Circuit Court for Wicomico County
Case No. 22-C-16-001158

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 833

September Term, 2017

TONYA GOWER

v.

BARRY SMITH, et al.

Woodward, C.J.,
Meredith,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: May 23, 2018

Tonya Gower, appellant, filed this negligence action against Barry Smith, Donald Rollyson, and John C. Moses (hereafter referred to as the "Employees"), appellees, in the Circuit Court for Wicomico County, alleging that, due to the negligence of the Employees, she was injured during a boxing component of her training at the Eastern Shore Criminal Justice Academy at Wor-Wic Community College. The circuit court granted summary judgment in favor of the Employees, and this appeal followed.

QUESTIONS PRESENTED

Ms. Gower presents two questions for our review:

> I. Whether The Court Erred In Determining That The Plaintiff, Ms. Gower, Failed to Substantially Comply With the Notice Provisions of the Local Government Tort Claims Act, Codified at Maryland Code, Courts & Judicial Proceedings Article, Section 5-304?
>
> II. Whether The Court Erred In Determining That the Plaintiff, Ms. Gower, Failed To Demonstrate Good Cause To Excuse Or Waive Compliance With The Notice Provisions Of Maryland Code, Courts & Judicial Proceedings Article, Section 5-304?

Because we perceive no reversible error, we will affirm.

BACKGROUND

In July 2013, Ms. Gower, who was an applicant to the Ocean City Police Department, was sent to the Eastern Shore Criminal Justice Academy (the "Academy") at Wor-Wic Community College. As part of her athletic training at the Academy, Ms. Gower was required to participate in a boxing component for which Barry Smith (one of the Employees) was the instructor. Although Ms. Gower was initially excused from participation due to an existing knee injury, she was later medically cleared to participate

in the boxing component. Ms. Gower alleges that, "in order to make-up the missed boxing component, she was required to box 6 to 8 other recruits in succession, two times each." That training occurred on two successive days in August 2013. According to Ms. Gower, on both days, she was struck in the head by a fellow recruit and lost consciousness.

Ms. Gower reported her head injury to the Assistant Director of the Academy, Donald Rollyson (one of the "Employees") on August 21, 2013, the second day of boxing. All recruits are required to report injuries to the Academy, even if the injuries were sustained outside of the Academy in an unrelated setting. Ms. Gower indicated to Rollyson that, since the alleged injury, she felt nauseous, her feet tingled, and she had been seeing blue dots. On the First Report of Injury form, Ms. Gower initially checked a blank indicating that she did not require medical attention for said injuries. But Rollyson crossed out her response and checked the blank indicating that Ms. Gower *did* need medical attention.

Thereafter, Rollyson asked Smith to send him a memo describing the boxing component and the circumstances surrounding Ms. Gower's injury. Smith reported that Ms. Gower's symptoms "came as a surprise to [him] because [he] gave Recruit Gower more breaks to regain her breath and stamina than any of the other recruits." Smith also said he "asked Recruit Gower numerous times if she was okay and was ready to fight. At neither time did Recruit Gower every [sic] reply to me that she was having" the symptoms she had described to Rollyson. Smith "advised Mr. Rollyson that [he]

personally wanted [Ms. Gower] checked out by a doctor due to the symptoms she had related to [Rollyson]."

After the meeting with Rollyson, Ms. Gower went to the emergency room at Peninsula Regional Medical Center. CT scans from her visit show that Ms. Gower had developed a brain bleed and other symptoms of a traumatic brain injury. Ms. Gower returned to the Academy on August 26, 2013, but she did not participate in further athletic training and was required to drop out of the Academy shortly thereafter. In December 2013, Ms. Gower, through legal counsel, filed a claim for workers' compensation from the Town of Ocean City for "a head injury while boxing at the Police Academy" on August 21, 2013.

In January 2014, Ms. Gower was cleared to participate in all physical activity training with no restrictions. She then re-enrolled in the Academy, and signed a document that described the physical training and hand-to-hand combat that were requirements of the class. She signed this document and initialed the following statement: "I certify that I have no medical restrictions and can participate in the above required activities." Ms. Gower completed the training program, including the boxing component, in June 2014 with an 89.23% average grade.

After completing her training program at the Academy, Ms. Gower became an officer with the Ocean City Police Department. During her first three months with the Ocean City Police Department, Ms. Gower received positive evaluations. After nearly a year and a half with the department, however, Ms. Gower was referred to Dr. Jack Leeb

by the Ocean City Police Department so that she could receive a "psychological and fitness for duty examination." Ms. Gower was examined by Dr. Leeb on February 1, 2016. Following the examination, Dr. Leeb opined that, although Ms. Gower is "not mentally ill and is not a danger to herself her others," she exhibits problems "of not being able to make rapid assessments and judgments in emergent situations while working as a sworn police officer." Dr. Leeb further opined:

> In addition, [Ms. Gower's] intermittent cognitive confusion and difficulty retrieving and using words quickly and effectively significantly reduce her ability [to] interact with other people in person or on the radio when she is under stress, increasing the likelihood that she might make an error or miss important cues in her environment. These issues obviously put both Ms. Gower and those around her at some degree of risk and thus, as her field training officer concluded, preclude her from being able to function effectively as a police officer; as a result, Ms. Gower is not fit for duty.

After receiving Dr. Leeb's opinion and evaluation, the Ocean City Police Department terminated Ms. Gower's employment as a police officer, effective March 31, 2016.

On March 2, 2016 — approximately two years and seven months after the date of the boxing injury — counsel for Ms. Gower provided notice by letter of her intent to pursue a claim against Wor-Wic Community College and its employees pursuant to Maryland Code (1973, 2013 Repl.Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-304, also known as the Local Government Tort Claims Act ("LGTCA"). The letter described the circumstances of Ms. Gower's injury that occurred on August 20, 2013, and August 21, 2013, and stated:

> Pursuant to Maryland Code, Courts & Judicial Proceedings Article, § 5-304, this correspondence serves as formal notice to Wor-Wic Community College and its servants, agents, and/or employees that Tonya Gower has a claim against Wor-Wic Community College and its servants, agents, and/or employees as a result of the incident referenced above and described more fully below and the injuries and damages sustained therein.

On August 18, 2016, Ms. Gower filed a Complaint in the Circuit Court for Wicomico County, asserting negligence claims against Smith, Rollyson, and John Moses, the Director of the Academy. The Complaint sought compensation for her 2013 head injury sustained during the boxing component of the Academy. The Employees responded to the complaint on September 20, 2016. On April 12, 2017, the Employees filed a motion for summary judgment arguing that, because Ms. Gower failed to provide timely notice of her claim to Employees pursuant to CJP § 5-304, the Complaint must be dismissed. Ms. Gower filed a response to the Employees' motion for summary judgment. Ms. Gower argued that she substantially complied with the notice requirement under CJP § 5-304. In the alternative, Ms. Gower moved for the court to "find good cause to excuse noncompliance with the [Local Government Tort Claims Act] notice requirement and waive the notice requirement in this case . . . ."

On June 8, 2017, the circuit court filed an Opinion and Order granting the Employees' motion for summary judgment. First, the circuit court noted that the parties agree Ms. Gower failed to strictly comply with the statute. The circuit court observed that "the letter that the parties agree would strictly comply with the notice requirement was not sent until March 2, 2016," which, the circuit court recognized, was "well beyond the statutory period for giving notice." Citing *Ellis v. Housing Authority of Baltimore*

City, 436 Md. 331, 343 (2013), the circuit court held that Ms. Gower also failed to substantially comply with the LGTCA's notice requirement. According to the circuit court, Ms. Gower was unable to provide evidence that the purported notice (*i.e.*, the First Report of Injury) fulfilled the fourth factor in determining substantial compliance—*i.e.*, whether the purported notice fulfills the LGTCA's notice requirement's purpose. The circuit court noted that the LGTCA's purpose is "to apprise a local government of its possible liability at a time when it could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished," so that the local government could determine its potential liability. *Ellis*, *supra*, at *id*. (quoting *Faulk v. Ewing*, 371 Md. 284, 298-99 (2002)). The circuit court explained:

> In the instant case, [Ms. Gower] filed a First Injury Report [sic] on August 21, 2013, which described what happened. This report does not refer to Smith, but simply states that [Ms. Gower] was "boxing." Although Smith was required to write an account of what happened, his report in no way reflected the type of investigation required for a potential tort claim. Not only were the Defendants not on immediate notice of a claim, [Ms. Gower's] subsequent actions did not reflect any interest in pursuing a claim. She returned to work two days after the injury. She was later cleared to return to training with no restrictions. On January 6, 2014, five months after the injury, the Plaintiff did in fact return to training and certified that she had no medical restrictions. She then completed the course, including the boxing portion, which was again taught by Smith. Nothing in the facts demonstrate that the Defendants should have been on notice of potential tort liability.
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> Further, with respect to the First Report of Injury, the Academy requires trainees to submit injury reports for every injury, even if the injury occurred outside of training. . . . [I]t would be unreasonable to expect that every First Report of Injury be investigated as a potential tort claim. For the foregoing reasons, the Court finds that the Plaintiff did not substantially comply with the notice requirements of the LGTCA.

The circuit court also ruled that good cause did *not* exist to waive Ms. Gower's failure to either strictly or substantially comply with the LGTCA's notice requirement. According to the circuit court, there was no indication that Ms. Gower "had significant cognitive difficulties during the 180 days following her injury" which would have inhibited her ability to "comply with legal requirements and deadlines." The circuit court explained:

> The record shows that [Ms. Gower] missed two days of work after the injury. She filed a worker's [sic] compensation claim in December 2013 and retained counsel to assist her. She re-enrolled in the Academy in January 2014 with no medical restrictions. Her records from the Academy indicate that she was performing well above the minimum requirements, scoring greater than 90% in several areas involving complex thought . . . . After successfully graduating . . . [Ms. Gower] worked at [the Ocean City Police Department] for approximately two years prior to her termination, where she received a positive evaluation for the time period of May 19, 2014 to August 29, 2014.

The circuit court also rejected Ms. Gower's argument that good cause should be found because she was not advised of the requirement to timely report her notice of intent to pursue a tort claim because, the court explained, "while ignorance of the notice requirement of the LGTCA may be a factor in considering whether good cause has been shown, it is not by itself sufficient."

Ms. Gower noted a timely appeal. Additional facts relevant to this appeal are discussed in greater detail below.

STANDARD OF REVIEW

In *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 483 (2017), the Court of Appeals summarized the standard of review applicable to a circuit court's grant of a motion for summary judgment:

> A court may grant summary judgment in favor of the moving party "**if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law**." Md. Rule 2–501(f).
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> **The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal**. In reviewing a grant of summary judgment under [Maryland] Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law. We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.
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> *Boland v. Boland*, 423 Md. 296, 366, 31 A.3d 529 (2011) (quoting *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 479, 914 A.2d 735 (2007)).

(Emphasis added.)

DISCUSSION

Ms. Gower raises two separate questions that could be paraphrased: (1) Did the circuit court err in granting the Employees' motion for summary judgment on the basis that Ms. Gower failed substantially comply with the notice requirement of the LGTCA; and (2) was it an abuse of discretion for the court to conclude that good cause did not exist to excuse and waive the notice requirement?

I. Substantial compliance with CJP § 5-304.

At oral argument in this Court, counsel for Ms. Gower expressly conceded that she did not strictly comply with the LGTCA's statutory notice requirement. But, Ms. Gower contends that the circuit court erred in its determination that she failed to substantially comply with CJP § 5-304's notice requirement. She argues that the circuit court "erroneously liken[ed] the present matter to *Wilbon v. Hunsicker*, 172 Md. App. 181 (2006), rather than *Faulk v. Ewing*, 371 Md. 284 (2002)." The Court of Appeals's decision in *Faulk*, Ms. Gower argues, is "more akin to the factual circumstances of the present matter: the notice to the Appellees triggered an investigation which was an unusual course of conduct for the Appellees to take when a simple injury occurs." She further contends that, as a result of her reporting of the injury to Assistant Director Rollyson, the Employees "had notice of [their] potential liability; made their own determination that they were not liable; and continued their practice as usual, deciding against the need for any remedial safety measures." Therefore, Ms. Gower argues, the First Report of Injury served as notice to the community college and substantially complied with the LGTCA.

The Employees, on the other hand, argue that the circuit court correctly determined that Ms. Gower failed to substantially comply with the LGTCA's notice requirement under CJP § 5-304. They assert that the "mere completion of a First Injury Report [sic] does not equate to substantial compliance" because it "fails to set out what happened, who may be liable and how." The Employees contend that, should this Court

find that a First Report of Injury constitutes substantial compliance, we would "destroy[] the very purpose of the notice requirement—to protect counties from meretricious claims and exaggerated claims by providing a mechanism to be advised of possible liability at a time when [they] could conduct [their] own investigation . . . ."

The LGTCA requires that, as a condition precedent to maintaining a tort action against a local government or its employees, a potential claimant must comply with the LGTCA's notice requirement pursuant to CJP § 5-304(b), which currently states in relevant part:

> (b)(1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 1 year after the injury.[1]
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> (c)(1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.
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> * * *
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> (4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

CJP § 5-301(d)(9) provides that a "community college or board of trustees for a community college established or operating under Title 16 of the Education Article, not

[1] As the Employees point out in their brief, "[a]t the time of this alleged incident, an injured party was required to give notice of a potential suit within 180 days, or six months, of the injury. *See Moore v. Norouzi*, 371 Md. at 167, 807 A.2d at 639." Regardless, any notice by Ms. Gower which would have satisfied the express notice requirement of CJP § 5-304 was sent well beyond the statutory period, as express notice of suit was not provided until two years and seven months after the alleged injury.

including Baltimore City Community College" is considered a "local government" within the scope of the LGTCA. Wor-Wic Community College operates under Title 16 of the Education Article and, according to Maryland Code (1978, 2014 Repl.Vol.), Education Article ("EA"), § 16-305(b)(10)(vii), is considered a "[s]mall community college."

Even if a plaintiff fails to strictly comply with the statutory notice requirement, however, case law provides that a suit may proceed if a court determines that the plaintiff substantially complied with the notice requirement. *See Ellis*, *supra*, 436 Md. at 342-43. In *Ellis*, the Court of Appeals detailed four necessary factors which a plaintiff must satisfy in order to demonstrate substantial compliance with CJP § 5-304:

> Even if a plaintiff does not strictly comply with the LGTCA notice requirement, a plaintiff substantially complies with the LGTCA notice requirement where: **(1) the plaintiff makes "some effort to provide the requisite notice"; (2) the plaintiff does "in fact" give some kind of notice; (3) the notice "provides . . . requisite and timely notice of facts and circumstances giving rise to the claim"; and (4) the notice fulfills the LGTCA notice requirement's purpose**, which is
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> > to apprise [the] local government of its possible liability at a time when [the local government] could conduct its own investigation, *i.e.*, while the evidence was still fresh and the recollection of the witnesses was undiminished by time, sufficient to ascertain the character and extent of the injury and [the local government's] responsibility in connection with it.
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> *Faulk*, 371 Md. at 298–99, 808 A.2d at 1272–73 (ellipsis in original) (citations and internal quotation marks omitted).

(Emphasis added.)

The letter that was belatedly sent by Ms. Gower's counsel on March 2, 2016, is clearly not eligible to be considered for substantial compliance because, as noted in the

third factor in *Ellis*, the plaintiff must have provided "timely notice." *See also Ransom v. Leopold*, 183 Md. App. 570, 584 (2008) ("[S]ubstantial compliance exists when timely notice has been given in a manner that, although not technically correct, nevertheless has afforded actual notice of the tort claim or claims to the local government."). The only notice of any sort provided by Ms. Gower to anyone within 180 days was the First Report of Injury submitted to Assistant Director Rollyson on August 21, 2013. But the limited information contained in that report did not fulfill the purpose of the LGTCA's notice requirement.

As the Court of Appeals explained in *Faulk*, *supra*, 371 Md. at 308, "[t]he touchstone of substantial compliance is whether the alleged 'notice' was sufficient to fulfill the purpose of the requirement." There are two notable Court of Appeals cases in which the Court held that the plaintiff substantially complied with CJP § 5-304's notice requirement. First, in *Faulk*, the plaintiff (Faulk) was involved in a motor vehicle accident with an employee of the Easton Utilities Commission, which was operated by the Town of Easton. *Id*. at 287. The Director of Safety for the Easton Utilities Commission was called to the scene to investigate the accident. *Id*. at 287-88. Counsel for Faulk sent a letter providing written notification of the accident to the Town of Easton's private insurer later that month and advised the insurer of the claim his client had against the Town of Easton. *Id*. The letter specifically advised the insurance company "that this office represents [Faulk] in the matter of personal injuries and/or property damage sustained as the result of being involved in an accident with your

insured on the above captioned date," and requested that the insurer "acknowledge coverage in this matter." Less than two weeks later, the insurance company denied Faulk's claim. Thereafter, Faulk filed suit in the District Court of Maryland for Talbot County. *Id*. At trial, the Town's attorney argued, for the first time, that Faulk's letter to the Town's insurer did not constitute sufficient notice to pursue a claim under the LGTCA. The District Court judge disagreed, and entered judgment in favor of Faulk.

The Town appealed to the Circuit Court for Talbot County. The circuit court reversed the District Court, and found that the notice to the town's insurer was not notice to the town. Furthermore, the circuit court found that good cause had not been shown to excuse Faulk's non-compliance. But the Court of Appeals issued a writ of *certiorari*, and reversed the circuit court.

The Court of Appeals determined that, despite the minimal details in Faulk's letter to the insurer, he had substantially complied with the LGTCA's notice requirement. First, plaintiff's letter to Easton's private insurer represented "'some effort' to provide notice." *Id*. at 307. According to the Court, the letter also "contain[ed] sufficient information about the accident to enable a timely investigation to occur and **notif[ied the insurer] that [plaintiff] expected some type of compensation from its insured, the Town of Easton**, for his personal injuries and property damage." *Id*. at 307-08 (emphasis added). The Court determined that the notice fulfilled the purpose of the notice requirement in the LGTCA: "For a local government, such as the Town of Easton,

insured by a private insurance carrier . . . the underlying purpose of § 5-304 is satisfied by the notice to the insurer on the facts of this case." *Id*. at 308.

Because the party Faulk communicated with was, in fact, the specific party tasked with reviewing and investigating tort claims of the variety Faulk intended to assert, and the notice communicated a claim for compensation, *Faulk* is inapposite to the facts of Ms. Gower's case.

The Court of Appeals reached a similar result in *Moore v. Norouzi*, 371 Md. 154, 178-79 (2002). In both of the underlying cases before the Court in *Moore*, "the petitioners were injured in an accident, in which an employee of Montgomery County was involved and, according to petitioners, that employee's negligence caused." *Id*. at 159. Both plaintiffs failed to send notice of the suit to the County Executive as required under the LGTCA, but one of the plaintiffs was contacted by the County's claims administer directly and one contacted the Division of Risk Management directly. *Id*. at 159; 162; 164. In each instance, information was supplied by the plaintiff which apprised either the County or its claims administrator of the facts and circumstances giving rise to the potential claim. The Court of Appeals determined, *id*. at 178-79, that both plaintiffs substantially complied with the LGTCA:

> As indicated, **the Mendelsons contacted the Division of Risk Management directly, supplying the necessary information. Thus, the very division of County government responsible for the processing and handling of tort claims against the County acquired on the day after the accident actual knowledge of the accident and the claim and its basis.** Moreover, within 8 days of the accident, the County's claims administrator, having already been apprised of the Mendelson claim by Risk Management, received notice from the Mendelsons, as well. The

> County, accordingly, was able at the earliest moment to conduct its investigation. The purpose of requiring notice was fulfilled.
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> The same result obtains with respect to the Moore claim. **Within two or three days of the accident, he was contacted by a representative of Trigon, with whom he discussed the accident.** There is no contention that Moore did not give that representative the information required by § 5–304(b)(3). Given its relationship with Trigon and the extent of its control, here, too, the County received early actual knowledge of Moore's claim as to enable it, at the earliest moment, to investigate it.

In coming to its conclusion that the plaintiffs substantially complied with CJP § 5-304, the Court of Appeals elaborated on the requirement that the claimant provide notice of a tort claim:

> We agree with the Amicus Maryland Trial Lawyers Association, "[s]ubstantial compliance turns on ensuring that the County [or local government] has sufficient actual notice to perform a proper and timely investigation" (amicus curiae brief in No. 121, at 30). Consequently**, where the tort claimant provides the local government, through the unit or division with the responsibility for investigating tort claims against that local government, or the company with whom the local government or unit has contracted for that function, the information required by § 5–304(b)(3) to be supplied, who thus acquires actual knowledge within the statutory period, the tort claimant has substantially complied** with the notice provisions of the LGTCA. This test is fair and has the advantage of taking account of the reality of how tort claims actually are handled.

Id. at 178 (emphasis added).

But, in *Moore*, unlike the present case, the party responsible for reviewing the "tort claims" against the County was the party which was given notice of the plaintiff's tort claim. In this case, Ms. Gower did not establish that any of the Employees were the individuals responsible for reviewing or administering tort claims against the Academy.

Since the Court of Appeals's decisions in *Faulk* and *Moore*, a number of cases have held that the plaintiff's efforts did *not* constitute substantial compliance with the notice requirement. For example, in their brief, the Employees cite *Wilbon v. Hunsicker*, 172 Md. App. 181 (2006), to support their contention that Ms. Gower failed to substantially comply with the LGTCA's notice requirement. In *Wilbon*, Joseph Wilbon was arrested for attempted theft of a vehicle and taken to Central Booking. *Id*. at 187. While Wilbon was being booked at the station, officers noticed that he was unresponsive. The EMT on duty directed that Wilbon be taken to a hospital. *Id*. at 186-87. Wilbon was taken to the emergency room at Mercy Hospital, but he had a seizure and died as a result of "cardiac arrhythmia associated with atherosclerotic cardiovascular disease and past cocaine use." *Id*. at 187.

Four days after Wilbon's death, within the statutory notice period, his mother, Ms. Jackson, submitted a "Statement of Incident" to the Civilian Review Board in which she described the factual circumstances leading to her son's death. *Id*. at 191-92. Her statement "sparked an investigation by the Internal Investigative Division ("IID") of the Baltimore City Police Department ("BCPD")." *Id*. at 192.

More than 180 days after Wilbon's death, Ms. Jackson mailed, via certified mail, a "Notice of Intent to File Suit" to the Maryland State Treasurer, the Comptroller of the Treasury, and the Commissioner of the Baltimore City Police Department. That letter informed the recipients that Ms. Jackson "intend[ed] to file a lawsuit . . . arising out of an incident occurring June 5, 2000, in Baltimore, Maryland," and generally described the

incident and the nature of the claim. The letter purported to provide notice "pursuant to the Maryland/Local Government Tort Claims Act." A claims adjuster responded to Ms. Jackson's letter and opined that the State was not at fault. The adjuster advised Ms. Jackson that she should pursue her claim with the Baltimore City Police Department.

A year after Wilbon's death, the attorney for his estate mailed and hand-delivered to the City Solicitor a "Notice of Claim Form" which was an attempt to provide notice pursuant to CJP § 5-304. *Id*. at 193.

Nearly three years following Wilbon's death, Wilbon's daughter filed a complaint in the Circuit Court for Baltimore City against the arresting officers. Therein, she alleged various torts, including that Wilbon's rights under Articles 24 and 26 of the Maryland Declaration of Rights had been violated. The officers filed a motion to dismiss based on the plaintiff's apparent lack of strict or substantial compliance with the statutory notice requirement provision of CJP § 5-304. *Id*. at 187-88. The circuit court denied this motion, as well as a motion for summary judgment that raised the notice issue, and a motion raising a similar argument filed after the jury returned a verdict for Wilbon's estate.

On appeal, this Court reversed the circuit court and found that the plaintiff's "Statement of Incident" to the Civilian Review Board did *not* substantially comply with the LGTCA's notice requirement because it prompted a type of investigation that was different from one involving tort claims. We explained, *id*. at 203-05:

> As in *White,* "**[t]he content** of [the] complaint **pertained to [an] allegation of police brutality, not to tort claims** arising from such conduct." 163 Md.

> App. at 147, 877 A.2d 1129. **More importantly, Jackson did not provide notice of her claim "to an entity with responsibility for investigating tort claims lodged against the County."** *Id.* As previously stated, the CRB is not an agency of the City of Baltimore or the BCPD and is charged with the responsibility of advising the Police Commissioner regarding matters of police discipline arising out of alleged misconduct. The assistant city solicitor assigned as staff to the CRB is not an agent of the City or the BCPD authorized to receive notice of tort claims and, in fact, has never received any such claim.
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> Finally, as in *White*, **Jackson's complaint prompted an investigation that was vastly different from an investigation of a tort claim for damages.** The BCPD conducted a dual-natured investigation, involving both the Homicide Unit and the IID. The purpose of this investigation was to determine whether a crime had been committed and whether the officers had violated departmental rules and standards of behavior. **By contrast, an investigation into a tort claim for damages involves different issues, including, among other things, legal defenses, the nature and extent of the actual injuries sustained, the causal relationship of the injuries to the alleged misconduct, the likelihood of an award of compensatory and/or punitive damages, the necessity and cost of expert testimony, and litigation strategy.** Therefore, as defendants properly state in their brief, "[j]ust as the investigation in *White* did not suffice as a claim investigation, the investigation in the present case did not fulfill all of the purposes of the LGTCA's notice requirement."

(Emphasis added.)

We further commented: "It would be a totally unreasonable burden to require a local police department or other governmental agency to conduct a tort claim investigation on every complaint of police misconduct because of the mere possibility that the complainant may file a lawsuit for tort damages based on that conduct." *Id*. at 204-05.

A few years later, this Court decided a similar case involving a question of substantial compliance. In *Halloran v. Montgomery County Department of Public*

Works, 185 Md. App. 171, 177 (2009), plaintiff Halloran fell and was injured when she tripped on irregular pavement while walking in a crosswalk in Montgomery County on October 18, 2004. Four days after her fall, Halloran sent a letter to the Montgomery County Department of Public Works and Transportation which informed the Department as to the details of her fall, and the pavement conditions which she alleged caused the fall. *Id*. at 178. She did not explain in her letter that she intended to bring a claim with regard to this accident; rather, she stated: "Please have this pavement repaired immediately . . . . I do not want anyone else to have to suffer the injuries I've sustained or worse. Thank you for your immediate attention to this matter." *Id*. at 178-79. The Department responded and thanked Halloran for her letter. It also stated to Halloran that they "'agree[d] that this [was] a dangerous situation'" and that they "'regret [the] injury.'" *Id* at 179.

Halloran sent a "Notice of Claim Form" to the State (but not Montgomery County) on October 25, 2004, wherein Halloran reiterated the facts of the accident and made clear that she was seeking payment for her medical bills. *Id*. at 179. The State later responded that it had investigated the matter and determined it was not at fault. The State suggested that Halloran refer her claim to Washington Gas. *Id*. By letter dated July 7, 2005, counsel for Halloran "informed the Montgomery County Executive of his representation of Halloran and recited the basic facts of Halloran's injury." *Id*. at 179-80. The County Executive responded that the County had forwarded the matter to its claims adjuster, but also noted that the "notice of claim may be untimely under State law." *Id*. at 180. The

claims adjuster denied Halloran's claim, and Halloran filed suit against the County, Washington Gas, and the Washington Suburban Sanitary Commission, alleging tort claims. *Id*. at 180. The County moved to dismiss or in the alternative for summary judgment on the grounds that Halloran failed to comply with the LGTCA's notice requirement. The circuit court agreed and granted the County's motion for summary judgment. *Id*.

On appeal, this Court held that the circuit court correctly concluded that Halloran had not substantially complied with the notice requirement of the LGTCA. We stated:

> The purpose of Halloran's October 22, 2004 letter to DPWT was to inform DPWT of "a serious hazard" and to request that the road be "repaired immediately" to protect others from injury. **Nowhere in the letter did Halloran state that she had a "claim" against the County. Although she noted her injuries, she made no allegation that the County was responsible for damages resulting from those injuries. In short, Halloran requested no relief other than that the condition of the road be repaired.** Furthermore, the letter was not directed to the proper party under the LGTCA, namely the County Executive. Instead, the letter was addressed to the "Highway Maintenance" division of DPWT. No other entity, particularly the county council, county law office, or "corporate authority," was copied on the letter. In handling the letter, DPWT did not forward Halloran's letter to any of these entities or copy them on DPWT's response. Consequently, the letter failed to inform "the *proper officials* that [Halloran] [was] pursuing a claim." *Bibum,* 85 F.Supp.2d at 564 (emphasis added). **Therefore, based on this letter, the County had no reason to, and did not in fact, start "an investigation into a tort claim for damages** involv[ing] . . . legal defenses, the nature and extent of the actual injuries sustained, the causal relationship of the injuries to the alleged misconduct, the likelihood of an award of compensatory and/or punitive damages, the necessity and cost of expert testimony, and litigation strategy." *Wilbon,* 172 Md. App. at 204, 913 A.2d 678. **Accordingly, Halloran's October 22, 2004 letter to DPWT did not "apprise [the County] of its possible liability at a time when it could conduct its own investigation,"** *Faulk v. Ewing,* 371 Md. 284, 298, 808 A.2d 1262 (2002) (internal quotations

> omitted), **and thus did not substantially comply with the notice provision of the LGTCA.**

Id. at 187-88 (emphasis added).

In the present case, we hold that Ms. Gower failed to substantially comply with the LGTCA's notice requirement. Although Ms. Gower filed a First Report of Injury with Assistant Director Rollyson within the relevant notice period, the report failed to apprise the Employees of their potential liability. The report did not indicate Ms. Gower intended to file a claim against the college or its employees. The body of the report merely explains: "[Ms. Gower] WAS BOXING, HEAD INJURY, DIDN'T WANT TO GO TO DOCTORS, NAUSEA, SEEING BLUE DOTS, TINGLING OF THE FEET." Smith provided a brief memo to Rollyson which summarized the factual circumstances surrounding Ms. Gower's injury, but this memo was not an "investigation" into the potential tort liability of the Employees. *See Wilbon*, *supra*, 172 Md. App. at 204 ("[A]n investigation into a tort claim . . . involves different issues, including . . . legal defenses, the nature and extent of the actual injuries sustained, the causal relationship of the injuries to the alleged misconduct, the likelihood of an award of compensatory and/or punitive damages . . . ."). Moreover, this type of report is regularly submitted by students at the Academy and does not serve the same purpose as the notice required by the LGTCA; all recruits are required to submit injury reports for *any* injury sustained while that trainee is a member of the Academy, whether or not the injury occurs *at* the Academy. It would be "a totally unreasonable burden" upon the Academy to require that

every First Report of Injury filed by a trainee be investigated as a potential tort claim. *See Wilbon*, *supra*, 172 Md. App. at 204-05.

In *Ellis*, *supra*, 436 Md. at 346 n.8 (emphasis omitted), the Court of Appeals stated: "[W]e hold that, to substantially comply with the LGTCA notice requirement, a plaintiff must indicate — either explicitly or implicitly — that the plaintiff intends to sue the local government regarding an injury." The First Report of Injury filed by Ms. Gower contains no allegations that the Academy was in any way responsible for her injury. Nor does the report indicate — even implicitly — that she expected any sort of compensation or intended to file a claim against any party for tort damages in connection with her injury. *See Faulk*, *supra*, 371 Md. at 307-08 (holding that Faulk's letter to the insurer substantially complied with the LGTCA because it "contain[ed] sufficient information about the accident" *and* "notif[ied the insurer] that [plaintiff] expected some type of compensation from its insured"); *Halloran*, *supra*, 185 Md. App. at 187 ("Although [Halloran] noted her injuries [in her letter], she made no allegation that the County was responsible for damages resulting from those injuries. In short, Halloran requested no relief . . . .").

Finally, Ms. Gower's actions following her injury fail to lend credence to her assertion that the First Report of Injury was sufficient to provide the Academy with notice of her intent to pursue a tort claim. When she filled out the First Report of Injury, Ms. Gower herself indicated that she did not believe that she needed medical attention. It was not until Assistant Director Rollyson crossed out this selection and noted that Ms.

Gower should receive medical attention that Ms. Gower sought any medical opinion at all in connection with her injury. After her trip to the emergency room, Ms. Gower missed only two days at the Academy prior to returning. Upon her return, she participated in all activities except for the boxing component of the Academy. Four months later, in January 2014, Ms. Gower was cleared by two doctors to return to the physical training component of the Academy with no restrictions. In the process of re-enrolling in the Academy, Ms. Gower signed a statement certifying: "I have no medical restrictions and can participate in the above required activities [including hand-to-hand combat]." Thereafter, Ms. Gower successfully completed the Academy with a cumulative average score of 89.23% (75% is a passing score). In doing so, she again participated in and successfully completed the boxing component of the Academy. Ms. Gower was subsequently hired by the Ocean City Police Department and received positive evaluations for her first few months on the job. Based on Ms. Gower's conduct, the Academy and the Employees would have had no reason to pursue an investigation as to liability notwithstanding her filing of the First Report of Injury.

Consequently, the First Report of Injury and the brief investigation that followed "did not suffice as a claim in the investigation," and therefore, did not serve as substantial compliance with the LGTCA's notice requirement. *See Wilbon*, *supra*, 172 Md. App. at 204.

II. "For good cause shown"

Ms. Gower contends that, even if her notice was inadequate, good cause exists to waive the LGTCA's notice requirement. CJP § 5-304(d) provides for a waiver of the notice requirement in the event that a plaintiff demonstrates good cause for said waiver:

> (d) Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

In the circuit court, Ms. Gower argued that good cause should excuse her noncompliance because: 1) she filed a First Report of Injury and "had no reason to believe a more formal notice was required"; 2) the "nature and extent of Ms. Gower's brain injury made it more difficult for her to investigate and comply with legal requirements and deadlines"; and 3) Ms. Gower was "never advised regarding the necessity of filing an additional notice regarding her injury." In her brief in this Court, she additionally contends that the circuit court should have considered her deposition testimony — wherein she indicated that she was under the impression that Wor-Wic College automatically filed a claim on her behalf for injuries — as evidence of good cause. In addition, she believes the circuit court "completely fail[ed] to consider Dr. Williamson's report in assessing [her] cognitive difficulties within the first 180 days following her injury."[2]

[2] With respect to Ms. Gower's argument that the circuit court failed to consider Dr. Williamson's affidavit regarding his evaluation of her, we note that the fact that the circuit court did not explicitly refer to Dr. Williamson's report in its opinion does not continued…

The Employees, on the other hand, contend that Ms. Gower has failed to show good cause to excuse the LGTCA's notice requirement. In addition to citing the circuit court's reasoning, they also point out that Ms. Gower had an attorney who was representing her in connection with a workers' compensation claim within the 180-day notice period.[3] The Employees also argue that the doctors who did see Ms. Gower during the 180-day period following August 21, 2013, "opined that she was capable of being a police officer," and that her performance in the Academy following the injury and subsequent employment with the Ocean City Police Department never provided the Academy notice that she intended to bring a claim.

continued…
mean that the circuit court failed to consider the report. Moreover, Dr. Williamson's report itself fails to shed light on whether Ms. Gower's injury precluded her from complying with the notice requirement of the LGTCA during the relevant notice period. Dr. Williamson's report merely states that Ms. Gower "has significant cognitive and functional impairments," and that "her impairments caused her to be slow to process and respond to evolving legal exigencies and would make her likely to miss deadlines, including in this initiative to support legal proceedings related to her injuries." This opinion makes no reference to the 180-day notice period following Ms. Gower's injury and, therefore, would not have provided the circuit court with any basis to find that Ms. Gower's injuries precluded her from strictly or substantially complying with the LGTCA's notice requirement.

[3] In their brief, the Employees state that the lawyer representing Ms. Gower in connection with her workers' compensation claim during the notice period was representing her in connection with a "claim related to her knee injury." But, at oral argument, counsel for the Employees confirmed that Ms. Gower, through counsel, filed a workers' compensation claim in December 2013 seeking compensation for the August 2013 boxing injury.

In *Heron v. Strader*, 361 Md. 258, 272 (2000), the Court of Appeals surveyed case law from other jurisdictions and compiled a list of factors to consider in determining whether good cause exists:

> While courts generally consider a combination of factors, circumstances that have been found to constitute good cause fit into several broad categories: [1] excusable neglect or mistake (generally determined in reference to a reasonably prudent person standard); [2] serious physical or mental injury and/or location out-of-state; [3] the inability to retain counsel in cases involving complex litigation; and [4] ignorance of the statutory notice requirement.[4]

(Citation omitted.)

We agree with the Employees that the circuit court did not abuse its discretion in concluding that Ms. Gower failed to demonstrate good cause sufficient to waive the LGTCA's notice requirement. With regard to Ms. Gower's first argument — that she had no reason to believe that a more formal notice of a claim was required beyond the First Report of Injury — we fail to see how Ms. Gower could have operated under such a belief in light of the fact that the report she provided made no mention whatsoever of her intent to pursue a claim of any sort against any party, let alone a tort claim against the Employees.

Similarly, the evidence in the record regarding the severity of Ms. Gower's brain injury during the 180-days following the incident was not sufficient to compel the circuit court to conclude that the injury prohibited Ms. Gower from complying with the

[4] In *Hargrove v. Mayor and City Council of Baltimore*, 146 Md. App. 457, 463-64 (2002), this Court clarified, however, that ignorance of the law *alone* may not constitute good cause.

LGTCA's notice requirement. As the circuit court pointed out, Ms. Gower filed a workers' compensation claim in December 2013 — approximately four months *after* the date of her head injury — seeking compensation for this very same head injury. This undisputed fact supported the circuit court's conclusion that Ms. Gower was capable of understanding the concept of consulting an attorney for filing a claim in connection with an injury sustained as a recruit in the Academy. Moreover, it appears that Ms. Gower *did* timely retain counsel to assist her with the head injury claim. In January 2014, Ms. Gower reenrolled in the Academy and completed her training with an 89.23% course average. Thereafter, she became an officer with the Ocean City Police Department, and she received positive evaluations for her first four months on the job. And, although Dr. Leeb's report two years later indicated that Ms. Gower exhibited some level of cognitive impairment in 2016, his evaluation occurred well outside of the statutory notice period and does not provide evidence that Ms. Gower's injury affected her cognitive functions during the relevant notice period. Consequently, it was not an abuse of discretion for the circuit court to conclude that Ms. Gower's injury was not so severe that she was unable to comply with the LGTCA's notice requirement.

Ms. Gower's sole remaining argument is that she was simply unaware of the LGTCA's notice requirement. As mentioned above, however, this Court has held that ignorance of the notice requirement alone is an insufficient basis for a circuit court to make a finding of good cause to waive the notice requirement. *See Ransom*, *supra*, 183 Md. App. at 586-87; *Hargrove, supra*, 146 Md. App. at 463-64.

Consequently, we conclude that the circuit court did not abuse its discretion in determining that Ms. Gower did not show good cause to excuse her lack of compliance with the notice requirement of the LGTCA.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.