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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CINDY OLIVER,

Plaintiff-Appellant,

STUART OLIVER and BONNIE OLIVER,

Plaintiffs,

vs

SIOUX CITY COMMUNITY SCHOOL DISTRICT and CINDY ERICSON,

Defendants-Appellees.

Filed January 29, 1986

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Appeal from the Iowa District Court for Woodbury County - Richard F. Branco, Judge.

Plaintiff appeals the trial court's dismissal of her claim against defendants for failure to comply with the notice provisions under Iowa Code section 613A.5 (1983) **REVERSED.**

Daryl L. Hecht of Crary, Huff, Clem, Raby & Inkster, P.C., Sioux City, *for plaintiff-appellant.*

Michael R. Hellige of Mayne & Berenstein, Sioux City, for defendant-appellees.

Heard by Oxberger, C.J., and Snell and Schlegel, JJ., but considered en banc.

Plaintiff appeals the trial court's dismissal of her claim against defendants for failure to comply with the notice provisions under Iowa Code section 613A.5 (1983). We reverse.

Plaintiff Cindy Oliver suffered a fracture of her spinal column on February 17, 1983, during a high school gymnastics workout. She fell on her back while doing a routine on the uneven parallel bars under the supervision of her coach and instructor, defendant Cynthia Ericson. Cindy Oliver was taken by ambulance to the hospital where she underwent surgery that same evening. She sustained paralysis in both legs and loss of bladder function as a result of the fall.

Defendant Ericson, who was present when plaintiff fell, prepared a written accident report the next day and sent it to James Deignan, the high school principal. The report contained information about the time, place, and circumstances of the fall and who was injured. Mr. Deignan telephoned the intensive care unit of the hospital to inquire as to Cindy's progress and later personally visited her. Plaintiff was also visited by a member of the school district's board of directors while she was hospitalized.

During her stay at the hospital, Cindy was able to communicate with her visitors and even do a limited amount of school work. She was discharged from the hospital on April 2, 1983, but still required ankle shell braces and crutches to walk. She wore a body cast during the day until August 23, 1983, but all during this time was fully alert mentally and intellectually.

Neither Cindy nor her parents sought legal advice concerning her fall until January, 1984. On January 30, 1984, Cindy Oliver's lawyer sent a letter to the Sioux City Community School District Board of Education advising them

of her claim against the school district and Cynthia Ericson, her instructor and the district's employee. The petition was filed on January 31, 1984.

In her petition, plaintiff alleged that defendant Ericson was acting in the scope of her employment with defendant school district and that she negligently conducted gymnastics practice. In the next paragraph of her petition, plaintiff alleges that the school district authorized the gymnastics practice and failed to provide a safe place to conduct gymnastics practice. On October 31, 1984, defendant school district filed a Motion for Summary Judgment asserting that plaintiff failed to comply with the notice and limitation provisions of Iowa Code section 613A.5. Plaintiff filed a resistance to the Motion for Summary Judgment and contended that notice was timely given, that this action was timely commenced, and, in the alternative, that the notice and limitation provisions of Iowa Code section 613A.5 are unconstitutional on their face and as applied in this case. Defendant's motion was granted and plaintiff appeals.

On appeal, plaintiff alleges the district court erred in determining that the notice provisions of section 613A.5 were not substantially complied with, and in the alternative that section 613A.5 violates the Equal Protection and the Due Process clauses of both the Iowa and the United States Constitutions.

I. Section 613A.5 Notice. Iowa Code section 613A.5 is the notice provision of the Iowa Municipal Tort Claims Act. It provides the procedural guidelines for claimants filing a tort action against any municipality, and in this case, a school district. The section states:

> Every person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss or injury within the scope of section 613A.2 or section 613A.8 or under common law shall commence an action therefor within six months, unless said person shall cause to be presented to the governing body of the municipality within sixty days after the alleged wrongful death, loss or injury a written notice stating the time, place, and circumstances

> thereof and the amount of compensation or other relief demanded. Failure to state time or place or circumstances or the amount of compensation or other relief demanded shall not invalidate the notice; providing, the claimant shall furnish full information within fifteen days after demand by the municipality. No action therefor shall be maintained unless such notice has been given and unless the action is commenced within two years after such notice. The time for giving such notice shall include a reasonable length of time, not to exceed ninety days, during which the person injured is incapacitated by his injury from giving such notice.

Under this statute plaintiff had either to file her petition within six months of the accident, or to notify the school district within sixty days and file within two years thereafter. She did not file her claim until January 31, 1984, so compliance with the statute depends upon whether or not she notified defendants within the required sixty days.

We have held that substantial, rather than literal, observance of section 613A.5 is sufficient. Orr v. City of Knoxville, 346 N.W.2d 507, 509 (Iowa 1984). Our practice has been to examine the notice given in light of the statute's purpose: to provide a method for prompt communication of the time, place and circumstances of the injury in order to afford the prospective defendant the opportunity to investigate while the facts are fresh. Id.

With these principles in mind, plaintiff contends that the notice provision was substantially complied with. She points out that defendant Ericson filled out the accident report the very next day after the injury occurred and that it was received by the school district's agent, Mr. Deignan, shortly thereafter. She also argues that the school district had actual notice of the injury. She argues this point in spite of the fact that she cites within her own brief that actual knowledge and oral notice do not constitute substantial compliance with the statute. See Shearer v. Perry Community School District, 236 N.W.2d 688 (Iowa 1975). Because of the existence of adequate case law on this issue, we

are disappointed and disturbed at the lack of authority cited by plaintiff in support of her contention that the accident report filled out by defendant Ericson would substantially satisfy the requirements of 613A.5.

Defendants argue that the accident report is statutorily inadequate for two reasons. First, they contend that the report could not suffice under the statute because it does not state that a claim is being made against the school district. See Rush v. City of Sioux City, 240 N.W.2d 431, 437 (Iowa 1976). They equate the accident report with a policeman's log entry found to be insufficient in Pyland v. Astley, 324 N.W.2d 323 (Iowa 1982), and a policeman's accident report similarly lacking in Rush, 240 N.W.2d at 431. In Pyland, the issue to be resolved was whether in addition to the log entry of the police chief, actual knowledge on the part of the city constituted substantial compliance with section 613A.5. The supreme court held that even though the city may have had actual knowledge, the statute required written notice and the log entry by the police chief was not substantial compliance with the statute. In Rush, a policeman's routine accident report was alleged to be sufficient notice for § 613A.5, but the report failed to state whether anyone was injured so it could not satisfy the requirements of notifying the city of the "time, place and circumstances of the injury." The second argument propounded by defendants is that plaintiff did not present any written notice herself, nor did she request or direct that such a notice be prepared on her behalf and therefore did not cause notice to be sent to the school district. § 613A.5.

In Cook v. City of Council Bluffs, 264 N.W.2d 784 (Iowa 1978), the plaintiff's mother wrote a letter to her councilman complaining of police misconduct and brutality. She wrote the letter on behalf of her daughter who in her opinion had been wrongfully arrested and physically assaulted. On appeal, the supreme court reversed the trial court's dismissal due to failure to abide by section 613A.5

notice procedures. Like the case before us, the defendants in Cook alleged the notice was deficient because it did not state the plaintiff was presenting a claim. In response, the *Cook* court said:

> The statute contains no requirement that the notice is presenting a claim. Rather it must state "the time, place and circumstances [of the wrongful death, loss or injury] and the amount of compensation or other relief demanded." A notice is not even defective for failure to state the time or place or circumstances of the amount or other relief demanded if such information is furnished within 15 days of demand—leaving only the statement of the wrongful death, loss or injury and the identity of the damaged party as essential to the notice originally.

Cook v. City of Council Bluffs, at 791.

The Cook court added that the letter was sufficient because ". . . a municipality upon receipt of such a communication would at once see potential lawsuits by the women, and would investigate." Id. at 790. The letter was sufficient because it "informed the city of the claimed loss or injury and of the identity of the women, and it alerted the city to potential claims by them." Id. at 791.

Defendant's second argument is also unpersuasive. We are convinced plaintiff did cause a notice to be sent to defendant school district. As we have seen in Cook, a mother's letter on behalf of her daughter did not invalidate the notice, so it is certain the statute does not require the plaintiff, individually, to send the notice. In Orr v. City of Knoxville, 346 N.W.2d 507 (Iowa 1984), the supreme court held that the plaintiff substantially complied with § 613A.5 when his worker's compensation insurance carrier sent a letter to the municipality within the sixty-day limit, stating that the letter was intended to inform the defendant of the insurer's subrogation rights. There the supreme court said:

> There remains only the city's contention the notice was defective because it was sent by Kemper and not by Dwight Orr. In the unusual circumstances disclosed by this record, however, we do not view that fact as fatal. The evidence reflects Kemper had a potential liability for Dwight Orr's medical expenses and permanent

> disability. Under certain conditions Kemper is made Dwight Orr's statutory agent to "recover damages [against a third party] for the injury to the same extent that the employee might." See Iowa Code § 85.22(2) (1983). Where, as here, the notice provided would support a subsequent action by Kemper for Dwight Orr's damages, we believe it was sufficient to support Orr's claim against Kemper, linked with the provisions of section 85.22(2), minimally permits us to view the notice as one "cause[d] to be presented to . . . the municipality" by Dwight Orr. Iowa Code § 613A.5 (1983).

Orr v. City of Knoxville, 346 N.W.2d at 509.

Iowa Code section 613A.8 provides for indemnification of an individual teacher or instructor by the school district. See Vermeer v. Sneller, 190 N.W.2d 389, 391-92 (Iowa 1971). And, because defendant Ericson has been named as a codefendant in her individual capacity, she has "potential liability" for plaintiff's damages just as Kemper did in Orr. Therefore, the statute in this case would support a subsequent action by Ericson for plaintiff's damages, against defendant school district. Using the rationale of Orr, we hold that plaintiff's claim against defendant Ericson, linked with the statutory right of indemnification under section 613A.8, minimally permits us to view the report as a notice caused to be presented to the school district. See Orr v. City of Knoxville, at 509.

Ironically, the defendant school district has developed an accident reporting policy that effectively carries out the purpose and requirements of section 613A.5. As we have noted, the stated purpose is to provide a method for prompt communication of the time, place, and circumstances of the injury in order to afford the prospective defendant the opportunity to investigate while the facts are fresh. Orr v. City of Knoxville, at 509. Just like the circumstances in Cook, the severity of plaintiff's injuries would certainly cause the school officials "to see potential lawsuits, . . . and would investigate" the matter thoroughly. The accident report, therefore, would provide the same information and facts needed that a letter or notice of a claim would under strict compliance

of section 613A.5. Indeed, defendants admit that "the sole purpose of the report was to follow school procedures and advise the administration of the accident." There is no issue raised as to the authority of Mr. Deignan, the principal, to receive the statutory notice, and indeed, under the facts presented, his receipt of the report is legally sufficient to cause the school district to have written notice. See Vermeer v. Sneller, at 393, 394.

We hold, therefore, that plaintiff has substantially complied with the notice provisions of sections 613A.5 and that the district court erred in granting defendants summary judgment. Because we hold that notice in this case was procedurally sufficient, we need not address the remaining issues raised on appeal.

It was error for the district court to grant defendants' Motion for Summary Judgment. We therefore reverse.

REVERSED.

Oxberger, C.J., Snell, and Hayden, JJ., concur; Sackett and Donielson, JJ., dissent.

SACKETT, J. *(dissenting)*

I cannot agree with the majority that the school district's internal written accident reporting policy does in fact meet the requirements of Iowa Code section 613A.5.

The majority has overlooked the obvious underlying purpose of section 613A.5 which is to require claimants to inform municipalities of claims within a limited period of time. [emphasis supplied]. See Rush v. Sioux City, 240 N.W.2d 431, 437 (Iowa 1976).

The majority, as support for their position, relies on Cook v. City of Council Bluffs, 264 N.W.2d 784 (Iowa 1978), where the Iowa court held a notice by plaintiff's mother would have alerted the city to potential claims. Cook is clearly distinguishable. The notice in Cook was not internal reporting. Furthermore, in Cook the court held a fair reading of the written letter indicated in substance plaintiffs were wronged by the police. Cook at 790.

The internal notice here indicated only that Cindy was injured while practicing on the uneven parallel bars. It relates she was doing somie-ups to the high bar and missed the high bar with her hands and landed on her back on a crash mat. The report has questions as to whether there was an unsafe mechanical or physical condition, whether corrective action need be taken and whether there was an unsafe act or unsafe personal factor. All of the questions were answered in the negative. The report does not come from Cindy nor anyone acting in her behalf. The mere fact a person is injured does not mean someone else is liable for his injury. Nothing in the internal memo notified the school district of any potential liability to Cindy.

The trial court should be affirmed.

Donielson, J., joins this dissent.