

# Incorrect date did not negate lawsuit: panel

By KELLEY QUINN  
Law Bulletin staff writer

A lawyer's failure to cite the correct date of his client's accident did not cause the woman to lose her personal-injury suit against the Chicago Transit Authority, a state appeals panel held on Thursday.

The 1st District Appellate Court affirmed a trial judge's ruling that the attorney's negligence did not proximately cause Petra Cedeno's defeat in her complaint against the CTA.

On April 29, 1999, Cedeno — who has since died — was injured upon exiting a CTA bus. She retained James Ellis Gumbiner as her lawyer, who then referred the case to attorney Bruce D. Goodman, according to a published opinion written by Justice Allen Hartman.

Goodman sent the CTA a "Notice of Claim for Personal Injuries" on Sept. 8, 1999, but the notice incorrectly alleged that the accident occurred on April 30, 1999, instead of the actual date.

Cedeno terminated her relationship with Goodman in January 2000, and in proceeding with her lawsuit against the CTA, she hired the Law Offices of Ciardelli & Cummings.

"[P]laintiff filed her complaint on April 20, 2000, nine days within the statute of limitations. She asserted the accident date was April 29, 1999," Hartman wrote.

The CTA successfully moved for summary judgment, citing Cedeno's failure to comply with the notice requirements set forth in section 41 of the Metropolitan Transit Authority Act because the notice sent to the CTA contained the wrong accident date, which varied from the correct date stated in its complaint.

Cedeno, who was represented by the firm of Kupets & DeCaro on appeal, then filed a legal malpractice action against Gumbiner and Goodman, alleging they were negligent in providing a defective written notice of her accident to the CTA.

"It is her position that the notice provided is tantamount to no notice at all since the inclusion of the correct date is an indispensable element of notice under section 41 [of the MTA Act]," Hartman wrote.

Under section 41, which was amended in 1998, any person who notifies the transit authority that he or she was injured or has a cause of action shall be furnished a copy of the notice.

Within 10 days after being notified in writing, the authority shall either send a copy by certified mail to the person at his or her last known address or hand-deliver a copy to the person.

Cedeno contended that the CTA's duty never arose since it never received a notice with the correct date of the accident, and that without the correct accident date, written notice cannot comply with the requirements of section 41.

"She believes the issue of whether the CTA had a duty to provide her with a copy of section 41 is irrelevant to the question of whether defendants were negligent for providing defective notice," Hartman wrote.

However, the defendants correctly argued that the amendment to section 41, which allows for initial written notice to be 'liberally construed,' abrogates the plaintiff's duty to adhere strictly to the detailed formal notice requirements in situations where the CTA fails to furnish the plaintiff with a section 41 letter.

"Once CTA's duty is triggered but goes unsatisfied, CTA may not dismiss a claim based solely on plaintiff's noncompliance," Hartman wrote. "Therefore, they maintain, the adverse impact of their defective initial Notice was negated, and the strength of plaintiff's underlying case against CTA was left intact."

The reviewing court agreed.

Cook County Circuit Judge Diane J. Larsen dismissed Cedeno's legal malpractice claim after finding the Notice,  
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"although admittedly defective, 'could be reasonably interpreted as notification' so as to trigger CTA's duty to furnish plaintiff with a copy of section 41, which it failed to do," Hartman wrote. "Due to its lapse, CTA should not have been permitted to avail itself of the formal notice requirements as proper grounds for dismissal as a matter of law."

Nonetheless, Larsen granted summary judgment in favor of the CTA.

"Notwithstanding this fact, insofar as the present case is concerned, at the

time of defendants' discharge [from the case], plaintiff's personal injury case remained actional despite the defective initial Notice," Hartman wrote.

Justices Patrick J. Quinn and Mary Jane Theis concurred.

*Leticia Cedeno, as Special Administrator of the Estate of Petra Cedeno, deceased, v. James Ellis Gumbiner, d/b/a/ The Law Offices of James Ellis Gumbiner & Associates, et al., No. 1-03-0945.*

E-mail: [kquinn@lbpc.com](mailto:kquinn@lbpc.com)