

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 3, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1018

Cir. Ct. No. 2014CV213

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**ESTATE OF CLARENCE COLLIS BY ADMINISTRATOR AUDREY COLLIS,
AUDREY COLLIS AND DUSTIN PICKARD,**

PLAINTIFFS-APPELLANTS,

V.

**HAZEL GREEN RESCUE SQUAD, INC., RYAN FIELDS AND TRI COR,
INC.,**

DEFENDANTS-RESPONDENTS,

ABC INSURANCE COMPANY AND XYZ INSURANCE COMPANY,

DEFENDANTS.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Audrey Collis, Dustin Pickard and the Estate of Clarence Collis appeal a summary judgment order dismissing their wrongful death action against the Hazel Green Rescue Squad, Inc., Ryan Fields and Tri Cor, Inc.¹ The Estate contends that the circuit court erred by granting summary judgment to Hazel Green based on the Estate’s failure to provide timely statutory notice of its claim. It argues that it was not required to provide notice of its claim because, it asserts, the Hazel Green Rescue Squad is not a political corporation or governmental subdivision or agency. For the reasons set forth below, we disagree. We affirm.

¶2 The Estate filed this wrongful death action against Hazel Green in May 2014. The complaint alleged the following. On October 17, 2012, Clarence Collis suffered a medical emergency at his home and his wife, Audrey Collis, called 911 for assistance. Hazel Green Rescue Squad responded and loaded Clarence Collis into an ambulance. Fields drove the ambulance away from the Collis residence. The ambulance rolled over and Clarence Collis was thrown into a ditch. Clarence Collis was subsequently pronounced dead at the hospital.

¶3 Hazel Green moved for summary judgment. It argued that the Estate failed to provide the Hazel Green Rescue Squad and Fields with a notice of claim as required under WIS. STAT. § 893.80(1d) (2013-14).² Hazel Green argued that the Hazel Green Rescue Squad is a political corporation or governmental

¹ For ease of reading, we refer to the appellants collectively as “the Estate” and the respondents collectively as “Hazel Green.” When referencing a party in the party’s individual capacity, we use that party’s full name.

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

subdivision of the municipalities that it is organized and funded to serve, that its ambulance is a municipal vehicle, and that Fields was its volunteer at the time of the accident, triggering the notice of claim statute. *See* WIS. STAT. §§ 345.05 and 893.80. Hazel Green provided supporting affidavits averring that the Hazel Green Rescue Squad is a nonprofit organization that provides ambulance services for a group of neighboring municipalities; that all of its drivers are volunteers; that each participating municipality pays for a portion of the organization's equipment and operating costs; that the ambulance involved in this case is owned by the Hazel Green Rescue Squad; and that the Estate did not provide a timely notice of claim.

¶4 The Estate opposed summary judgment, arguing that the Hazel Green Rescue Squad is not a political corporation or governmental subdivision. The circuit court granted summary judgment to Hazel Green and dismissed the Estate's action. The Estate appeals.

¶5 The Estate argues that Hazel Green is not entitled to summary judgment. It asserts that it was not required to provide notice of its claim because the Hazel Green Rescue Squad is not a political corporation or governmental subdivision entitled to notice of claim under WIS. STAT. § 893.80. It argues that the Hazel Green Rescue Squad's articles of incorporation do not indicate that it has a political or public purpose and do not require that the corporate directors be elected officials or that they represent any particular municipalities. It also points out that a "volunteer fire company" is specifically listed as an entity entitled to notice of claim under WIS. STAT. § 893.80(1d), while a "rescue squad" is not. Thus, the Estate asserts, there was no indication to the Estate that the Hazel Green Rescue Squad is a political corporation or governmental subdivision requiring notice of claim. It asserts that it was therefore not required to provide notice to maintain this action. We disagree.

¶6 We independently review a circuit court's order on summary judgment, using the same methodology as the circuit court. *Malzewski v. Rapkin*, 2006 WI App 183, ¶11, 296 Wis. 2d 98, 723 N.W.2d 156. The purpose of summary judgment is “to avoid trials where there is nothing to try.” *Rollins Burdick Hunter of Wis., Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). Summary judgment is properly granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶7 Here, there are no genuine issues of material fact. The only issue is the legal question of whether Hazel Green was entitled to statutory notice of the Estate's wrongful death claim following the accident involving the Hazel Green Rescue Squad ambulance.

¶8 Under WIS. STAT. § 345.05(2) and (3), a negligence action against a municipality based on the negligent operation of a motor vehicle owned and operated by the municipality is subject to the notice of claim requirements under WIS. STAT. § 893.80. Under § 345.05(1)(c), a “[m]unicipality” includes any village or town, as well as any “commission formed by a contract under s. 66.0301(2), and, without restriction because of failure to enumeration, any other political subdivision of the state.”

¶9 WISCONSIN STAT. § 66.0301(2) provides that “any municipality may contract with other municipalities ... for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.” Additionally, § 66.0301(2) provides that the section “shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities ... in this state.”

¶10 Towns and villages—which comprise the entities that jointly operate and receive ambulance services from the Hazel Green Rescue Squad—are municipalities, and are authorized to provide ambulance services. *See* WIS. STAT. §§ 66.0301(1)(a) (providing that “municipality” includes any town or village); 60.565 (providing that towns “shall contract for or operate and maintain ambulance services”); 61.64 (providing that villages “may ... operate and maintain ambulances and contract for ambulance service”).

¶11 Under this statutory framework, Hazel Green was entitled to statutory notice of the Estate’s negligence claim. The Estate’s complaint alleged negligence in the operation of an ambulance owned and operated by the Hazel Green Rescue Squad. *See* WIS. STAT. § 345.05(2). The Hazel Green Rescue Squad is a nonprofit corporation organized and maintained by neighboring municipalities to provide authorized ambulance services. The Hazel Green Rescue Squad is therefore a “municipality” for purposes of negligence actions arising from operation of a motor vehicle owned by a municipality. *See id.*; WIS. STAT. §§ 345.05(1)(c); 66.0301(2); 66.0301(1)(a); 60.565; 61.64. Because the Estate was entitled to notice of claim and it is undisputed that the Estate failed to provide notice, the circuit court properly granted summary judgment to Hazel Green.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

