

APPELLATE CASE NOTES

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NOTICE STATUTE INAPPLICABLE IN WRONGFUL DEATH CLAIM BASED ON DEFECTIVE DESIGN OF INTERSECTION

STATE EX REL. SASNETT, ET AL V. MOORHOUSE

--- S.W.3d ----, 2008 WL 2966094 (Mo. App. W.D.)

In *State ex rel. Sasnett, et al v. Moorhouse*, the Western District held that the statute requiring notice to a city of a cause of action based on a road's defective condition did not apply to a wrongful death action based on defective design, and further that the notice requirement is tolled during a plaintiff's minority.

RELEVANT FACTS

Stephen Sasnett was killed in a automobile accident that occurred at an intersection in Kansas City, Missouri. The collision occurred when Tina Jons ran a red light. A vehicle driven by Ronald Brooks struck the Jons' vehicle sending it airborne. The Jons' vehicle landed on Stephen Sasnett's vehicle causing his death.

Approximately six months after the collision, counsel for the Sasnetts filed a written notice of claim with the mayor's office. Approximately fifteen months after the collision, the spouse and children of Stephen Sasnett filed a petition in Jackson County naming Tina Jons, Ronald Brooks and the City of Kansas City as defendants. The City filed a motion to dismiss based on the lack of proper notice under Section 82.210. The trial court dismissed the plaintiffs' claim against the City after finding that they failed to give the City notice as required by Section 82.210. The statutory provision states:

No action shall be maintained against any city of this state which now has or may hereafter attain a population of one hundred thousand inhabitants, on account of any injuries growing out of any defect in the condition of any bridge, boulevard, street, sidewalk or thoroughfare in said city, until notice shall first have been given in writing to the mayor of said city, within ninety days of the occurrence for which such damage is claimed, stating the place where, the time when such injury was received, and the character and circumstances of the injury, and that the person so injured will claim damages therefor from such city.

The case continued against defendants Jons and Brooks. Ultimately, the plaintiffs sought a writ of mandamus

seeking reversal of the trial court's dismissal of the wrongful death claim against the City.

LEGAL ANALYSIS

The Western District held that the Sasnetts were not required to give notice pursuant to Section 82.210 and the trial court's dismissal was incorrect. The Court cited three separate reasons for this holding.

First, Section 82.210 does not apply where the claim does not involve a defect in the condition of a street. Because the Sasnett's claim involved a dangerous intersection due to traffic signals, as opposed to a complaint about the condition of the street, the notice requirement was not triggered. In making this distinction, the Court relied upon precedent from the Missouri Supreme Court and the Western District. See, *Williams v. Kansas City*, 782 S.W.2d 64 (Mo. banc 1990) (notice requirement applied to claim of defect in steps of sidewalk at airport because they "facilitate travel"); *Banks v. City of Kansas City*, 862 S.W.2d 485 (Mo. App. WD 1993) (allegation of a dark and dangerous crosswalk encompasses a defect in the condition of a street and requires notice pursuant to section 82.210); *Jones v. Kansas City*, 15 S.W.3d 736 (Mo. banc 2000) (allegation of defective sign at intersection, specifically placement of yield sign instead of stop sign, did not trigger notice requirements of statute).

Second, the plaintiffs were not required to give notice because Section 82.210 does not apply to actions for wrongful death. Relying on *Glasgow v. City of St. Joseph*, 184 S.W.2d 412 (Mo. 1944), which interpreted a predecessor to Section 82.210 and held that "notice was not required in an action for wrongful death" the Western District concluded that the Sasnetts' claim for wrongful death was not governed by Section 82.210.¹

Third, Stephanie Sasnett's status as a minor plaintiff tolled the notice requirements of Section 82.210 as to the minor's claim. As the Missouri Supreme Court held in *Schumer v. City of Perryville*, 667 S.W.2d 414 (Mo. banc 1984), legal incapacity excuses the failure to give notice to a

city.² The appointment of a next friend does not extinguish the legal incapacity.³

CONCLUSION

Sasnett held it was error for the trial court to dismiss a family's wrongful death claim against the City of Kansas City for failure to provide timely notice as required by Section 82.210. In so holding, the Court identified three reasons why the notice statute was not applicable under the facts of this. Interestingly, the Court also questioned whether cities, as a class, should continue to benefit from the advance notice provisions contained in notice of claim statutes. The Court questioned whether notice of claim statutes are still necessary "given that cities are now permitted to purchase liability insurance, maintain modern police and fire departments to investigate accidents and take prompt remedial action and, furthermore, all defendants are afforded protection against frivolous and fraudulent suits by the rules of civil procedure." ■

ENDNOTES:

¹ A 1988 Western District opinion, *Hewitt v. City of Kansas City*, 761 S.W.2d 679 (Mo. App. W.D. 1988) cited the Missouri Supreme Court's 1944 opinion in *Glasgow* for the proposition that statutory notice was not required in an action for wrongful death against a city.

² In *Schumer v. City of Perryville*, 667 S.W.2d 313 (Mo. banc 1984), the court was addressing the failure to give notice under Section 79.480. Section 79.480 is "virtually identical" to Section 82.210. *Sasnett* at p. 4. The two statutes differ in that Section 82.210 applies to cities with a population of more than one hundred thousand and Section 79.480 applies to fourth class cities. *Id.*

³ The City attempted to distinguish *Schumer* by the fact that the minor was injured in that case. The Western District rejected this argument noting that Stephanie Sasnett was also injured and her wrongful death claim is "derivative of the injuries she suffered as a result of the death of her father." *Sasnett* at 5.

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