuries to his head and brain; extreme physical pain and suffering, including memory loss, inability to perform rudimentary daily tasks, and loss of consortium with his wife, as well as significant property damage.

Appellant's Appendix at 47-48 (emphasis added). Mackey signed the document, and below his signature are the words, "Mackey Griffin, Plaintiff." Id. at 48. A short time later, Mackey filed an amended tort claim notice in which he added a claim of respondeat superior liability against the School. In all other regards, the amended tort claim notice was the same as the original notice. In the amended tort claim notice, Mackey again alleged he was damaged by a "loss of consortium with his wife . . . ." Id. at 51. Karen never filed a tort claim notice of her own.

On August 18, 2004, Mackey and Karen filed a complaint against the School. Mackey sought recovery for his personal injuries, while Karen filed a claim for loss of consortium with Mackey. On March 21, 2005, the School filed a motion for partial summary judgment on Karen's loss of consortium claim arguing that the claim was barred because Karen did not comply with the notice provisions of the Indiana Tort Claims Act (ITCA). After holding a hearing, the trial court granted the School's motion for partial summary judgment on June 15, 2005. This appeal ensued.

Discussion and Decision

The Griffins argue that the trial court erred in granting the School's partial motion for summary judgment on Karen's loss of consortium claim. We disagree.

I. Standard of Review

When determining the propriety of an order granting summary judgment, we use the same standard of review as the trial court. Geiersbach v. Frieje, 807 N.E.2d 114, 116 (Ind. Ct. App. 2004), trans. denied. "We stand in the shoes of the trial court and apply a *de novo* standard of review." Wilcox Mfg. Group, Inc. v. Marketing Servs. of Indiana, Inc., 832 N.E.2d 559, 562 (Ind. Ct. App. 2005). Summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). We will view the pleadings and designated materials in the light most favorable to the non-moving party. Wilcox, 832 N.E.2d at 562. "A trial court's grant of summary judgment is clothed with a presumption of validity, and the party who lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous." Id. We will affirm the trial court's judgment upon any theory supported by the designated materials. Id.

II. Failure to Comply With the Indiana Tort Claims Act

The trial court granted the School's motion for partial summary judgment because it concluded that Karen did not comply with the notice provisions of the ITCA. Indiana Code section 34-13-3-8(a) provides that a claim against a political subdivision is barred unless notice if filed with the governing body of the political subdivision and the Indiana political subdivision risk management commission within one hundred and eighty days after the loss

occurs. We have previously stated that "[c]laims against school corporations and their employees are subject to the Indiana Tort Claims Act (ITCA) notice of claims provisions." Meury v. Eagle-Union Cmty. School Corp., 714 N.E.2d 233, 241 (Ind. Ct. App. 1999), trans. denied. The purpose of a tort claim notice is to afford the State an opportunity to investigate, determine liability, and prepare a defense to the tort claim. Orem v. Ivy Tech State College, 711 N.E.2d 864, 869 (Ind. Ct. App. 1999), trans. denied. Whether a party has complied with the notice requirements of the ITCA is a question of law to be determined by the court. Id.

Here, Mackey's accident with the school bus occurred on September 23, 2002. Karen never filed a notice of tort claim on her own behalf. Because of this, Karen's loss of consortium claim is barred.

However, the Griffins argue that Karen's claim is not barred. They point out that a timely notice of tort claim was filed in January of 2003. This notice stated that Mackey was injured in an automobile accident caused by the School's employee Earl Spaulding. They highlight a specific sentence in the notice that relates that Mackey was damaged in that he suffered a "loss of consortium with his wife . . . ." Appellant's App. at 48. The Griffins conclude that this statement sufficiently informed the School of Karen's loss of consortium claim, and thus, the trial court erred in granting the School's partial motion for summary judgment because Karen substantially complied with the notice provisions of the ITCA.

Indiana Code section 34-13-3-10 provides that a tort claim notice must

> describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the

time of filing the notice.

We have stated that "[f]ailure to strictly conform with the ITCA's notice provisions is not fatal if the claimant demonstrates he has substantially complied." Irwin Mortgage Corp. v. Marion County Treasurer, 816 N.E.2d 439, 446 (Ind. Ct. App. 2004). What constitutes substantial compliance with the notice provisions of the ITCA is a question of law and also a fact-sensitive determination. Howard County Bd. of Comm'rs v. Lukowiak, 810 N.E.2d 379, 382 (Ind. Ct. App. 2004).

> Generally, a notice that is filed within the required time period, informs the municipality of the claimant's intent to make a claim, and contains sufficient information which reasonably affords the political subdivision with an opportunity to promptly investigate the claim will satisfy the purpose of the statute and will be held to substantially comply with the statute.

Id.

In resolving the issue presented here, we find two cases instructive. In Putnam County v. Caldwell, 505 N.E.2d 85 (Ind. Ct. App. 1987), Jon Caldwell was injured in an automobile accident while he was riding in a vehicle owned by Putnam County and driven by a county employee. He later filed a timely notice of tort claim. The notice did not mention his wife Jerri or her loss of consortium claim. Jerri did not file a tort claim notice of her own. Jon and Jerri then filed a complaint against the county in which Jerri sought damages for loss of consortium. The county filed a motion for summary judgment arguing that Jerri's claim was barred because she did not file a tort claim notice. The trial court denied the county's motion. On appeal, we stated:

> After examining the statute and the cases, we are of the opinion that the purpose of the notice provision is to give the public body prompt notice of its exposure to liability. The names and number of claimants are essential. . . .
>
> Here, until the complaint was filed, [Putnam County] would not know

> that Jerri existed, or if it did, that she contemplated filing a claim. Knowledge that the accident occurred is not sufficient. Failure to give notice as required is fatal to the action.

Id. at 87 (citation omitted). We reversed the trial court and directed it to enter summary judgment on Jerri's loss of consortium claim in favor of Putnam County. Id. at 88.

In Lukowiak, Kellie Lukowiak was injured in an automobile accident caused by an employee of the Howard County Corrections Department. Eight days after the accident, a claims representative of Kellie's insurance company sent a document titled "Tort Claims Notice" to the Howard County Corrections Department. Lukowiak, 810 N.E.2d at 380. The notice identified Kellie and her husband Paul as the claimants, and specified that the Lukowiaks sought compensation for Kellie's injuries and for damages to the car. Twenty months after the original notice of tort claim was filed, the Lukowiaks filed an amended notice of tort claim, which added a claim by Paul for loss of consortium. The Lukowiaks later filed a complaint to recover their damages. Howard County filed a motion for summary judgment arguing that the notice of tort claim was filed late, and the trial court denied that motion.

On appeal, we first determined that the tort claim notice sent to Howard County by a claims representative of Kellie's insurance company substantially complied with the ITCA, and that the trial court did not err in denying summary judgment on Kellie's claim for medical damages. Id. at 383. The next question was whether Howard County received sufficient notice of Paul's loss of consortium claim. We noted that the original tort claim notice did not include Paul's claim for loss of consortium, and that this claim was only later raised in the amended tort claims notice. Id. The original notice only made Howard County

aware that it needed to defend itself against a claim for damages to an automobile and for the medical costs of Kellie's injuries. Id. at 384. We determined that the Lukowiaks' amended tort claims notice was not timely filed, and therefore, they could only pursue damages on those claims raised in their original notice. Id. We directed the trial court to enter summary judgment in favor of Howard County on Paul's loss of consortium claim. Id.

This case falls somewhere between Caldwell and Lukowiak. Unlike Caldwell, the tort claim notice here informed the School that Karen at least existed, which moves this case closer to Lukowiak. But, unlike Lukowiak, the tort claims notice did not identify Karen as a claimant. The tort claim notice only refers to Karen once, and not by name but simply as "wife." Appellant's App. at 48. This reference is not in a paragraph devoted to Karen or her claim against the School, but a paragraph that describes the damages Mackey incurred from the accident. The only claimant identified in the tort claim notice is Mackey, who is referred to throughout the notice as the plaintiff and signs the notice as "Mackey Griffin, Plaintiff." Id.

Furthermore, the tort claim notice does not identify what Karen's claim is against the School. The Griffins argue that the language "loss of consortium with his wife," indicates that Karen had a claim for loss of consortium. Id. This statement is made in a paragraph describing Mackey's damages. It reveals that Mackey has a claim for loss of consortium with Karen, but does not give notice to the School that Karen has or is contemplating a claim for loss of consortium with Mackey. Because the tort claim notice does not identify Karen as a claimant or inform the School of Karen's claim, it does not substantially comply with the notice provisions of the ITCA. Therefore, the trial court properly granted the School's partial

motion for summary judgment on Karen's loss of consortium claim.

Conclusion

The tort claim notice that was filed here does not substantially comply with the notice provisions of the ITCA because it does not identify Karen as a claimant or inform the School of Karen's claim. Because of this and the fact that Karen did not file her own tort claim notice, Karen's loss of consortium claim is barred. The trial court's order granting the School's partial motion for summary judgment on Karen's loss of consortium claim is therefore affirmed.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.