Circuit Court for Baltimore City
Case No. 24-C-18-000603

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1017

September Term, 2018

RODERICK TAYLOR

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: September 16, 2019

On July 6, 2015, appellant Roderick Taylor, while walking in Baltimore, Maryland, stepped onto a temporary water meter cover which collapsed and injured his leg. Pursuant to the Local Government Tort Claims Act ("LGTCA"), Md. Code (1987, 2013 Repl. Vol., 2018 Suppl.), § 5-301 *et seq.* of the Courts and Judicial Proceedings Article ("CJP"), Mr. Taylor mailed notice of his claim by a letter dated September 16, 2015, to the City Solicitor, as required by CJP § 5-304. Tracking information from the United States Postal Service ("USPS") verified that this letter was delivered to a 21230 zip code in Baltimore; however, the City Solicitor's office is located in the 21202 zip code. Nearly nineteen months later, in April 2017, when the City Solicitor finally received notice of Mr. Taylor's claim, it denied the claim as untimely. On February 2, 2018, Mr. Taylor filed the present negligence suit in the Circuit Court for Baltimore City against the Mayor and City Council of Baltimore ("Baltimore City"). Baltimore City moved for summary judgment on the ground that Mr. Taylor did not give proper notice under the LGTCA. After a hearing on March 29, 2018, the circuit court granted summary judgment. Mr. Taylor timely appealed, and presents the following question for our review: "Whether the trial court erred as a matter of law by granting summary judgment in favor of [Baltimore City] since [Mr. Taylor] substantially complied with the notice requirements of the Local Government Tort Claims Act?" We hold that the trial court did not err, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 8:30 p.m. on July 6, 2015, Mr. Taylor stepped onto a temporary water meter cover on a sidewalk in Baltimore, Maryland. The cover, made of wood,

collapsed, causing injury to Mr. Taylor's left leg. By a letter dated September 16, 2015, and addressed to the City Solicitor at 100 N. Holliday Street, Suite 101, Baltimore, Maryland 21202,[1] Mr. Taylor's attorney attempted to give notice pursuant to the LGTCA. According to his complaint, Mr. Taylor's attorney instructed his staff to send the letter via certified mail, return receipt requested, as required by CJP § 5-304(c)(1). The letter, according to USPS's online tracking system, was delivered to an unknown address in Baltimore's 21230 zip code.

On April 3, 2017, Mr. Taylor's counsel, apparently unaware of the delivery issue, sent Baltimore City a settlement demand letter. Baltimore City responded to the demand letter on April 7, 2017, advising that the letter was defective because it lacked certain information, including the date, location, and description of the incident. Mr. Taylor supplied the missing information in a letter dated May 26, 2017. On June 7, 2017, Baltimore City denied the claim as untimely under CJP § 5-304. On June 26, 2017, Mr. Taylor's attorney responded that he had sent notice to the City Solicitor on September 15, 2015 (even though the notice letter was dated September 16) and attached the letter, certified mail receipt, and tracking information from the USPS website. Baltimore City searched its mail log and confirmed that it did not receive the letter in either September or October of 2015.

On February 2, 2018, Mr. Taylor filed a complaint in the Circuit Court for Baltimore

[1] Neither a copy of the envelope nor the certified mail return receipt from USPS appear in the record.

City alleging that Baltimore City was

> negligent in that it failed to cover its water meter located on its sidewalk with a water meter cover made from suitable materials which could support the weight of individuals walking on the sidewalk . . . failed to place caution signs, warnings, cones and/or barriers on its sidewalk in the area of the defective temporary wood water meter cover, failed to conduct regular and reasonable inspections of its sidewalk and temporary wood water meter cover, failed to identify and correct the presence of the defective temporary wood water meter cover within a reasonable period of time, failed to warn [Mr. Taylor] of the unreasonably dangerous condition which existed on the sidewalk at the time of the subject occurrence and was otherwise negligent and careless in the ownership, operation and/or management of its property, specifically its sidewalk and its defective temporary wood water meter cover.

On March 29, 2018, Baltimore City moved for summary judgment on the basis that there was no genuine dispute that Mr. Taylor did not provide timely notice as required by the LGTCA. In his opposition to summary judgment, Mr. Taylor argued that he complied with the notice requirement, and that Baltimore City "has failed to affirmatively show . . . that its defense has been prejudiced by the alleged lack of required notice." Additionally, Mr. Taylor's attorney alleged that he "was never notified by his staff that the Certified Mail Return Receipt was never returned by [USPS]."

On May 4, 2018, the circuit court held a hearing on Baltimore City's motion for summary judgment. After hearing the parties' arguments, including Mr. Taylor's attorney's explanation of what had occurred regarding the mailing of the September 16, 2015 letter, the circuit court granted summary judgment in favor of Baltimore City. The court concluded that there was neither substantial compliance with the LGTCA nor good

cause for Mr. Taylor's failure to timely notify Baltimore City of his claim.[2]

The court denied Mr. Taylor's motion to alter or amend judgment on June 25, 2018, and Mr. Taylor filed this timely appeal.

DISCUSSION

> Under the Maryland Rules, a court may grant summary judgment in favor of the moving party "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2–501(f). In reviewing the grant of summary judgment, appellate courts ask whether it was legally correct without deference to the trial court. *Hamilton v. Kirson*, 439 Md. 501, 522, 96 A.3d 714 (2014) (citations omitted). We evaluate "the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party." *Id.* (citations omitted). To defeat a defendant's motion for summary judgment, the opposing party must present admissible evidence "upon which the jury could reasonably find for the plaintiff." *Id.* at 522-23, 96 A.3d 714 (citations omitted).

Rogers v. Home Equity USA, Inc., 453 Md. 251, 263 (2017). Concerning Mr. Taylor's LGTCA argument, "[a]n appellate court reviews without deference a trial court's conclusion as to whether a plaintiff substantially complied with the LGTCA notice requirement." *Ellis v. Hous. Auth. of Balt. City*, 436 Md. 331, 342 (2013) (citing *Faulk v. Ewing*, 371 Md. 284, 308 (2002)).

The LGTCA provides, in relevant part, that:

[2] Mr. Taylor does not challenge on appeal the circuit court's adverse "good cause" determination.

> (c)(1) The notice required under this section[3] shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.
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> * * *
>
> (3) If the defendant local government is:
> (i) Baltimore City, the notice shall be given to the City Solicitor[.]
>
> * * *
>
> (d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion for good cause shown the court may entertain the suit even though the required notice was not given.

CJP § 5-304. The notice requirement is meant

> to protect municipalities and counties of the State from meretricious claimants and exaggerated claims by providing a mechanism whereby the municipality or county would be apprised of its possible liability at a time when it could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, 'sufficient to ascertain the character and extent of the injury and its responsibility in connection with it.'

Ransom v. Leopold, 183 Md. App. 570, 580 (2008) (quoting *Moore v. Norouzi*, 371 Md. 154, 167-68 (2002)).

The Court of Appeals has held that, "[w]here the purpose of the notice requirements is fulfilled, but not necessarily in a manner technically compliant with all of the terms of the statute, this Court has found such substantial compliance to satisfy the statute." *Faulk*,

[3] At the time of Mr. Taylor's injury, the LGTCA required the injured person to give notice within 180 days. However, effective October 1, 2015, the General Assembly amended this section to give injured individuals one year to file the appropriate notice. 2015 Md. Laws 589.

371 Md. at 299 (citing *Moore*, 371 Md. at 171-72; *Williams v. Maynard*, 359 Md. 379, 389-90 (2000); *Jackson v. Bd. of Cty. Comm'rs of Anne Arundel Cty.*, 233 Md. 164, 167 (1963)). The Court uses a four-factor test to determine whether a potential plaintiff has substantially complied with the LGTCA's notice requirement. *Ellis*, 436 Md. at 342-43. Substantial compliance exists when:

> (1) the plaintiff makes "some effort to provide the requisite notice"; (2) the plaintiff does "in fact" give some kind of notice; (3) the notice "provides . . . requisite and timely notice of facts and circumstances giving rise to the claim"; and (4) the notice fulfills the LGTCA notice requirement's purpose.

Id. (quoting *Faulk*, 371 Md. at 299) (ellipsis in *Faulk*). This "requires some effort to provide the requisite notice and, in fact, it must be provided, albeit not in strict compliance with the statutory provision." *Faulk*, 371 Md. at 299 (quoting *Moore*, 371 Md. at 171). In construing the statute, we have held that, "substantial compliance exists when *timely notice* has been given in a manner that, although not technically correct, nevertheless has afforded *actual notice* of the tort claim or claims to the local government." *Ransom*, 183 Md. App. at 584 (emphasis added). In *Faulk*, the Court of Appeals stated that

> [t]he touchstone of substantial compliance is whether the alleged "notice" was sufficient to fulfill the purpose of the requirement. As we recognized in *Moore*, the purpose of the notice requirement is "to ensure that the local government is made aware of its possible liability at a time when it is able to conduct its own investigation and ascertain, for itself, from evidence and recollection that are fresh and undiminished by time, the character and extent of the injury and its responsibility for it."

Faulk, 371 Md. at 308 (quoting *Moore*, 371 Md. at 176).

Although Mr. Taylor argues that *Ransom v. Leopold* "is inapposite," we find it

instructive. In *Ransom*, a police officer shot and killed Ms. Ransom's[4] dog while responding to a suspicious vehicle call on November 27, 2006, in Edgewater, Anne Arundel County. 183 Md. App. at 574. On May 25, 2007, Ms. Ransom's lawyer sent a letter giving timely notice of Ms. Ransom's claim; however, "by virtue of an error on the part of a law clerk," it was mailed to the Prince George's County Attorney. *Id*. at 575, 581. On June 14, 2007, Ms. Ransom's attorney "learned that the injury occurred in Anne Arundel County and promptly sent the notice of claims, with a copy of the complaint, to the County Attorney for Anne Arundel County." *Id*. at 575. The County Attorney for Anne Arundel County received this letter on June 18, 2007. *Id*. On July 6, 2007, Ms. Ransom filed her complaint in the Circuit Court for Anne Arundel County. *Id*. Anne Arundel County moved to dismiss, and in response, Ms. Ransom argued that she had "substantially complied with the LGTCA notice requirement by sending [her] notice of claim to the Prince George's County Attorney; and that [she] had good cause for not strictly complying and [Anne Arundel County] did not suffer any prejudice as a result of the delay." *Id*. at 577. The circuit court granted Anne Arundel County's motion to dismiss. *Id*. at 578.

For purposes of its analysis, the *Ransom* Court assumed that the notice letter was in fact mailed to the Prince George's County Attorney's Office and that it otherwise conformed to the LGTCA's notice requirements. *Id*. at 583. After a thorough analysis of

[4] Both Ms. Ransom and her adult daughter, Ms. Hancock, were appellants in this case. For simplicity, we refer to the two collectively as "Ms. Ransom."

the case law, Judge Deborah Eyler, writing for our Court, concluded that Ms. Ransom did not substantially comply with the notice requirement, explaining that

> substantial compliance exists when timely notice has been given in a manner that, although not technically correct, *nevertheless has afforded actual notice of the tort claim or claims to the local government.* In all of those cases, the relationship between the person or entity in fact notified and the person or entity that the statute requires be notified was so close, with respect to the handling of tort claims, that notice to one effectively constituted notice to the other.
>
> Here, the letter allegedly mailed on May 25, 2007, was not sent to any Anne Arundel County person or entity having anything to do with tort claims against that county. Indeed, it was sent to an entirely different county altogether. The May 25, 2007 letter was not a communication that provided requisite and timely notice of facts and circumstances giving rise to the appellants' claim to Anne Arundel County. It did not communicate anything to Anne Arundel County. Anne Arundel County did not acquire from that letter any knowledge of the tort claims the appellants intended to bring. Accordingly, the purpose of the LGTCA notice requirement was not satisfied by the May 25, 2007 letter. On the facts as pleaded in the complaint, the doctrine of substantial compliance does not apply.

Id. at 584 (emphasis added); *accord*, *White v. Prince George's Cty.*, 163 Md. App. 129, 147-48 (2005) (holding that letter sent to internal affairs division of County's police department concerning alleged police brutality did not constitute substantial compliance for LGTCA purposes because "[n]otice to I.A.D. simply was not notice to the County Attorney or County Solicitor" as required by the statute).

Viewing the evidence in a light most favorable to Mr. Taylor, we assume the following facts related to the LGTCA notice in this case:

- That Mr. Taylor's attorney sent the September 16, 2015 letter by "certified

mail, return receipt requested"[5] to the City Solicitor at 100 N. Holliday Street, Suite 101, Baltimore, Maryland 21202.

- That there is no evidence concerning the delivery address as it appeared on the envelope containing the September 16, 2015 letter.

- That USPS tracking information verified that a "Certified Mail" was delivered on September 28, 2015, to "Baltimore, MD 21230."

- That the City Solicitor does not maintain an office in the 21230 zip code.

- That Mr. Taylor's attorney did not receive the "return receipt" from USPS and there is no evidence concerning the location of the "return receipt" for the certified mailing.

- That the City Solicitor's mail log indicated that it did not receive during September or October 2015 any certified mail associated with the USPS tracking number for Mr. Taylor's September 16, 2015 certified letter.

- That the City Solicitor's mail log also indicated that it did not receive any certified mail from Ashcraft and Gerel, LLP, Mr. Taylor's counsel, during September or October, 2015.

Based on this record, we conclude that, even assuming the September 16, 2015 letter otherwise complied with the LGTCA's notice requirements, Mr. Taylor did not substantially comply with the statute's notice requirements because, in the parlance of *Ransom*, he failed to show that the letter was received by any "person or entity having anything to do with tort claims against" Baltimore City. 183 Md. App. at 584. Absent *actual notice* to the local government, the purpose of the LGTCA's notice requirement –

[5] We will assume that the September 16, 2015 letter was sent "certified mail, return receipt requested" as alleged by Mr. Taylor, although we note that there is no evidence in the record that Mr. Taylor paid the additional fee required by the United States Postal Service for "return receipt requested" service. *See* USPS.com, *What is Certified Mail?* (Nov. 9, 2018), https://faq.usps.com/s/article/What-is-Certified-Mail.

that the local government be "made aware of its possible liability at a time when it is able to conduct its own investigation" concerning "the character and extent of the injury" – cannot be fulfilled. *Faulk*, 371 Md. at 308 (quoting *Moore*, 371 Md. at 176). Because the doctrine of substantial compliance does not apply, the record is clear that Mr. Taylor failed to provide Baltimore City timely notice of his claim pursuant to the LGTCA. We therefore hold that the circuit court properly granted summary judgment in favor of Baltimore City.[6]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] We reject Mr. Taylor's contention, raised for the first time during oral argument, that he is entitled to a presumption that a properly addressed, stamped, and mailed letter reached its destination and was received by the person to whom it was addressed. *Kolker v. Biggs*, 203 Md. 137, 144 (1953). Here, the uncontradicted USPS tracking information showed that the September 16, 2015 letter was delivered to a 21230 zip code. Therefore, any presumption that the letter was received by the City Solicitor was unequivocally rebutted by the USPS tracking information that Mr. Taylor himself submitted to the court. In addition, we doubt that the presumption applies to "certified mail, return receipt requested" because such mail service contemplates proof of delivery to the addressee.