SUMMARY
November 18, 2021

2021COA140

No. 20CA0954 *Bradley v. School District No. 1* — Torts; Government — Colorado Governmental Immunity Act — Notice of Claim

Under section 24-10-109(1), C.R.S. 2021, a person seeking to assert a tort claim against a public entity must file a written notice within 182 days of discovering the injury that is the basis of the claim. A division of the court of appeals is asked to decide whether a claimant's written notice strictly complies with section 24-10-109(1) and *Mesa County Valley School District No. 51 v. Kelsey*, 8 P.3d 1200 (Colo. 2000), when it does not contain an explicit statement that she requests monetary damages. The division concludes that a document constitutes written notice of a claim under section 24-10-109(1) when, as here, it reasonably and

objectively can be inferred from the document as a whole that the claimant is in fact making a claim for monetary damages.

COLORADO COURT OF APPEALS **2021COA140**

Court of Appeals No. 20CA0954
City and County of Denver District Court No. 20CV30084
Honorable Eric M. Johnson, Judge

Lisa Bradley,

Plaintiff-Appellee,

v.

School District No. 1 in the City and County of Denver, d/b/a Denver Public Schools,

Defendant-Appellant.

ORDER AFFIRMED

Division II
Opinion by JUDGE YUN
Román and Berger, JJ., concur

Announced November 18, 2021

Anne Whalen Gill, L.L.C., Anne Whalen Gill, Castle Rock, Colorado, for Plaintiff-Appellee

Caplan and Earnest LLC, Douglas A. Stevens, Justin H. Miller, Boulder, Colorado, for Defendant-Appellant

¶ 1 The defendant, School District No. 1 in the City and County of Denver, appeals the district court's denial of its motion to dismiss the complaint of the plaintiff, Lisa Bradley, for lack of subject matter jurisdiction under the Colorado Governmental Immunity Act (CGIA), §§ 24-10-101 to -120, C.R.S. 2021.

¶ 2 Before a lawsuit can be brought, the CGIA requires a person claiming to have suffered an injury by a public entity to file a "written notice" within 182 days of discovering the injury. § 24-10-109(1), C.R.S. 2021. In this appeal, we are asked to decide whether Bradley's "written notice" strictly complied with section 24-10-109(1) and *Mesa County Valley School District No. 51 v. Kelsey*, 8 P.3d 1200 (Colo. 2000), even though it did not contain an explicit statement requesting monetary damages.

¶ 3 We conclude that a claimant need not recite particular words or talismanic language to strictly comply with the written notice requirement. Rather, a document constitutes written notice of a claim under section 24-10-109(1) when it reasonably and objectively can be inferred from the document as a whole that the claimant is in fact claiming monetary damages. Because the document on which Bradley relies made clear that she asserts such

a claim against the School District, we affirm the district court's order.

I. Background

¶ 4 Bradley was injured on November 12, 2018, when she slipped and fell on an icy stairway at Asbury Elementary School. She notified the school principal of her injury that day. The accident was then reported to the school superintendent, and a claims adjuster for the Colorado School District Self Insurance Pool (CSDSIP) opened an insurance claim. After Bradley filled out certain forms, the claims adjuster informed her that CSDSIP had determined that the School District was not at fault but that CSDSIP would provide its discretionary, no-fault coverage for her medical expenses, up to $1,000. He requested copies of her medical bills, which she provided. Bradley then retained an attorney, who sent a letter to the school principal noting the location of the stairway where Bradley fell and requesting that the principal preserve any video footage of the accident.

¶ 5 On January 18, 2019, approximately two months after the accident, Bradley's attorney sent a letter to the Interim Superintendent of Denver Public Schools, the City Attorney's office,

and the Mayor of Denver entitled, "Notice pursuant to C.R.S. section 24-10-109 on behalf of Lisa Bradley." This letter provided Bradley's name and address; referred to her as "Claimant"; identified the date, time, and location of the accident; and described the factual and legal bases of the claim. It stated in part:

> [Bradley] was injured as a result of a dangerous condition existing in the physical condition and use of the facility (Asbury Elementary School) located at the north facing stairway for entrance and exit into the school. The dangerous condition was caused by an accumulation of snow and ice which physically interfered with public access on walks leading to the school which was a public building open for public business which failed to use existing means available to it for removal or mitigation of such accumulation and agents, servants and employees of the school had actual notice of such condition and a reasonable time to act.
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> Further, if Ms. Bradley is deemed a licensee, then the City and County of Denver and the Denver School Board unreasonably failed to exercise reasonable care with respect to the dangers it created of which it actually knew or its unreasonable failure to warn of dangers not created by it which are not ordinarily present on property of the type involved and of which it actually knew.
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> If Ms. Bradley is deemed an invitee, the City and County of Denver unreasonably failed to exercise reasonable care to protect against

> dangers of which it actually knew or should have known.

The letter then asked again that any relevant video footage be preserved and stated that the failure to do so would be deemed spoliation of evidence.

¶ 6 Bradley subsequently filed a premises liability lawsuit against the School District. The School District moved to dismiss Bradley's complaint for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1), arguing that, because the January 18 letter did not include an explicit request for monetary damages, she had not provided proper "written notice" under section 24-10-109(1). Following a hearing, the district court issued an order concluding that the letter constituted proper written notice. Accordingly, it denied the School District's motion to dismiss.

¶ 7 The School District now brings this interlocutory appeal under section 24-10-108, C.R.S. 2021.

II. Analysis

¶ 8 The School District contends that the district court erred by denying its motion because the January 18 letter did not include an

explicit request for monetary damages and therefore did not qualify as "written notice" under section 24-10-109(1). We disagree.

A. Standard of Review

¶ 9 Under section 24-10-109(1) of the CGIA, a person seeking to assert a tort claim against a public entity must file a written notice of claim within 182 days of discovering the injury that is the basis of the claim. *See Kelsey*, 8 P.3d at 1203-04. Failure to strictly comply with the 182-day written notice requirement is a jurisdictional bar to suit requiring dismissal of the action. *Id.* at 1206; *Reg'l Transp. Dist. v. Lopez*, 916 P.2d 1187, 1190 (Colo. 1996). The plaintiff bears the burden of demonstrating that notice was properly given. *Dicke v. Mabin*, 101 P.3d 1126, 1132 (Colo. App. 2004).

¶ 10 "Whether a claimant has satisfied the requirements of section 24-10-109(1) presents a mixed question of law and fact." *Kelsey*, 8 P.3d at 1204. We review the district court's factual findings for clear error. *Id.* However, whether a document constitutes a written notice of claim is a question of law that we review de novo. *Id.*

B. Law and Discussion

¶ 11 Section 24-10-109(1) provides that "[a]ny person claiming to have suffered an injury by a public entity . . . shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury." The purposes of the written notice are "to allow a public entity to investigate and remedy dangerous conditions, to settle meritorious claims without incurring the expenses associated with litigation, to make necessary fiscal arrangements to cover potential liability, and to prepare for the defense of claims." *Kelsey*, 8 P.3d at 1204.

¶ 12 "[T]he 'written notice' required by section 24-10-109(1) is notice that the claimant in fact is asserting a claim against the public entity." *Id.* A claim, "in the context of a tort action against a public entity for personal injuries, . . . is a demand for payment of monetary damages." *Id.* Consequently, any document or documents on which a plaintiff relies to satisfy the written notice requirement must, "as a whole, . . . objectively request or demand that the recipient of the notice pay the claimant monetary damages." *Id.* at 1205. "[T]he request for payment of monetary damages is what shows that a document is a notice of a claim

under section 24-10-109(1)." *Id.* A claimant must strictly comply with this requirement. *Id.*

¶ 13 The School District's sole contention on appeal is that the January 18 letter did not contain an explicit request for payment of monetary damages and that, under *Kelsey*, the letter therefore did not strictly comply with section 24-10-109(1).[1] The School District does not argue that it failed to understand the letter to make a claim for monetary damages, nor does it argue that it suffered any prejudice from the lack of an explicit request.

¶ 14 In *Kelsey*, on which the School District relies, the plaintiff (Kelsey) argued that the defendant public entity (the District) had written notice of her claim under section 24-10-109(1) because it had received an accident report, medical reports, and medical bills. *Id.* at 1203. The supreme court held that these documents did not constitute written notice of Kelsey's claim because they did not

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[1] In its motion to dismiss, the School District also argued that the letter did not constitute proper written notice because it did not substantially comply with the requirements of section 24-10-109(2), C.R.S. 2021. But the School District does not renew this argument on appeal, and we accordingly do not address it.

"objectively request or demand . . . monetary damages." *Id.* at 1205. Reviewing the documents as a whole, the court stated,

> [W]e cannot conclude that [the] accident report form or . . . medical reports and bills implicitly stated a claim by Kelsey against the District. Neither Kelsey nor her agents authored or filed these documents. Thus, it would not be reasonable to infer from these documents any intent by Kelsey to make a claim against the District. The most that objectively can be inferred from the documents is that Kelsey could have made a claim for damages against the District, not that she in fact was making a claim for damages against the District.

Id.

¶ 15 Here, in contrast, Bradley's attorney sent a formal letter, on the attorney's letterhead, entitled, "Notice pursuant to C.R.S. section 24-10-109 on behalf of Lisa Bradley." The letter stated that "Claimant is Lisa Bradley," that Bradley was injured as a result of a dangerous condition existing at Asbury Elementary School, and that Asbury Elementary School is part of the School District. It further described the circumstances of Bradley's accident and alleged that the School District failed to exercise reasonable care with respect to the dangers of accumulated snow and ice. Finally, it stated that the failure to preserve any relevant video footage would

be deemed spoliation of evidence. Thus, although the letter did not explicitly state that Bradley sought monetary damages, it could "objectively . . . be inferred" from the letter that Bradley "in fact was making a claim for damages against" the School District. *Kelsey*, 8 P.3d at 1205.

¶ 16 Under these circumstances, we conclude that Bradley strictly complied with the requirements of section 24-10-109(1). As the district court correctly observed, "there is no need for a [p]laintiff to use any specific magic words in order to strictly comply" with the requirement that a written notice of claim under section 24-10-109(1) objectively request or demand monetary damages. The letter made clear that Bradley asserts a claim against the School District. *See Kelsey*, 8 P.3d at 1204 ("[T]he 'written notice' required by section 24-10-109(1) is notice that the claimant in fact is asserting a claim against the public entity . . . ."). We agree with the district court that to hold otherwise would be to ignore the letter's plain words ("Claimant"), clear message ("Notice pursuant to C.R.S. section 24-10-109"), and obvious meaning.

¶ 17 Accordingly, we conclude that the district court did not err by denying the School District's motion to dismiss.

C. Attorney Fees

¶ 18 Because we affirm the district court's order denying the School District's motion to dismiss, we decline the School District's request for attorney fees pursuant to section 13-17-201, C.R.S. 2021.

III. Conclusion

¶ 19 The order is affirmed.

JUDGE ROMÁN and JUDGE BERGER concur.