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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG 13 2026

SELDEN JONES
CLERK

SHIRRHONDA WHITTENBERG, as Administrator of the Estate of A'liya Unique Ann Johnson, Deceased,

Plaintiff/Appellant,

vs.

CENTRAL OKLAHOMA TRANSPORTATION AND PARKING AUTHORITY,

Defendant/Appellee.

Case No. 123,562

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE NATALIE MAI, TRIAL JUDGE

AFFIRMED

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OPINION BY DEBORAH B. BARNES, JUDGE:

Plaintiff Shirrhonda Whittenberg, as Administrator of the Estate of A'liya Unique Ann Johnson, Deceased, appeals from the district court's Order filed on October 22, 2025, granting the motion to dismiss filed by Defendant Central Oklahoma Transportation and Parking Authority (COTPA). Based on our review, we affirm.

BACKGROUND

Ms. Whittenberg alleged in her Petition filed in March 2025 that Ms. Johnson was struck by a vehicle owned by COTPA, and negligently driven by an employee of COTPA, resulting in Ms. Johnson's death. She alleged that the incident occurred on January 3, 2024, "on NE 23rd Street and Bartel Road in Oklahoma City, Oklahoma." Ms. Whittenberg alleged the employee violated various duties – such as "the duty to follow the safety rule of keeping a proper lookout" – and that the "injuries and damages sustained by [Ms. Johnson] and her subsequent death . . . were produced in a natural and continuous sequence from Defendants' violation of one or more . . . duties of ordinary care for the safety of [Ms. Johnson]."

Ms. Whittenberg further alleged that COTPA is a government entity located in Oklahoma City, and that, "[i]n compliance with the Governmental Tort Claims Act, [she] gave timely notice of her claim in writing to [COTPA], which was received on or about October 18, 2024." Ms. Whittenberg alleged the "claim was deemed denied on January 16, 2025," and that she "timely filed this action within 180 days of the date of denial."

In its Answer filed in April 2025, COTPA admitted it "received notice of tort claim," that the claim was deemed denied by operation of the Governmental Tort Claims Act (GTCA), 51 O.S. 2021 §§ 151-172, and that Ms. Whittenberg timely filed this action within 180 days of the date of denial. COTPA admitted "that an incident occurred on January 3, 2024," "on NE 23rd Street and Bartel Road in Oklahoma City," but denied the majority of Ms. Whittenberg's remaining allegations.

In July 2025, COTPA filed its motion to dismiss. It stated that although it received a notice of tort claim on October 21, 2024, the notice identified the claimant as "Aliya Johnson" only. COTPA further stated that the notice was "signed only by Attorney Harry 'Jake' Kouri IV and did not name an administrator for the Estate. In fact, at the time the Notice was made, no probate action to appoint an administrator had been initiated." COTPA asserted that "neither a deceased person nor an attorney may be a claimant under the [GTCA]" and, therefore, the notice was invalid. COTPA pointed out that in the Petition, Ms. Whittenberg purports to be the Administrator of the Estate of Ms. Johnson and alleges that she gave timely notice to COTPA under the GTCA. COTPA asserted that "no tort claim was ever submitted on behalf of [Ms.] Whittenberg, either on her own or as administrator of Johnson's estate," and "neither [Ms. Whittenberg] nor any other individual filed a Notice of Tort Claim as personal representative of the Estate of [Ms.] Johnson[.]"

In its Order filed in October 2025, the district court granted COTPA's motion to dismiss. The Order states: "The Court finds the Notice of Tort Claim submitted on behalf of [Ms. Johnson] was not valid pursuant to 51 O.S. § 152(5)(c), and Plaintiff has not otherwise complied with the notice requirements of 51 O.S. §§ 156 and 157."

Ms. Whittenberg appeals.

STANDARD OF REVIEW

"The notice required by 51 O.S. § 156(B) is considered a mandatory prerequisite and jurisdictional requirement to filing a tort claim in district court." *Crawford ex rel. C.C.C. v. OSU Med. Tr.*, 2022 OK 25, ¶ 5, 510 P.3d 824, 829. A dismissal for lack of jurisdiction is reviewed de novo. *Id.*

> [A] motion to dismiss based upon 12 O.S. 2011 § 2012(B)(1) lack of jurisdiction is not converted to a motion for summary judgment by reliance upon extra-record facts (outside the pleadings) unless these facts are used as one or more elements to a cause of action or a defense thereto. . . . An order granting a motion to dismiss when based on a jurisdictional issue of law and no controverted issue of fact will receive *de novo* appellate review and allegations of the petition are deemed true. Facts used for appellate review of the trial court's order are based upon the . . . petition's allegations and facts in exhibits that are uncontested for the purpose of the motion to dismiss.

Knox v. Okla. Gas & Elec. Co., 2024 OK 37, ¶ 19, 549 P.3d 1260, 1268 (footnotes omitted). "Issues of statutory interpretation also present questions of law and are reviewed *de novo*. Appellate courts have plenary, independent and nondeferential authority to determine whether the trial court erred in its legal rulings." *Crawford*, ¶ 5, 510 P.3d at 829 (citations omitted).

ANALYSIS

"Notice of a claim is critical under the Act because the Act provides for the exclusive liability of a governmental entity for a tort claim." *Ullman v. Okla. Highway Patrol*, 2023 OK 100, ¶ 20, 538 P.3d 138, 144. As above stated, "[n]otice is a jurisdictional prerequisite to bringing an action under the GTCA. Failure to present written notice as required by the GTCA results in a permanent bar of any action derivative of the tort claim." *Harmon v. Cradduck*, 2012 OK 80, ¶ 28, 286 P.3d 643, 652 (citations omitted). *See* 51 O.S. 2021 § 156(B) ("[C]laims against the state or a political subdivision are to be presented within one (1) year of the date the loss occurs. A claim against the state or a political subdivision shall be forever barred unless notice thereof is presented within one (1) year after the loss occurs."); *Ullman*, ¶ 20, 538 P.3d at 144 ("A lawsuit must be based on the claimant presenting written notice of a claim within one year of the date the loss occurs, or the claim is forever barred."). *See also* 51 O.S. 2021 § 152.1(B) ("The state, *only* *to the extent and in the manner provided in this act*, waives its immunity and that of its political subdivisions." (emphasis added)).[1]

The *Ullman* Court explained:

> A "claim" means any written demand presented by a claimant, or the claimant's representative, in accordance with the Act to recover money for the governmental entity's act or omission. Notice of the claim is designed to protect governmental interests by promoting prompt investigation, repair of dangerous conditions, speedy settlement of meritorious claims, and to give the governmental entity time to meet fiscal liabilities. Substantial compliance with the notice provisions of the Act is sufficient when the governmental entity is not prejudiced, and the information provided satisfies the purposes of the statutory notice provisions.

2023 OK 100, ¶ 21, 538 P.3d at 144-45 (footnotes omitted).

> Although the failure to provide some details of the claim does not necessarily invalidate the entire claim, we have held that notice of claims must be substantially complied with to constitute the required statutory notice. Claims must generally include details such as the date, time, place and circumstances of the incident; the identity of the agency involved; the amount of compensation or other relief demanded; the name, address, and telephone number of the claimant or authorized agent; the name, address and telephone number of any agent authorized to settle.

Id. ¶ 23, 538 P.3d at 145 (footnotes omitted).

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[1] A "political subdivision" is defined as including "a municipality," *id.* § 152(12), and "municipality" is defined as "any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality," *id.* § 152(10). It is undisputed that, under these definitions, COTPA is a political subdivision.

Under the circumstances presented, the GTCA does not leave open the question of who may present a claim.[2] Section 152(5) defines a "claimant" as "the person or the person's authorized representative who files notice of a claim in accordance with [the GTCA]," and then provides: "Only the following persons and no others may be claimants," specifying, "in the case of death, an administrator, special administrator or a personal representative who shall aggregate in the claim all losses of all persons which are derivative of the death[.]" Consistent with this definition, § 156(I) provides that "[w]hen the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the death occurs."[3]

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[2] The Oklahoma Supreme Court has explained:

> In interpreting the GTCA we look, first, to the plain language of the statute itself. As we have previously explained,
>
> > The goal of any inquiry into the meaning of a statutory enactment is to ascertain and give effect to the intent of the legislature. The law-making body is presumed to have expressed its intent in a statute's language and to have intended what the text expresses. If a statute is plain and unambiguous, it will not be subjected to judicial construction, but will receive the effect its language dictates. Only where the intent cannot be ascertained from a statute's text, as when ambiguity or conflict (with other statutes) is shown to exist, may rules of statutory construction be employed.
>
> We may not add words that are not there.

Frank Bartel Transp., Inc. v. State ex rel. Murray State Coll., 2023 OK 121, ¶ 5, 540 P.3d 480, 483 (citations omitted).

[3] The second sentence of § 156(I) – providing that "[i]f the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for

Here, it is uncontested that the notice of tort claim received by COTPA in October 2024 identified the claimant as "Aliya Johnson" – the decedent – and was signed only by an attorney. Moreover, no administrator, special administrator, or personal representative of Ms. Johnson's estate existed when the notice was presented. A deceased person is incapable of being a claimant, and § 152(5)(c) forecloses any other person – including next of kin – from claimant status in a death case absent appointment.

Ms. Whittenberg's reliance on the doctrine of substantial compliance is misplaced. Substantial compliance, as articulated in *Ullman*, is a doctrine that measures imperfect performance of the notice provisions – the content and manner of a *claim* presented by a *claimant*. A "claim" is "any written demand presented by a claimant or the claimant's authorized representative in accordance with [the GTCA] . . . ." 51 O.S. 2021 § 152(4). Where the Legislature has provided that "no others" than an appointed fiduciary "may be claimants" in a death case, a document presented by no statutorily authorized person is not an imperfect claim subject to the forgiveness of substantial compliance; it is the absence of a claim.

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wrongful death may be brought without any additional notice" – addresses the circumstance in which an injured person presents notice of a claim during his or her lifetime and subsequently dies. It has no application here. Ms. Johnson died on the date of the incident and presented nothing during her lifetime; a notice presented after her death naming her as the claimant is not a notice "presented" by "the person for whose death the claim is made[.]"

The doctrine of substantial compliance may excuse a claim's deficiencies, but it cannot supply a claimant.[4]

Moreover, the purposes served by statutory notice, as identified in *Ullman*, confirm this conclusion. Even assuming the notice permitted COTPA to promptly investigate the incident, the notice was incapable of serving the statute's remaining objectives during the ninety-day period for approval or denial under § 157, which provides, in part, as follows:

> A claim is deemed denied if the state or political subdivision fails to approve the claim in its entirety within ninety (90) days, unless the state or political subdivision has denied the claim or reached a settlement with the claimant before the expiration of that period. If the state or a political subdivision approves or denies the claim in ninety (90) days or less, the state or political subdivision shall give notice within five (5) days of such action to the claimant at the address listed in the claim.

"Speedy settlement of meritorious claims" requires a counterparty with legal authority to negotiate the claim, execute a release, and receive payment. *Ullman*, ¶ 21, 538 P.3d at 144. Section 157 thus contemplates, at every step, an existing

[4] Some courts have concluded that "omission of the claimant's address 'was inconsequential' because the claimant had included the attorney's contact information," *Osterhout v. Bd. of Cnty. Comm'rs of LeFlore Cnty., Okla.*, 10 F.4th 978, 988 (10th Cir. 2021), but such a circumstance is distinguishable because, unlike in the present case, the notice in such circumstances was presented on behalf of a living, existing claimant whose attorney's contact information gave the entity a functioning counterparty capable of responding to any demand; the omission of information about a claimant is not the absence of one.

claimant – one with whom the entity may "reach[] a settlement," and one to whom notice of approval or denial can be given. Here there was none.

Furthermore, § 152(5)(c) obligates a claimant to "aggregate in the claim all losses of all persons which are derivative of the death" – a requirement that allows the governmental entity to resolve its entire exposure with one authorized fiduciary and obtain finality. Had COTPA elected to approve and pay this claim, there was no one with authority to settle it and no release that would have bound the estate or any derivative claimant, nor could COTPA meaningfully assess its fiscal exposure when no fiduciary existed to aggregate the derivative losses.

The structure of § 156 reinforces the point. Subsections (E) through (H) contain similar language: the failure to state or provide certain information "shall not invalidate the notice . . . unless the claimant declines or refuses to furnish such information after demand[]" by the governmental entity. However, this cure-after-demand mechanism presupposes an appropriate claimant capable of receiving a demand and responding to it. Subsection (E)'s inclusion of "the name . . . of the claimant" as among the items of curable content may allow for the forgiveness of incomplete information about a claimant, but it does not speak to the nonexistence of one, which is governed by the exclusive command of § 152(5) that, in the case of death, only an administrator, special administrator or a personal representative may be claimants, "and no others[.]"

This case is unlike *I.T.K. v. Mounds Public Schools*, 2019 OK 59, 451 P.3d 125, in which the Supreme Court held a notice sent by certified mail to a school superintendent satisfied § 156(D)'s requirement of filing with the office of the clerk of the governing body. That case concerned the manner of delivering a notice presented by a proper claimant, a subject on which the Court found the statute did not specify a mandatory method. 2019 OK 59, ¶ 23, 451 P.3d at 136. Here, by contrast, the Legislature has spoken in expressly exclusive terms as to who may be a claimant – "[o]nly the following persons and no others" – language that admits of no construction under which a deceased person, or an attorney acting without an existing claimant, qualifies. *Cf. Minie v. Hudson*, 1997 OK 26, ¶ 7, 934 P.2d 1082, 1086 (the Legislature's use of mandatory language in § 156 expresses a legislative command).

We further observe that the defect here was not the product of any impossibility. As set forth in Ms. Whittenberg's response to the motion to dismiss, Ms. Johnson's injury and death occurred on January 3, 2024; the notice of tort claim "was filed with [COTPA]" on October 21, 2024, when "an Administrator had not yet been appointed to represent the Estate of [Ms.] Johnson"; and "the Order Approving Summary Administration and appointing [Ms. Whittenberg] as Administrator was entered on December 11, 2024." Based on this chronology, Ms. Whittenberg was appointed administrator twenty-three days before the one-year period expired,[5] and nothing prevented her, once appointed, from presenting a notice of tort claim in conformity with §§ 152(5)(c) and 156. None was presented.[6]

The Legislature consented to be sued "only to the extent and in the manner provided" in the GTCA, 51 O.S. 2021 § 152.1(B), and it is not the province of this Court to enlarge that consent or modify the jurisdictional requirement at issue. Because no person authorized and statutorily specified by § 152(5)(c) presented notice of a claim within one year of the loss, no claim was ever presented within the meaning of § 156(B), and the action is therefore barred. Compliance with the notice provisions being a jurisdictional prerequisite, the district court lacked jurisdiction and properly granted dismissal.

CONCLUSION

The district court correctly determined that the notice of tort claim presented in October 2024 was not valid under 51 O.S. 2021 § 152(5)(c), and that Ms.

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[5] As pointed out in the dissent to this Opinion, Ms. Whittenberg appears to have been appointed on an earlier date than she represents in her response. However, this earlier date still lands several days after the October 21 notice of tort claim and thus would have provided even more time for the filing of a notice in conformity with §§ 152(5)(c) and 156.

[6] It is unclear from the record presented on appeal whether the attorney who signed the October 2024 notice was representing Ms. Whittenberg at the time of that notice and/or at the time Ms. Whittenberg was appointed administrator. However, even assuming he was representing Ms. Whittenberg at all relevant times, we conclude, as set forth above, that the October 2024 notice was not a notice of a claim in accordance with the GTCA. "Failure to present written notice as required by the GTCA results in a permanent bar of any action derivative of the tort claim." *Harmon*, ¶ 28, 286 P.3d at 652.

Whittenberg did not otherwise comply with the notice requirements of 51 O.S. 2021 §§ 156 and 157. Accordingly, we affirm.

AFFIRMED.

HUBER, J., concurs, and BLACKWELL, P.J., dissents.

BLACKWELL, P.J., dissenting:

As the majority recognizes, the doctrine of substantial compliance in regards to GTCA notice remains alive and well. Per our Supreme Court, "[s]ubstantial compliance with the notice provisions of the Act is sufficient when the governmental entity is not prejudiced, and the information provided satisfies the purposes of the statutory notice provisions." *Ullman v. Oklahoma Highway Patrol*, 2023 OK 100, ¶ 21, 538 P.3d 138, 144–45.

In this case, I cannot find that the notice was insufficient when the very target of that notice *admitted* full compliance in its first pleading. In its answer,[1] COPTA admits "it received notice of the tort claim," that "the claim was deemed denied," and that "Plaintiff timely filed this action within 180 days of the date of

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[1] Notably, COPTA never sought to amend its answer below. Generally, admissions in an answer "should be treated as admitted facts, and the defendant will not be heard to question the correctness thereof at any stage of the case either in the trial court or on appeal." *Lee v. Little*, 1921 OK 96, ¶ 3, 197 P. 449, 451. This rule continued into the notice-pleading era, though with the addition of liberal amendments to pleading. *See* 12 O.S. § 2015. Because that rule did not allow COPTA to unilaterally amend its answer at the time of its motion to dismiss, COPTA should have been required to seek to amend its answer before contradicting the already-admitted jurisdictional facts with its motion to dismiss. Because our review is *de novo* this failing provides an additional basis on which we should reverse.

denial." *Petition,* pg. 1; *Answer*, pg. 1. The entity further admitted, without qualification, that "jurisdiction is proper in this court." *Answer*, pg. 2. And, while I agree with the majority that in any given case the failure to identify the proper claimant in a claim *could* create problems, in this case, no such problems are identified. While there was no personal representative of the estate of A'liya Johnson on the date the claim was filed, there was just three days later, and she was represented by Mr. Kouri, whose contact information was listed on the claim.[2] The record does not suggest that COPTA ever attempted to contact Mr. Kouri.

Per the defendant's own admission, GTCA notice was satisfied. "Rather than rely[ing] on a hyper-technical application of the Act," I would "consider the purpose behind the GTCA and apply a more reasoned approach sounding in equity." *McWilliams v. Bd. of Cnty. Comm'rs of Comanche*, 2011 OK 103, ¶ 24, 268 P.3d 79, 85. When the question of proper notice is admitted by all parties, including the very object of that notice, I would deem the matter settled. I respectfully dissent.[3]

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[2] The majority opinion references December 11, 2024, as the date Ms. Whittenberg was appointed. However, that was the date of her final account and discharge. Ms. Whittenberg was issued letters of administration on October 24, 2024, just three days after the claim was filed. Mr. Kouri represented her throughout the proceedings. *See* Oklahoma County Case No. PB-2024-1414, available at https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=PB-2024-1414 (last visited 8/6/2026).

[3] In my view, many of the landmines of this area of law will be revealed and open to defusing only when our Supreme Court stops insisting that the GTCA's notice requirements are "jurisdictional." *See, e.g., Ullman*, 2023 OK 100, ¶ 20. While they are properly labeled

"mandatory" and "prerequisite[s] … to filing," *id.*, the jurisdictional label is both inaccurate and exceptional in its ability to spawn a host of issues and inequities, of which this case is a fine example. This is because "[b]randing a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). Among other things, it allows, as here, a party to object to jurisdiction "even if the party had previously acknowledged the trial court's jurisdiction," *id.* at 435, and the party may do so at any time. Here, government's motion to dismiss came a couple months after its answer, but it could have filed the same motion after losing a trial or even raise the issue on appeal without having made any such objection in the trial court. Under our Supreme Court's current jurisdiction-centric framework, these tactics must be allowed no matter when they are raised, no matter the waste of judicial resources, no matter the prejudice to the opposing party.

It doesn't have to be this way. Properly labeled and evaluated, Oklahoma's GTCA notice requirements are mandatory, nonjurisdictional claim-processing rules. The U.S. Supreme Court has already held as much in relation to the Federal Tort Claims Act's deadlines, *United States v. Wong*, 575 U.S. 402 (2015), and at least one federal court of appeals has so held relating to the FTCA's sum certain presentment requirement, *Copen v. United States*, 3 F.4th 875, 884 (6th Cir. 2021). Indeed, the U.S. Supreme Court has been busy un-muddying the jurisdiction versus claim-processing distinction for a number of years in other areas of the law. *See, e.g., Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006) (holding that Title VII's numerical threshold is not jurisdictional and could not be raised after a trial on the merits); *Henderson*, 562 U.S. 428 (2011) (holding that the deadline for filing a notice of appeal with the Veterans Court is not jurisdictional); *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145 (2013) (holding that a 180-day limit for filing Medicare appeals is not jurisdictional); *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199 (2022) (holding that the Internal Revenue Code's 30-day time limit to file a petition for review of a collection due process determination is nonjurisdictional). And our twin high Courts have recently each engaged in this process, as well. *See, e. g., In re N.A.*, 2025 OK 22, ¶ 18, 567 P.3d 374, 381 (walking back the Court's prior "casual[] refer[ences] to UCCJEA jurisdiction as 'subject matter jurisdiction[]'" and holding that "jurisdiction under the UCCJEA is a statutory, procedural limitation" and not "subject matter jurisdiction"); *Deo v. Par.*, 2023 OK CR 20, ¶ 12, 541 P.3d 833, 837 (overruling a line of cases that held that federal legislation preempted the state's subject matter jurisdiction as to the criminal law in Indian country in part because those cases provided "no analysis or reasoning as to why the court's subject matter jurisdiction [wa]s implicated rather than one of the many other meanings of jurisdiction …"). Our Supreme Court should apply this same analysis to Oklahoma's GTCA.

If it does, I think it will find the requirements of 51 O.S. §§ 156 and 157 neither reference "jurisdiction" nor "govern[] [the] court's adjudicatory capacity." *Henderson*, 562 U.S. at 435. They are primarily "[f]iling deadlines" which "are quintessential claim-processing rules," *id.*, and other mandatory prerequisites to suit that do not affect the "power to adjudicate the type of controversy" before the court. *In re N.A.*, 2025 OK 22, ¶ 15 (emphasis removed). It is time we treat them as such.