



Court of Appeals Addresses Inverse Condemnation Issues and Filing Provision Claims of the PSTCA

In *Essink v. City of Gretna*, 25 Neb. App. 53, --- N.W.2 --- (2017), individuals brought an inverse condemnation action and a negligence action under the Political Subdivisions Tort Claims Act (PSTCA) against the City as a result of two sanitary sewer backups into their homes. A jury found in favor of the individuals on the inverse condemnation claims and awarded damages and the trial court dismissed the negligence action under the PSTCA with respect to some of the parties. However, the trial court found some of the parties had complied with the filing requirements of the PSTCA and that the City negligently caused the backups and awarded damages. Then the City appealed from the judgment on the jury verdict and the trial court's order from the bench trial.

One of the issues addressed by the Court of Appeals was related to an individuals' claim pursuant to the PSTCA. The City assigned an error that individuals failed to file a proper claim and did not comply with the filing requirements of the PSTCA in two respects: (1) the cleaning bills presented to the City clerk's office did not demand the satisfaction of an obligation and (2) the individuals did not deliver the cleaning bills to the proper city official.

As noted by the Court, "The Tort Claims Act is the exclusive means by which a tort claim may be maintained against a political subdivision or its employees. (citations omitted). While not a jurisdictional prerequisite, the filing or presentment of a claim to the appropriate political subdivision is a condition precedent to commencement of a suit under the Tort Claims Act." Neb. Rev. Stat. § 13-920(1) (Reissue 2012) provides, in relevant part:

No suit shall be commenced against any employee of a political subdivision for money on account of damage to or loss of property . . . caused by any negligent or wrongful act or omission of the employee while acting in the scope of his or her office or employment unless a claim has been submitted in writing to the governing body of the political subdivision within one year after such claim accrued

The requisite content of a written claim is addressed in Neb. Rev. Stat. § 13-905 (Reissue 2012), which requires that all claims "shall be in writing and shall set forth the time and place of the occurrence giving rise to the claim and such other facts pertinent to the claim as are known to the claimant." With regard to a claim's content, substantial compliance with the statutory provisions supplies the requisite and sufficient notice to a political

subdivision.

In the present case, the individuals submitted two envelopes to the City clerk's office after the sewer backups into their home. The first envelope had a bill addressed to one of the individuals from a cleaning and restoration company for work done at their residence. There was also a bill from a plumbing company. The second envelope, delivered after the second backup, included a bill addressed to one of the individuals from the cleaning and restoration company for water damage cleanup at their residence.

The court concluded that like in *Jessen v. Malhotra*, 266 Neb. 393, 665 N.W.2d 586 (2003), the cleaning bills here do not meet the statutory requirements of a claim, because the bills do not make a demand on the City for the satisfaction of an obligation or relief sought to be recovered. There were no other documents submitted with the cleaning bills. There was no written document of any sort by the individuals. Although the bills show the dates the work was performed, the location of the work, the reason (water damage) for the work, and the specific amount owed for such work, there is no demand made that the City satisfy an obligation. The bills are addressed to the individuals, indicating they are responsible for payment of the bills. The bills indicate that they are a result of water damage in the home, but there is no allegation that the City caused the water damage, no reference to the sewer backups, and no indication as to why the City would be responsible for the bills. The only reference to the City is a statement in the bills where it indicates that the individuals would be submitting them to the City for payment.

The content of the bills does not satisfy the requirements of § 13-905, and therefore, the court reversed the trial court's finding that the cleaning bills delivered to the City clerk's office constituted a "claim" under the PSTCA. Accordingly, the individuals failed to comply with a condition precedent to the commencement of a suit under the PSTCA and their claim must be dismissed.

After concluding that the cleaning bills did not demand the satisfaction of an obligation, the court determined it did not need to discuss whether the cleaning bills were delivered to the proper city official. The court also determined it did not need to discuss whether the trial court erred in finding that the City was negligent in causing the backups. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.

Conclusion

On the inverse condemnation action, the Court of Appeals concluded that the trial court should have granted a directed verdict in favor of the City and then they vacated the jury's verdict, and reversed the judgment of the trial court and remanded the matter with directions to enter judgment in favor of the City. The Court of Appeals determined that the parties found by the trial court to comply with the filing requirements had actually not done so as required under the PSTCA, and therefore, the Court of Appeals reversed the trial court's order and remanded the matter to the trial court with directions to dismiss.

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