

SUPREME COURT OF RHODE ISLAND

Loretta A. Provost et al. v. Dennis Finlay, as Treasurer of the Town of Smithfield

768 A.2d 1256 (R.I. 2001) · No. No. 99-549-Appeal · Decided April 13, 2001

SUMMARY

The Rhode Island Supreme Court affirmed dismissal of a personal-injury complaint arising from a fall into a manhole because the plaintiff failed to provide the municipality with timely notice under Rhode Island General Laws § 45-15-9. The court held that the statutory notice requirement is a jurisdictional condition precedent that cannot be waived, distinguishing cases involving other municipal presentment requirements.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Williams, C.J.; Lederberg, J.; Bourcier, J.; Flanders, J.; Goldberg, J.
JURISDICTION	Rhode Island
DECIDED	April 13, 2001
DOCKET	No. 99-549-Appeal
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Rhode Island Superior Court dismissing a highway-injury complaint for failure to provide timely statutory notice to the municipality.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Loretta A. Provost et al. v. Dennis Finlay, as Treasurer of the Town of Smithfield

TOPICS

- municipal law
- statute of limitations
- motions to dismiss
- subject matter jurisdiction
- appellate procedure

PRACTICE AREAS

- municipal law
- civil procedure
- torts
- appellate procedure

QUESTIONS PRESENTED

1. Whether the town waived its defense of untimely notice under Rhode Island General Laws § 45-15-9(a) by waiting nearly three years to move for dismissal when the defense had been asserted in its answer.
2. Whether dismissal for failure to provide timely notice under § 45-15-9(a) should have been without prejudice to permit refiling.

HOLDINGS

1. The town did not waive its defense of untimely notice by waiting nearly three years to move for dismissal because it pleaded the defense in its answer, and the notice requirement under § 45-15-9 cannot be waived voluntarily or involuntarily.
2. Failure to provide timely notice under § 45-15-9(a) requires dismissal because the notice is a jurisdictional condition precedent to bringing suit against the municipality.
3. The dismissal was not required to be without prejudice under the savings-statute reasoning of *Blessing* because *Blessing* involved a different statutory presentment requirement under § 45-15-5; the untimely notice under § 45-15-9 was jurisdictional and required dismissal.

KEY QUOTATIONS

“Sufficient notice is a prerequisite to bringing suit against a municipality. The notice requirement may not be waived voluntarily or involuntarily.” (768 A.2d at 1258)

FACTUAL BACKGROUND

Loretta A. Provost alleged that she fell into a manhole while walking on a sidewalk in Smithfield on October 16, 1993. She filed suit on March 22, 1995, seeking damages under Rhode Island General Laws § 45-15-8. She conceded that she did not provide the town notice of her claim until 124 days after the injury, exceeding the sixty-day period in § 45-15-9(a).

PROCEDURAL HISTORY

Provost alleged that she was injured after falling into a manhole on a Smithfield sidewalk and brought an action under Rhode Island General Laws § 45-15-8. The town answered and asserted lack of timely notice as a defense. After discovery, court-annexed arbitration, and unsuccessful settlement negotiations, the town moved to dismiss or alternatively for summary judgment based on the untimely notice. The Superior Court granted the motion, and the Supreme Court of Rhode Island affirmed after a show-cause review.

DISPOSITION

affirmed

CASES CITED

- *Tessier v. Ann & Hope Factory Outlet, Inc.*, 114 R.I. 315, 318, 332 A.2d 781, 782 (1975)
- *Mesolella v. City of Providence*, 508 A.2d 661, 663-67 (R.I. 1986)
- *Lahaye v. City of Providence*, 640 A.2d 978, 979-80 (R.I. 1994)

- Batchelder v. White, 28 R.I. 466, 467, 68 A. 320, 320 (1907)
- Blessing v. Town of South Kingstown, 626 A.2d 204, 204-05 (R.I. 1993)
- Barroso v. Pepin, 106 R.I. 502, 506, 261 A.2d 277, 279 (1970)

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