

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-002272-MR

EVELYN DENTON

APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE KEVIN HORNE, JUDGE
ACTION NO. 06-CI-00756

CITY OF FLORENCE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND NICKELL, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

ACREE, JUDGE: Evelyn Denton appeals from an order of the Boone Circuit Court dismissing her complaint against the City of Florence for failure to follow the notice requirements of KRS 411.110. This Court has previously considered the precise issue raised on appeal in this case and made a determination adverse to Denton's arguments in the case of *Baldrige v. City of Ashland*, 613 S.W.2d 430 (Ky.App. 1981). Thus, we affirm the trial court.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

On January 20, 2006, Denton slipped on rock salt and fell on a sidewalk maintained by the City of Florence. She faxed notification letters, and mailed certified copies, to the Mayor, City Clerk, and City Attorney as required by KRS 411.110. However, in both her letters, and her eventual complaint, Denton stated that her injury occurred on or about January 18, 2006. After receiving discovery from the City of Florence, Denton learned that she had incorrectly stated the date of her injury. She filed an amended complaint indicating that the fall occurred on January 20, 2006.

The City of Florence filed a motion for judgment on the pleadings based on Denton's failure to strictly adhere to the notice requirements of KRS 411.110. The statute reads as follows:

No action shall be maintained against any city in this state because of any injury growing out of any defect in the condition of any bridge, street, sidewalk, alley or other public thoroughfare, unless notice has been given to the mayor, city clerk or clerk of the board of aldermen in the manner provided for the service of notice in actions in the Rules of Civil Procedure. This notice shall be filed within ninety (90) days of the occurrence for which damage is claimed, stating the time of and place where the injury was received and the character and circumstances of the injury, and that the person injured will claim damages therefore from the city.

KRS 411.110. The City of Florence argued Denton's failure to correctly indicate the date of her injury in her letter of notice barred her from suing the city because she did not strictly comply with the statute's notice requirements. The trial court agreed and dismissed the complaint. This appeal followed.

On appeal, Denton presents three arguments. First, she contends the trial court erred in ruling that her letter of notification did not comply with KRS 411.110. Her other arguments focus on the public policy behind the statute and the legislature's intent

in passing the statute. However, it is a long-recognized legal principle that a city's liability for tortious claims is exclusively statutory in nature and, thus, the legislature "may attach such conditions to the right to recover . . . as it deems proper or expedient." *City of Irvine v. Cox*, 296 Ky. 680, 682, 178 S.W.2d 199, 200 (Ky. 1944). Consequently, we are constrained to consider whether Denton's notice, in fact, met the requirements of the statute. This Court has previously considered the same issue in *Baldrige*, a decision which Denton admits does not support her arguments.

The plaintiffs in *Baldrige* were injured when their motorcycle struck a mound of dirt which was in the highway near a bridge undergoing repairs. The accident occurred near midnight on August 6, 1979. However, the date on their letter of notice was August 8, 1979. After the trial court dismissed the action, they appealed arguing that their letter complied with KRS 411.110 despite the fact that the date of their injury was incorrect by one or two days. This Court upheld the trial court, reasoning as follows:

KRS 411.110 provides in part that notice shall be given to the city "stating the time of" and place where the injury was received. This statute has always been given a strict interpretation by the courts. We cannot do otherwise.

(1) The giving of notice as required by the statute is mandatory and a condition precedent to the filing of the suit. *Berry v. City of Louisville, Ky.*, 249 S.W.2d 818 (1952). Literal compliance with the statute is necessary. *Treitz v. City of Louisville*, 292 Ky. 654, 167 S.W.2d 860 (1943). It has been held that the city's actual or constructive notice of the defect is not a substitute for proper notice. *Reibel v. Woolworth*, 301 Ky. 76, 190 S.W.2d 866 (1945).

It has also been held that to provide an exception to the strict compliance with the statute would be to amend the law. If there is a need for such an amendment, it should properly be addressed to the General Assembly. The courts do not have

authority to amend the statute. *Galloway v. City of Winchester*, 299 Ky. 87, 184 S.W.2d 890 (1945).

(2) The correct date of any alleged accident is an essential and mandatory element of a statutory notice. The courts of Kentucky have repeatedly held that strict compliance with the statute is mandatory. We cannot say that the correct date is a minute detail.

Baldrige, 613 S.W.2d at 431. The reasoning in *Baldrige* is entirely on point in the case at hand. Thus, we are unable to agree with Denton's claim that her letter of notice complied with KRS 411.110.

Denton argues that our decision in *Baldrige* should be disregarded because of the age of the case. We note that our reasoning in *Baldrige* has not been overruled. Neither has the General Assembly chosen to enact an amendment to the notice letter requirement. Since our language in *Baldrige* clearly states that we will strictly construe the notice requirement of KRS 411.110 unless the legislature chooses to enact an exception, we must assume that the legislature also intends the statute to be subject to strict compliance. Consequently, we must affirm the Boone Circuit Court's judgment dismissing Denton's complaint against the City of Florence.

ALL CONCUR.

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