2018 IL App (5th) 170103-U

NO. 5-17-0103

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CASSIE L. KELLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 13-L-171
	)	
FRANK S. BONHAM, RIDES MASS TRANSIT DISTRICT, and SHANDRIL DAYTON,	)	
	)	
Defendants	)	
	)	Honorable
(Frank S. Bonham and Rides Mass Transit District, Defendants-Appellants).	)	Brian D. Lewis,
	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: We answer the trial court's certified question in the affirmative based upon the facts of this case. Where Cassie L. Kelley was not a passenger of the Rides Mass Transit District bus driven by its employee, Frank S. Bonham, the "common carrier" exception from the one-year statute of limitations applicable to local governmental entities does not apply. Where Cassie L. Kelley did not file her complaint against Rides Mass Transit District and its employee, Frank S. Bonham, within one year of the accident, her claim is time-barred, and must be dismissed.

¶ 2 Plaintiff, Cassie L. Kelley, was operating a vehicle that became involved in a three-vehicle accident. One of the vehicles was a bus operated by Rides Mass Transit

District (RMTD) and driven by Frank S. Bonham, RMTD's employee. Bonham and RMTD filed a motion to dismiss asserting that Kelley's complaint was filed after the expiration of the one-year statute of limitations for local public entities as required by the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/8-101(a) (West 2010)). The trial court denied the motion to dismiss finding that because RMTD was a common carrier, the one-year statute of limitations did not apply. *Id.* § 2-101(b). Pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2016), the trial court certified the statute of limitations question. This court granted the Rule 308 application for leave to appeal on May 16, 2017. For the reasons stated in this order, we affirmatively answer the certified question in favor of Bonham and RMTD and remand the case to the trial court with directions to dismiss Kelley's complaint.

¶ 3 FACTS

¶ 4 The motor vehicle accident occurred on December 5, 2011, in Marion, Illinois. All three drivers were traveling westbound. Kelley was in the first vehicle. She slowed to a stop at a red light behind other vehicles. Shandril Dayton, who was driving the vehicle immediately behind Kelley's vehicle, also slowed to a stop because of the stopped traffic at the red light. Frank S. Bonham was operating an RMTD bus directly behind Dayton. Bonham struck the rear of Dayton's vehicle which resulted in Dayton's vehicle striking the rear of Kelley's vehicle.

¶ 5 Kelley filed a personal injury complaint against Bonham, his employer RMTD, and Dayton on November 27, 2013. Dayton filed her answer and also filed a

counterclaim against Bonham and RMTD for contribution. Bonham and RMTD[1] filed a motion to dismiss Kelley's complaint that alleged the complaint was barred by the Tort Immunity Act's one-year statute of limitations for local public entities.

¶ 6 Kelley asked the trial court for the opportunity to conduct discovery and for additional time to respond to the motion to dismiss. She filed a request to admit facts directed to RMTD. In its response, RMTD admitted that it was a common carrier serving the public and that Bonham was its employee. Kelley then filed her response to the motion to dismiss arguing that RMTD's admission that it was a common carrier precluded its reliance on the one-year statute of limitations.

¶ 7 On January 28, 2016, the trial court entered its order denying the motion. RMTD filed a motion to reconsider. The trial court denied this motion on April 19, 2016.

¶ 8 RMTD asked the trial court to certify a question for immediate appeal. The court granted the motion certifying the question in orders filed February 15, 2017, and March 7, 2017.

¶ 9 We granted RMTD's application for leave to appeal to this court on May 16, 2017.

¶ 10 LAW AND ANALYSIS

¶ 11 Illinois Supreme Court Rule 308 provides a means for parties to appeal a nonfinal order if the order "involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016). Here, the trial court certified the following legal question:

[1]In this order, we will refer to Bonham and RMTD, collectively, as RMTD.

> "Whether a 'local public entity' (as that term is defined by § 1-206 of the Governmental and Governmental Employees Tort Immunity Act ('Tort Immunity Act') (745 ILCS 10/1-206)) operating as a common carrier is afforded the protection of the one (1) year statute of limitations contained within 745 ILCS 10/8-101 which states (a) no civil action other than an action described in subsection (b) may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one (1) year from the date that the injury was received or the cause of action accrued."

¶ 12 Our review of this issue is *de novo* for two reasons. First, the applicability of the one-year statute of limitations raises a legal issue. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332, 898 N.E.2d 631, 636 (2008) (statute of limitations issue raises a legal question reviewed *de novo*). Second, the underlying motion denied by the trial court was a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). When a defendant files a motion to dismiss pursuant to section 2-619, the defendant is admitting the legal sufficiency of the complaint but is asserting affirmative matter that may defeat the claim. *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*, 238 Ill. 2d 262, 267, 938 N.E.2d 483, 488 (2010) (finding that filing a claim after the applicable statute of limitations expired is an example of affirmative matter that can defeat a plaintiff's claim); *Glasgow v. Associated Banc-Corp*, 2012 IL App (2d) 111303, ¶ 11, 980 N.E.2d 785 (review of denial of a section 2-619 motion to dismiss is *de novo*).

¶ 13 In section 13-202 of the Code of Civil Procedure, the legislature established the time limits to file a personal injury action. 735 ILCS 5/13-202 (West 2010). "Actions for damages for an injury to the person *** shall be commenced within 2 years next after the cause of action accrued ***." *Id.*

¶ 14 If the plaintiff files a complaint for personal injury against a local governmental entity and/or its employees, the action may be governed by the Tort Immunity Act. 745 ILCS 10/1-101 *et seq.* (West 2010). Following the supreme court's abolition of sovereign immunity in 1959 (*Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11, 163 N.E.2d 89 (1959)), the legislature passed the Tort Immunity Act in 1965 in order to "protect local public entities and public employees from liability arising from the operation of government." 745 ILCS 10/1-101.1(a) (West 2010).

¶ 15 We turn to the statute at issue in this appeal. The applicable portion of section 8-101(a) of the Tort Immunity Act provides: "No civil action *** may be commenced in any court against a local entity or any of its employees for any injury unless it is commenced within one year from the date that the injury was received or the cause of action accrued." *Id.* § 8-101(a). The term "local public entity" is defined as including:

> "a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, trustees of schools of townships, treasurers of schools of townships, community college district, community college board, forest preserve district, park district, fire protection district, sanitary district, museum district, emergency telephone system board, and all other local governmental bodies. 'Local public entity' also includes

> library systems and any intergovernmental agency or similar entity formed pursuant to the Constitution of the State of Illinois or the Intergovernmental Cooperation Act as well as any not-for-profit corporation organized for the purpose of conducting public business. It does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State." *Id.* § 1-206.

¶ 16 To interpret this section of the Tort Immunity Act, we must primarily determine and then execute the legislature's intent. *Barnett v. Zion Park District*, 171 Ill. 2d 378, 388, 665 N.E.2d 808, 813 (1996). If the legislature's intent is evident from the plain language of the statute, then that intent must be followed and we must not read any exceptions, limitations, or conditions into that language that would conflict with the Tort Immunity Act's plain language. *Id.*

¶ 17 The legislature had two primary intentions with the passage of the Tort Immunity Act. The first primary intention was the protection of public funds. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 505, 848 N.E.2d 1030, 1036 (2006) (quoting *Village of Bloomingdale v. CDG Enterprises, Inc.*, 196 Ill. 2d 484, 490, 752 N.E.2d 1090, 1096 (2001)); see also *Prough v. Madison County*, 2013 IL App (5th) 110146, ¶ 22, 984 N.E.2d 1177. The second intention was to expedite early investigation into any claim filed at a time "when the matter is still fresh, witnesses are available, and conditions had not materially changed." *Saragusa v. City of Chicago*, 63 Ill. 2d 288, 293, 348 N.E.2d 176, 179-80 (1976). The supreme court has stated that the shorter limitations period for claims brought against local public entities is logical, stating: "Because a local

governmental entity must anticipate that the number of claims made against it will far exceed those brought against a private individual, the provision of an abridged limitations period is reasonable." *Ferguson v. McKenzie*, 202 Ill. 2d 304, 313, 780 N.E.2d 660, 665 (2001) (citing *Tosado v. Miller*, 188 Ill. 2d 186, 194-95, 720 N.E.2d 1075, 1080 (1999)).

¶ 18 We do not find any ambiguity in the basic language of the Tort Immunity Act's one-year statute of limitations for claims brought against a local public entity. Therefore, if RMTD qualifies as a local public entity and no statutory exceptions apply, then Kelley's claim against RMTD and its employee, Bonham, would be time-barred.

¶ 19 Kelley argues that the one-year statute of limitations does not apply to a local public entity that is functioning as a "common carrier." Section 2-101(b) of the Tort Immunity Act states that "[n]othing in this Act affects the liability, if any, of a local public entity or public employee, based on *** [o]peration as a common carrier ***." 745 ILCS 10/2-101(b) (West 2010). In answers to Kelley's requests to admit, RMTD admitted that it was a common carrier serving the public. Kelley contends that because of this admission, RMTD and its employee, Bonham, are not covered by the one-year statute of limitations, but by the two-year statute of limitations, with which Kelley complied.

¶ 20 In addition to RMTD's admission that it operates as a common carrier, Kelley cites to two cases in support of her argument that the one-year statute of limitations does not apply in this case: *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 807 N.E.2d 439 (2004), and *Harvest Church of Our Lord v. City of East St. Louis*, 407 Ill. App. 3d 649, 943 N.E.2d 1230 (2011).

¶ 21 In the first case Kelley cites, Raintree Homes, Inc., filed a declaratory judgment suit against the Village of Long Grove seeking to have an ordinance declared unlawful. *Raintree Homes, Inc.*, 209 Ill. 2d at 256. The Village of Long Grove filed a motion to dismiss alleging that the claims were barred by the one-year statute of limitations. *Id.* at 253. The supreme court held that although Raintree Homes, Inc., filed its complaint against the Village of Long Grove more than one year after the cause of action arose, it was not barred from pursuing the claim because it sought relief other than damages. *Id.* at 258 (citing 745 ILCS 10/2-101 (West 2002)). The court explained that although the Tort Immunity Act does not exclude all non-tort-based actions, a declaratory judgment suit fell within the meaning of the Tort Immunity Act's phrase, "[n]othing in this Act affects the right to obtain relief other than damages against a local public entity ***." (Internal quotation marks omitted.) *Id.* at 261. Therefore, the complaint filed by Raintree Homes, Inc., was not barred by the Tort Immunity Act's one-year statute of limitations. *Id.*

¶ 22 In the second case Kelley cites, Harvest Church of Our Lord sued the City of East St. Louis for wrongful demolition of its church building. *Harvest Church of Our Lord*, 407 Ill. App. 3d at 650. In response, East St. Louis filed a motion for summary judgment arguing that the church's claim was barred by the Tort Immunity Act's one-year statute of limitations. *Id.* On appeal, the court determined that section 1-4-7 of the Illinois Municipal Code (65 ILCS 5/1-4-7 (West 2006)) precluded application of the one-year statute of limitations. *Harvest Church of Our Lord*, 407 Ill. App. 3d at 655-56. Section 1-4-7 of the Illinois Municipal Code provided that the "municipality shall be liable for any injury occasioned by actionable wrong to property by the removal, destruction *** of

any unsafe or unsanitary building ***." (Internal quotation marks omitted.) *Id.* at 653 (quoting 65 ILCS 5/1-4-7 (West 2006)). Section 2-101(e) of the Tort Immunity Act provided an exception to the one-year statute of limitations if the claim against the local public entity was based on section 1-4-7 of the Illinois Municipal Code. 745 ILCS 10/2-101(e) (West 2006). Because the case fell under section 1-4-7 of the Illinois Municipal Code, the court held that the Tort Immunity Act's one-year statute of limitations did not apply. *Harvest Church of Our Lord*, 407 Ill. App. 3d at 653; 745 ILCS 10/2-101(e) (West 2006).

¶ 23 Kelley contends that both of these cases support her theory that the one-year statute of limitations does not apply in this case. Both *Raintree Homes, Inc.* and *Harvest Church of Our Lord* involved specific statutory exceptions to the one-year statute of limitation. In *Raintree Homes, Inc.* the applicable exception was in the prefatory language that disallowed the Tort Immunity Act's application if the plaintiff was seeking relief other than damages. 745 ILCS 10/2-101. In *Harvest Church of Our Lord*, the applicable exception disallowed the Tort Immunity Act's application if the claim was based upon section 1-4-7 of the Illinois Municipal Code. 745 ILCS 10/2-101(e). Kelley contends that this case is legally analogous in that a different subsection of section 2-101 of the Tort Immunity Act applies and bars application of the one-year statute of limitations. She asks this court to answer the certified question in her favor and argues that the exception in section 2-101(b) precludes a local public entity operating as a "common carrier" to raise the one-year statute of limitations.

¶ 24 While both cases Kelley cites involve exceptions to the Tort Immunity Act, we disagree that the holdings support her claim that RMTD is precluded from asserting the one-year statute of limitations. We acknowledge that a local governmental entity operating as a common carrier may be barred from asserting the Tort Immunity Act protections. However, the fallacy in Kelley's reasoning is that the common carrier doctrine only applies to passengers of the common carrier at the time of an accident. The supreme court addressed this precise issue in *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*, 238 Ill. 2d 262, 938 N.E.2d 483 (2010). A Bi-State bus collided with Hubble's vehicle, and as a result Hubble sustained injuries. *Id.* at 264-65. Hubble filed his action against Bi-State and its driver about 18 months after the accident. *Id.* at 265. Bi-State and its driver filed its motion to dismiss, asserting that the one-year statute of limitations barred Hubble's action. *Id.* at 265-66. The trial court denied the motion but certified a question for immediate appeal; the appellate court affirmed on the basis that Bi-State did not qualify as a local public entity; and the supreme court reversed. *Id.* at 264-65. The supreme court's reversal was on the basis that Bi-State was a local public entity. *Id.* at 282. In discussing the broad definition of "local public entity," the court noted that although Bi-State could be construed as a common carrier, in this case Bi-State "was not operating as a common carrier with respect to plaintiff at the time of the accident since he was not a passenger." *Id.* at 269-70 n.4.

¶ 25 Kelley initially argues that the facts of her case are distinguishable from the facts in *Hubble*. We agree that the case is factually distinguishable. The issue in *Hubble* was whether Bi-State qualified as a local public entity—not whether or not it was a common

carrier for Hubble at the time of the accident. However, the supreme court confirmed that the common carrier exception was inapplicable in the *Hubble* case. By footnote, the court established that the exception did not apply because Hubble was not a passenger of the Bi-State bus at the time of the accident. Although the "common carrier" issue was not fully considered in *Hubble*, the supreme court's footnote was a correct assessment of Illinois law on the issue.

¶ 26 The rationale for the common carrier exception is explained in *Cooper v. Bi-State Development Agency*, 158 Ill. App. 3d 19, 25, 510 N.E.2d 1288, 1292 (1987), and *Slaughter v. Rock Island County Metropolitan Mass Transit District*, 275 Ill. App. 3d 873, 875, 656 N.E.2d 1118, 1119-20 (1995). Public transportation carriers owe the highest standard of care to its passengers—a standard of care higher than that owed by other public entities. *Cooper*, 158 Ill. App. 3d at 24 (quoting *Fujimura v. Chicago Transit Authority*, 67 Ill. 2d 506, 513-14, 368 N.E.2d 105, 108-09 (1977)); see also *Katamay v. Chicago Transit Authority*, 53 Ill. 2d 27, 29-30, 289 N.E.2d 623, 625 (1972) ("the rationale for the imposition of the duty upon a carrier to exercise the highest degree of care for the safety of an individual while he is a passenger as distinguished from the lesser duty owed at all other times is that the degree of care should be commensurate with the danger to which the passenger is subjected, and the degree of care required to be exercised increases as the danger increases" (citing *Sims v. Chicago Transit Authority*, 4 Ill. 2d 60, 64, 122 N.E.2d 221, 223 (1954))). The common carrier provision of section 2-101 is not an exclusion from the Tort Immunity Act's application, but is interpreted as

a preservation of the standard of care imposed upon a common carrier as to its passengers. *Slaughter*, 275 Ill. App. 3d at 875 (quoting *Cooper*, 158 Ill. App. 3d at 25).

¶ 27 As the highest level of care is owed by a common carrier to its passengers, if the claimant was a passenger of the common carrier at the time of the accident, the Tort Immunity Act exempts that claim from the one-year statute of limitations. See *Del Real v. Northeast Illinois Regional Commuter R.R. Corp.*, 404 Ill. App. 3d 65, 73, 934 N.E.2d 574, 580-81 (2010) (where the common carrier exception did not apply to the railroad because at the time of the injury, the plaintiff, was attempting to board the platform "and had not yet presented herself in a proper place to be transported"); *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 19, 923 N.E.2d 854, 1008 (2010) (where the common carrier exception did not apply to the railroad because at the time of the injury, the plaintiff, who had purchased his monthly train pass, parked in the railroad lot, and tripped and fell over a protruding bolt at a train crossing while walking towards the commuter station, was not a passenger at the time of the incident).

¶ 28 We recognize that the Tort Immunity Act is in derogation of common law, and must be strictly construed in Kelley's favor and against RMTD. Kelley asks us to disregard Illinois law about the common carrier exception and simply apply section 2-101(b) of the Act as it is expressly and plainly written. She argues that RMTD admitted that it was a common carrier and that the accident occurred while Bonham was operating its bus as a common carrier, and therefore Bonham and RMTD cannot utilize the one-year statute of limitations to defeat her claim. For the reasons previously outlined in this order, we decline Kelley's suggestion and follow the applicable legal precedent.

¶ 29 CONCLUSION

¶ 30 In answering the certified question, we conclude that given the facts of this case, RMTD qualifies as a "local public entity," and was functioning as a "common carrier" at the time of the accident. Because Kelley was not a passenger of RMTD's bus at the time of the accident, RMTD was not a "common carrier" with respect to her. RMTD is protected by the Tort Immunity Act's one-year statute of limitations. We remand this case to the trial court and direct the court to dismiss Kelley's complaint.

¶ 31 Certified question answered; remanded with directions.