

KEVIN L. RICHARDS and COLETTE	:	IN THE COURT OF COMMON PLEAS OF
RICHARDS, parents and natural	:	LYCOMING COUNTY, PENNSYLVANIA
guardians of MALORI and MONICA	:	
RICHARDS, both minors	:	
Plaintiffs	:	
	:	
vs.	:	NO. 02-02,182
	:	
PIATT TOWNSHIP,	:	
Defendant	:	JUDGMENT ON THE PLEADINGS

Date: December 11, 2003

OPINION and ORDER

Before the Court for determination is the Motion for Judgment on the Pleadings of Plaintiffs Kevin L. Richards and Colette Richards filed February 21, 2003. Upon filing the Motion, Plaintiffs' counsel initially failed to attach a cover sheet/scheduling order as required by Lycoming County Rule of Civil Procedure L206. An order of Non-Compliance was filed March 5, 2003 advising counsel that no action would be taken until the L206 Cover Sheet was filed. Counsel filed the same on or about October 1, 2003. A Scheduling Order was filed on October 9, 2003 and argument held November 21, 2003.

This is a Declaratory Judgment action in which Plaintiffs seek a declaration regarding the ability of the two minor plaintiffs to assert personal injury claims against Defendant Piatt Township arising out of an automobile accident that occurred on a Piatt Township road on January 2, 2000. At issue is the sufficiency of the notice given to Piatt Township under 42 Pa. C.S.A. §5522, which generally requires that parties give notice of their anticipated claims for personal injury or property damage against a township within six months of the date of the incident.

The Motion for Judgment on the Pleadings specifically asked this Court to address two issues. The first is whether the six-month notice requirement applies to the minor Monica or does her minority toll the notice requirement until she reaches her majority. The second is whether the June 26, 2000 letter sent to Defendant Piatt Township provided sufficient notice as to the claims of Malori under 42 Pa. C.S. §5522. The Court holds that the six-month notice requirement is not tolled by the minority of Plaintiff Monica Richards. However, the Motion for Judgment on the Pleadings as to the sufficiency of the notice relating to Plaintiff Malori Richards must be granted.

The facts of the underlying case are not in dispute and are as follows. On January 2, 2000, Plaintiff Kevin Richards was operating a vehicle in which Plaintiffs Colette, Malori, and Monica Richards were passengers. Malori and Monica are the minor children of Kevin and Colette Richards. The vehicle hit a patch of ice and left the roadway. All the occupants of the vehicle sustained injuries.

Plaintiffs' prior counsel, Michael H. Collins, Esquire, sent a letter dated June 26, 2000 to Piatt Township. The letter stated that Kevin Richards and his family, of 1943 Canoe Run Road, were traveling east on Canoe Run Road at 10:00 a.m. when he lost control of his vehicle because of a dangerous and defective condition of the road. The vehicle left the roadway, struck an embankment, and rolled over. The letter further advised the Township of the following: Mr. Richards sustained injuries including a separated left shoulder and left thumb; Craig L. Stabler, M.D. was treating him; Colette Richards had pain in her neck and back and was being treated by Cherie Thomas, DR; and Malori had sustained injuries. The letter concluded by stating that its purpose was to notify Piatt Township of the potential claims

of Kevin Richards, Colette Richards, and Malori Richards so that the Township could look into the matter and contact their insurance agent.

Plaintiffs instituted the present declaratory judgment action by a Complaint filed on November 26, 2002. In Count I, Plaintiffs are seeking a declaratory judgment that the June 26, 2000 letter meets the notice requirements of 42 Pa.C.S.A. §5522 as would pertain to Malori's claim. In Count II, Plaintiffs are seeking a declaratory judgment that June 26, 2000 letter sufficiently encompasses Monica and that it satisfies the notice requirements of 42 Pa.C.S.A. §5522 as would pertain to her claim. Piatt Township filed an Answer and New Matter on February 5, 2003. In the Answer, Piatt Township denied, *inter alia*, that the letter provided sufficient notice pursuant to 42 Pa.C.S.A. §5522 as to both Malori and Monica's claims. In the New Matter, Piatt Township asserted that the notice was deficient as to Malori's claim because it failed to give notice of the type of injury she suffered, the name of the physician treating Malori, the physician's address, the residence of the person to whom the cause of action accrued, the actual residence of the person injured, and the hour of the accident. Regarding Monica's claim, Piatt Township's New Matter asserted that the notice was deficient because the letter did not mention her at all. Piatt Township's New Matter further asserted that there was no reasonable excuse for Plaintiffs' failure to provide sufficient notice pursuant to 42 Pa.C.S.A. §5522.

Once the relevant pleadings are closed, any party may move for judgment on the pleadings. Pa.R.C.P. 1034. In deciding a motion for judgment on the pleadings, a Court may only consider the pleadings and documents that are properly attached to the pleadings. *Casner v. American Federation of State, County, and Municipal Employees*, 658 A.2d 865, 869 (Pa.

Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. *Felli v. Commonwealth, Dep't of Transp.*, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. *Ibid*; *Casner*, 658 A.2d at 869.

The language of §5522 is as follows:

(a) Notice prerequisite to action against government unit. –

(1) Within six months from the date that any injury was sustained or any cause of action accrued, any person who is about to commence any civil action or proceeding within this Commonwealth or elsewhere against a government unit for damages on account of any injury to his person or property under Chapter 85 (relating to matters affecting government units) or otherwise shall file in the office of the government unit, and if the action is against a Commonwealth agency for damages, then also file in the office of the Attorney General, a statement in writing, signed by or in his behalf, setting forth:

- (i) The name and residence address of the person to whom the cause of action has accrued.
- (ii) The Name and residence of the person injured.
- (iii) The date and hour of the accident.
- (iv) The appropriate location where the accident occurred.
- (v) The name and residence or office address of any attending physician.

- (2) If the statement provided for by this subsection is not filed, any civil action or proceeding commenced against the government unit more than six months after the date of injury to person or property shall be dismissed and the person to whom any such cause of action accrued for any injury to person or property shall be forever barred from proceeding further thereon within this Commonwealth or elsewhere. The court shall excuse failure to comply with this requirement upon a showing of reasonable excuse for failure to file such statement.
- (3) In the case of a civil action or proceeding against a government unit other than the Commonwealth government:
 - (i) The time for giving such written notice does not include the time during which an individual injured is unable, due to incapacitation or disability from the injury, to give notice, not exceeding 90 days of incapacity.
 - (ii) If the injuries to an individual result in death, the time for giving notice shall commence with such death.
 - (iii) Failure to comply with this subsection shall not be a bar if the government unit had actual or constructive notice of the accident giving rise to the claim of a person.

42 Pa.C.S.A. §5522.

Addressing the first issue, the minority of Monica does not toll the six-month notice requirement until she reaches majority. 42 Pa.C.S.A. §5533(b) tolls the time within which a claim must be instituted by a minor until she reaches the age of majority. The minority tolling statute does not affect the notice requirements of §5522. In support of this conclusion, the Court finds persuasive and concurs with the decision in *Hilbert v. Novak*, 5 Pa. D. & C. 4th 499 (Lehigh Cty. 1989). As stated in *Hilbert*, the requirements of §5522 do not limit the time

within which a claim must be commenced, but limits the time within which notice must be given that the plaintiff may commence a cause of action in the future. 5 Pa. D. & C. 4th at 452. The notice requirements of §5522 are prerequisite to bringing a claim in the future and are separate from any limitation imposed by the statute of limitations. Therefore, Monica's minority does not toll the six-month notice requirements of §5522 until she reaches the age of majority.

Furthermore, the Declaratory Judgment action does not assert that Monica's claims should be allowed because of there being a reasonable excuse for failing to include Monica in the June 26, 2000 letter. Nor does the Declaratory Judgment action assert that there was any actual or constructive notice to the Township of Monica's potential claim arising out of the injuries suffered in the accident. Therefore, the claims on behalf of Monica in this Declaratory Judgment action must be dismissed.

As to the second issue, the Court grants judgment on the pleadings. The requirements of §5522 provide a defendant with an affirmative defense that must be raised in the answer and new matter. *Bissey v. Commonwealth, Dep't of Transp.*, 613 A.2d 37, 41 (Pa. Cmwlth. 1992). There are two exceptions that excuse compliance with §5522. *Graffigna v. City of Philadelphia*, 512 A.2d 91, 93 (Pa. Cmwlth. 1986). A court will excuse compliance if there is "(1) a showing of reasonable excuse for failure to file such statement, and (2) if the government unit had actual or constructive notice of the incident or condition giving rise to the claim." *Ibid*, see also, 42 Pa.C.S.A. §5222(a)(2), (3)(iii). When the plaintiff contends that the defendant government unit had actual or constructive notice, the defendant is not required to establish prejudice. *Graffigna*, 512 A.2d at 94.

A township's knowledge of the mere existence of the condition that caused the accident does not constitute actual or constructive notice. *Taylor v. Montgomery Developers Co.*, 1 Pa. D. & C. 4th 493 (Bucks Cty. 1987). A government unit did not have actual or constructive notice of the incident or condition giving rise to the claim when it did not receive a copy of the police report and did not participate in the investigation of the incident. *Ibid.* However, a government unit did have actual or constructive notice when it received a detailed police report setting forth quotes from the occupants of the vehicle, a description of the road conditions, and a diagram of the accident scene. *Rohrbach v. Harrisburg*, 45 Pa. D. & C. 3d 233 (Dauphin Cty. 1987).

The Court concludes that although the letter of June 26, 2000 did not meet the technical requirements of §5522 as to Malori, the letter provided constructive knowledge and excuses compliance. The letter provides sufficient detail to let the Township know what happened and alert it to begin an investigation into the claims so that a defense could be prepared. The letter sets forth the date and time of the accident, the location of the accident, how it happened, the seriousness of the collision, the driver, who was involved, and that the Township's road was a cause of the accident. Clearly, this gave the Township the information necessary to commence an investigation and the ability to obtain the information that was excluded from the letter.

Furthermore, the requirements of §5522 are to be used by the government unit as a shield not a sword. *Yurechko v. Allegheny County*, 243 A.2d 372, 377 (Pa. 1967). The purpose of the notice requirement is so that municipal governments could "protect themselves against claims of those who have tarried so long that they have made it insurmountably difficult

for the municipality to conduct a proper investigation into the circumstances of the accident.”

*Ibid.*¹ The municipality cannot sit idly by or conduct an inadequate investigation and then seek the protection of §5522 by having the claim dismissed and barred. It would be improper to permit §5522 to be used in this manner.

Accordingly, the following Order will be entered.

¹ The Supreme Court in *Yurechko*, *supra*, did not address an issue under 42 Pa.C.S.A. §5522, but dealt with one of its predecessors regarding providing notice of a claim to a municipality. However, it has been noted that 42 Pa.C.S.A. §5522 and 53 P.S. §5301 were sufficiently similar as to allow precedent interpreting 53 P.S. §5301 to be applied to cases involving 42 Pa.C.S.A. §5522. *Augusta*, 563 A.2d at 1314-1315; *Ramon*, 556 A.2d at 922. The Court believes that the principles underlying the purpose of 53 P.S. §5301’s notice requirement, as set forth in *Yurechko*, apply with equal force to 42 Pa.C.S.A. §5522.

ORDER

It is hereby Ordered that the Motion for Judgment on the Pleadings of Plaintiffs Kevin L. Richards and Colette Richards filed February 21, 2003 is denied as to the claim that the minority of Monica Richards tolled the notice requirements of 42 Pa.C.S.A. §5522.

The Motion for Judgment on the Pleadings is granted as to the claim that Piatt Township received sufficient notice of Plaintiff Malori Richards' claims pursuant to 42 Pa.C.S.A. §5522.

BY THE COURT:

William S. Kieser, Judge

cc: David Knauer, Esquire
411A East Main Street; Mechanicsburg, PA 17055
Joseph Musto, Esquire
Christopher M. Williams, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)