

No. 1-10-2453

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAREN COLLINS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 L 12713
)	
THE CHICAGO TRANSIT AUTHORITY,)	
a municipal corporation,)	Honorable
)	Diane J. Larsen,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the CTA sent plaintiff a copy of section 41 of the Metropolitan Transit Authority Act by certified mail within 10 days of receiving notice of her injury, and plaintiff failed to strictly comply with the notice requirements of section 41, plaintiff's claim was properly dismissed.
- ¶ 2 Plaintiff Karen Collins brought suit against defendant Chicago Transit Authority (CTA) for injuries she sustained after boarding a CTA bus. The trial court granted the CTA's motion to dismiss on the grounds that plaintiff's notice failed to strictly comply with section 41 of the Metropolitan Transit Authority Act (Act) (70 ILCS 3605/41 (West 2008)) because it omitted the

time of plaintiff's injury. On appeal, plaintiff contends that the trial court erred in dismissing her case because the CTA failed to strictly comply with the section 41 requirements, relieving plaintiff of her duty to file a complete notice or, in the alternative, that her notice strictly complied with section 41. We affirm.

¶ 3 Plaintiff alleged that on May 26, 2009, she boarded a CTA bus when, before she was able to take a seat, the bus driver accelerated at an unsafe rate of speed. As a result of this alleged negligence, plaintiff slipped and fell on the bus and sustained "severe and permanent injuries." Plaintiff filed her section 41 notice, which omitted the time of her accident, with the CTA on July 10, 2009. She filed her complaint on October 26, 2009.

¶ 4 On December 3, 2009, the CTA filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2008)). The following facts are derived from the CTA's motion to dismiss, plaintiff's responses to the motion, and the CTA's replies in support of its motion.

¶ 5 Plaintiff alleged that after the accident on May 26, 2009, while waiting for an ambulance, she filled out a "CTA courtesy card" on which she provided, in pertinent part, her name, her address as "2216 N. Central Ave., 1st Floor, Chicago, IL, 60639," and the date, time, and location of her accident.

¶ 6 On June 4, 2009, Latonya Odom, a CTA employee, filled out a "Report of Telephone Complaint" form. On the form, plaintiff's address is listed as "2216 N. Central Ave., 1st FL, Chicago, IL 60639." The form also lists the approximate time of the accident.

¶ 7 According to the affidavits of Frank Sanders, the CTA claims coordinator who was assigned to plaintiff's case, he sent a copy of section 41 of the Act to plaintiff by certified mail and regular mail on June 5, 2009. The CTA provided a certified mail receipt which shows a mailing being sent to "Karen Collins, 2216 N. Central, Chicago, IL 60639" on June 5, 2009, as

well as a copy of a return receipt from June 6, 2009, signed by Karen Collins. The CTA also attached a copy of a letter dated June 5, 2009, which stated "[i]n accordance with Section 41 of the Metropolitan Transit Authority Act as amended, enclosed is a copy of said statute." Sanders further attested that an additional copy of section 41 was sent by certified mail on June 12, 2009, in response to the telephone complaint.

¶ 8 In her own affidavits, plaintiff averred that she received a mailing from the CTA dated June 5, 2009, by regular mail that did not contain a copy of section 41, and a mailing dated June 12, 2009, by certified mail that did contain a copy of section 41. Plaintiff denied ever receiving or signing for a mailing dated June 5, 2009, by certified mail.

¶ 9 Plaintiff filed her section 41 notice, which omitted the approximate time of her accident, with the CTA on July 10, 2009.

¶ 10 In its motion to dismiss, the CTA contended that because plaintiff's section 41 notice failed to list the approximate time of the accident, her notice failed to strictly comply with the statute's requirements and therefore her claim must be dismissed. The CTA further contended that it complied with the statute by sending plaintiff a copy of section 41 by certified mail on June 5, 2009, within 10 days of receiving her courtesy card.

¶ 11 In response, plaintiff contended that because she did not receive a copy of section 41 by certified mail within 10 days of the CTA receiving notice of her injury as required by the statute, she was not obligated to strictly comply with the notice requirements.

¶ 12 The trial court denied the CTA's motion to dismiss. The CTA filed a motion to reconsider and on July 27, 2010, the trial court granted the motion to reconsider and dismissed plaintiff's case with prejudice. Plaintiff timely filed a notice of appeal.

¶ 13 An involuntary dismissal may be granted where "the claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-

619(a)(9) (West 2008). When considering a motion to dismiss, all pleadings and supporting documents shall be interpreted in the light most favorable to the nonmoving party. *Johnson v. Chicago Transit Authority*, 366 Ill. App. 3d 867, 869 (2006). The grant of a section 2-619 motion to dismiss is reviewed *de novo*. *Johnson*, 366 Ill. App. 3d at 869-70.

¶ 14 On appeal, plaintiff first asserts that the CTA failed to strictly comply with its obligations under section 41 because it: (1) failed to timely and properly provide her with a copy of section 41; and (2) used a truncated address for its mailings to her. Plaintiff argues that the June 5, 2009, letter from the CTA was received by regular, not certified, mail; did not enclose a copy of section 41; and omitted her street designation (Avenue) and her apartment designation (first floor). Plaintiff does not dispute that the CTA sent, and she received, a copy of section 41 by certified mail on June 12, 2009.

¶ 15 Paragraph two of section 41 provided that:

"Any person who notified the Authority that he or she was injured or has a cause of action shall be furnished a copy of Section 41 of this Act. Within 10 days after being notified in writing, the Authority shall either send a copy by certified mail to the person at his or her last known address or hand deliver a copy to the person who shall acknowledge receipt by his or her signature. *** In the event the Authority fails to furnish a copy of Section 41 as provided in this Section, any action commenced against the Authority shall not be dismissed for failure to file a written notice as provided in this Section. Compliance with this section shall be liberally construed in favor of the person required to file a written statement." 70 ILCS 3605/41 (West 2008).

¶ 16 Plaintiff claims that the CTA failed to send her a copy of section 41 by certified mail within 10 days of receiving notice of her injury through the courtesy card she filled out on May 26, 2009, and therefore the CTA failed to strictly comply with section 41. Specifically, plaintiff argues that the undisputed facts, viewed in the light most favorable to plaintiff, establish that the CTA did not comply with section 41 because she averred that she never received the June 5, 2009, certified mailing and therefore her action cannot be dismissed. The CTA contends that it did comply with section 41 because the statute does not require it to show that a copy of section 41 was actually received by plaintiff, but only that a copy of section 41 was sent to plaintiff by certified mail within 10 days. We find the CTA did comply with the section 41 requirements.

¶ 17 The court's primary goal in interpreting a disputed statutory provision is to ascertain and give effect to the legislature's intent. *Fields v. Chicago Transit Authority*, 319 Ill. App. 3d 683, 687 (2001). To determine the intent, a court must first consider the statutory language. *Id.*

¶ 18 Section 41 requires that within 10 days of receiving notice of a potential plaintiff's injury, it "shall either send a copy by certified mail to the person at his or her last known address or hand deliver a copy to the person who shall acknowledge receipt by his or her signature." 70 ILCS 3605/41 (West 2008). The plain language of the statute establishes that the CTA must either: (1) send a copy of section 41 by certified mail to the person at his or her last known address; or (2) hand deliver a copy of section 41 to the person who shall acknowledge receipt by his or her signature. In other words, the CTA need only obtain a signature if it hand delivers a copy of section 41 to the plaintiff. If the CTA sends a copy of section 41 to a plaintiff by certified mail, no proof of receipt is required by the section. Here, plaintiff averred that she never received or signed for the certified letter dated June 5, 2009. However, Frank Sanders attested that on June 5, 2009, he sent plaintiff a copy of section 41 by certified mail. The CTA also included a copy of the certified June 5, 2009, letter, the body of which indicates that a copy

of section 41 was included. Moreover, the CTA attached a certified mail receipt for a letter to plaintiff, dated June 5, 2009. Whether plaintiff actually received the June 5, 2009, certified mailing does not rebut the facts that show the CTA sent a copy of section 41 to plaintiff by certified mail on June 5, 2009, within 10 days of receiving notice of plaintiff's injury and therefore complied with section 41.

¶ 19 Plaintiff also maintains that whether the June 5 certified mailing contained a copy of section 41 is still in dispute because she attested that the June 5 letter sent by regular mail did not contain a copy of section 41 and Frank Sanders attested that he mailed a copy of section 41 to plaintiff on June 5 by regular mail as well as certified mail. Plaintiff argues that, therefore, the credibility of Sanders' statement that a copy of section 41 was included in the certified mailing is in question. However, beyond speculation, plaintiff is unable to show that a copy of section 41 was not included in the certified letter of June 5 and so we find this argument has no merit. Plaintiff can hardly claim that a genuine issue of material fact may exist based on a purported omission of an enclosure in a letter which she claims she never received.

¶ 20 Plaintiff next claims that the June 5 certified mailing nonetheless failed to strictly comply with section 41. Specifically, plaintiff argues that because the CTA omitted the floor designation and the word "Avenue" from her address, the June 5 certified mailing was not sent to her "last known address" as required by the statute. The CTA responds that Central Avenue is the only "Central" in the 60639 zip code, and that because no speculation would be required to deliver the certified mailing to plaintiff, it strictly complied with the section 41 requirements. We agree with the CTA.

¶ 21 A plaintiff has the burden to strictly comply with the notice requirements of section 41. *Hemphill v. Chicago Transit Authority*, 357 Ill. App. 3d 705, 711 (2005). This court has stated that "we find it only fair that the CTA strictly comply with the statutory obligation to provide

claimants with a copy of section 41" which is "only imposing the same zealous adherence to the statute it asks us to impose on the claimant." *Puszkarska v. Chicago Transit Authority*, 322 Ill. App. 3d 75, 80 (2001). However, this court has also found that a place or location falls short of the section 41 strict compliance requirements only when it would require speculation as to the true location of the accident, or if it is a nonexistent location. See *Hemphill*, 357 Ill. App. 3d at 714 (notice was insufficient because "the CTA would have had to speculate" as to the true location); *Barrera v. Chicago Transit Authority*, 349 Ill. App. 3d 539, 544 (2004) (section 41 notice must not cause the CTA to speculate as to the actual location of the incident); *Yokley v. Chicago Transit Authority*, 307 Ill. App. 3d 132, 137 (1999) (the plaintiff's notice was insufficient where the plaintiff provided a nonexistent location of his accident on his notice and the CTA would be required to speculate as to where the accident occurred).

¶ 22 Here, the CTA sent the June 5 certified mailing to plaintiff's correct name, the correct building in which she resided, and the correct zip code. The omission of the floor designation and the word "Avenue" would not necessitate speculation on the part of the mail carrier and therefore the CTA strictly complied with the section 41 requirements.

¶ 23 Plaintiff next contends that if we find the CTA strictly complied with section 41, then we should find that she strictly complied with the section 41 notice requirements.

¶ 24 Section 41 of the Act requires that any person who brings a civil suit against the CTA file a signed, written statement that includes: (1) the name of the person to whom the cause of action accrues; (2) the name and residence of the injured party; (3) the date and time of the accident; (4) the location of the accident; and (5) the name and address of any attending physician. 70 ILCS 3605/41 (West 2008). If a plaintiff fails to file proper notice within six months of the date of injury, the claim must be dismissed. 70 ILCS 3605/41 (West 2008).

¶ 25 A plaintiff has the burden to strictly comply with the notice requirements of section 41. *Hemphill*, 357 Ill. App. 3d at 711; *Davis v. Chicago Transit Authority*, 326 Ill. App. 3d 1023, 1027 (2001); *Fields*, 319 Ill. App. 3d at 686; *Dimeo v. Chicago Transit Authority*, 311 Ill. App. 3d 152, 155 (1999). A defect in a single section 41 notice element requires dismissal of plaintiff's claim. See *e.g.*, *Hemphill*, 357 Ill. App. 3d at 714 (summary judgment in favor of the defendant was affirmed where the plaintiff did not correctly identify the location of her accident in her notice); *Cione v. Chicago Transit Authority*, 322 Ill. App. 3d 95, 100 (2001) (the dismissal of the plaintiff's case was affirmed because he listed his physician's practice group instead of his physician's name on his notice); *Dimeo*, 311 Ill. App. 3d at 155 (the court affirmed the dismissal of the plaintiff's claim because she failed to provide the approximate time of her accident).

¶ 26 Here, plaintiff admits that she failed to provide the approximate time of her accident on her section 41 notice. Therefore, plaintiff failed to strictly comply with the section 41 notice requirements and the trial court properly dismissed her claim.

¶ 27 Plaintiff argues that nonetheless her claim should not be dismissed because the CTA had actual knowledge of the time of her accident which she provided both on the courtesy card and during her phone interview. However, this court has held that the CTA's actual knowledge of a notice element does not excuse a plaintiff's strict compliance with the section 41 notice requirements. *Hemphill*, 357 Ill. App. 3d at 712-13 (citing *Curtis*, 34 Ill. App. 3d at 576; *Yokley*, 307 Ill. App.3 d at 137); *Dimeo*, 311 Ill. App. 3d at 155. We find no reason to depart from that reasoning here.

¶ 28 Plaintiff also argues that because the date of the accident and the approximate hour of the accident are considered to be one element, her provision of the date of the accident was an "attempt to designate" the element and therefore "reasonably fulfills the requirements," citing *High v. Chicago Transit Authority*, 345 Ill. App. 3d 964, 967 (2004) and *Barrera*, 349 Ill App.

3d 543. However, as plaintiff also recognizes, this court has since departed from the idea that an attempt to designate the elements is sufficient to comply with section 41. *Hemphill*, 357 Ill. App. 3d 705. In fact, in *Hemphill*, this court observed that both *High* and *Barrera* actually applied a strict compliance standard despite the "mere recitation" of the principles of a more relaxed standard. *Hemphill*, 357 Ill. App. 3d at 711. The *Hemphill* court went on to recognize that "this court has repeatedly rejected similar arguments to allow less than strict compliance with section 41." *Id.* Plaintiff's attempt to distinguish *Hemphill* based on the facts of the case is not convincing, and does not affect this court's consistent application of a strict compliance standard with the section 41 notice requirements. See *Curtis v. Chicago Transit Authority*, 341 Ill. App. 3d 573, 582 (2003) (affirming dismissal of plaintiff's claim for failure to provide the correct date of the injury); *Davis*, 326 Ill. App. 3d 1028 -29 (summary judgment for the defendant was upheld because the plaintiff's notice listed a nonexistent location, the incorrect time of the accident, and failed the list the name of her attending physician). Moreover, this court has previously found that a plaintiff who omits the approximate time of the accident has not strictly complied with the requirements of section 41. *Dimeo*, 311 Ill. App. 3d at 155. Therefore, we find that plaintiff failed to strictly comply with the section 41 notice requirements and the trial court properly dismissed plaintiff's claim.

¶ 29 To the extent that plaintiff suggests that the "checkered past" of the stringent section 41 notice requirements should allow a more relaxed standard for plaintiff, we note that though the legislature did repeal the section 41 notice requirements effective June 1, 2009, just six days after plaintiff was injured, the fact remains that the notice requirements were in effect on the date plaintiff was injured. Therefore, plaintiff was required to strictly comply with the notice requirements.

¶ 30 For the foregoing reasons, we affirm the judgment of the trial court.

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¶ 31 Affirmed.