THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.

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November 2, 2026

In the Court of Appeals of Georgia

A26A0922. CAIN v. THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH et al.

PIPKIN, Judge.

Arnita Cain was injured in a car accident as she was attempting to exit the Savannah Highlands condominium complex in July 2019. On appeal, Cain challenges the trial court's grant of partial summary judgment to the Mayor and Aldermen of the City of Savannah ("the City") on her negligence and nuisance claims, and the grant of summary judgment to the Savannah Highlands Homeowners Association ("the HOA") on her claims of nuisance, punitive damages, and attorney fees. For the reasons discussed below, we affirm in part and reverse in part.

1. Viewing the evidence in the proper light, see *Yim v. Carr*, 349 Ga. App. 892, 893(1) (827 SE2d 685) (2019), the record shows that Cain was leaving the

condominium complex when she approached the intersection of Whitehaven Boulevard and Highlands Avenue in Savannah. The intersection had a stop sign, followed by a yield sign on Cain's right; to Cain's left was a median with landscaping. Cain stopped at the stop sign and then yielded at the next sign. However, when she could not see around the landscaping to her left, she proceeded forward into the intersection in an attempt to see around the foliage and was struck by oncoming traffic.

Cain initially sued the HOA, asserting claims of negligence and premises liability for allowing the line of sight of motorists entering the intersection to be obscured by overgrown landscaping; she also included claims for punitive damages and attorney fees. Cain amended the complaint twice. In her first amended complaint, she added the City as a party defendant; in her second amended complaint, Cain added nuisance claims against the HOA and the City based upon the improper placement of a stop sign and stop bar and the overgrown landscaping's obstructing motorists's line of sight.

The City moved for partial summary judgment, contending that Cain's ante litem notice failed to meet statutory requirements because it did not mention the

improper placement of the stop line or stop sign; that the negligence claim was barred by sovereign immunity because the placement of the stop line and stop sign is a governmental function; and that the acts alleged did not rise to the level of nuisance. The HOA also moved for summary judgment on all claims in the complaint.

The trial court granted the City's motion for partial summary judgment, concluding that the claims regarding the stop sign and stop bar were not sufficiently included in Cain's ante litem notice and were further barred by sovereign immunity. In a separate order, the trial court granted summary judgment to the HOA on the claims of nuisance, punitive damages, and attorney fees and denied summary judgment on the negligence and premises liability claims.[1] Cain appeals the trial court's rulings and, for the reasons discussed below, we affirm the trial court's grant of summary judgment to the City and the HOA on Cain's nuisance claims, and we affirm the grant of summary judgment to the HOA on Cain's claims for punitive damages and attorney fees; however, we reverse the trial court's grant of summary judgment to the City on the basis of sovereign immunity and alleged ante litem notice deficiencies.

[1] The HOA does not challenge the trial court's denial of summary judgment on these claims.

2. Before we turn to the merits of Cain's claims on appeal, we must first address two threshold questions: the sufficiency of the ante litem notice and sovereign immunity. The trial court granted partial summary judgment to the City on both of these issues, finding that Cain had failed to satisfy the requirements of Georgia's ante litem notice statute and that Cain's negligence claim against the City was barred by sovereign immunity. Cain challenges both rulings on appeal; we address each in turn.

(a) *Ante Litem Notice*. Prior to serving the City with her first amended complaint, Cain sent the City an ante litem notice pursuant to OCGA § 36-33-5, outlining the time, place, and extent of her injuries, and the negligence which caused the same. As to the last requirement, Cain described the negligent acts of the City as follows:

> The acts or omissions which caused Ms. Cain's injuries include the negligent management of the roadways, in addition to the negligent hiring, retention and supervision of employees of the City and its negligent affiliates which are the subject of this Notice or any legal theory of recovery set forth herein. Furthermore, it includes creating and maintaining a nuisance that ultimately manifested in injuries to Ms. Cain. These acts or omissions include but are not limited to:
>
> (1) failing to adequately plan for shrubs/plants within the area where the wreck occurred;
>
> (2) failing to adequately remove the overgrown shrubs from the area where the wreck occurred once evidence that these hedges posed a safety hazard to the public road users had surfaced;

> (3) failing to institute adequate safety measures to protect citizens from hidden but foreseeable dangers posed by the overgrown shrubs which posed a visual obstruction to drivers (and decreased their line of sight) in the area where the wreck occurred;
> (4) failing to adequately warn citizens of any hidden dangers posed by the overgrown shrubs;
> (5) failing to adequately inspect the area where the wreck occurred for any hidden dangers posed by roadway visual obstructions such as overgrown shrubs;
> (6) failing to adequately institute speed bumps in the area at which the wreck occurred -- an area where many pedestrians and road users face the dangers of speeding cars;
> (7) failing to adequately monitor the roadway where the wreck occurred for any unreasonable and foreseeable risks posed to road users by visual obstructions to drivers;
> (8) failing to keep public roads in good repair; and
> (9) failing to otherwise exercise reasonable care and take required legal precautions to inspect for, warn of, and remove any unreasonable hazards and dangers caused by visual obstructions to road users like the overgrown shrubs at issue.

In her second amended complaint for damages, Cain added a claim of nuisance against all defendants, asserting that "[t]he unreasonably high vegetation blocking Plaintiff's line of sight" as well as "an improperly placed Stop Line and Stop Sign" constituted a continuing nuisance.

In its motion for partial summary judgment, the City argued that, because Cain's ante litem notice did not include references to the stop line or stop sign, the letter failed to place the City on notice as to Cain's nuisance claims and must be

dismissed. The trial court agreed, determining that "there is no way to read Plaintiff's ante litem notice to include a description of the negligence which caused the injury other than vegetation or the physical condition of the roadway." Cain argues that this was error.[2] We agree.

It is well settled that, prior to filing a personal injury suit against a municipality, a claimant must provide written notice of the claim "to the governing authority of the municipal corporation," and such notice must include "the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury." OCGA § 36-33-5(b). "The codified purpose of the ante litem notice requirement is, of course, to give the municipality the opportunity to investigate potential claims, ascertain the evidence, and avoid unnecessary litigation." *Mayor & Aldermen of City of Savannah v. Pope*, 376 Ga. App. 647, 649(1) (920 SE2d 688) (2025) (punctuation and footnote omitted). "However, the statute does not contemplate that the notice shall be drawn with all technical niceties but must simply give the municipality notice of the grievance against it." *Columbus v. Preston*, 155 Ga. App. 379, 380(1) (270 SE2d

[2] Although the trial court granted summary judgment on this contention rather than ordering the complaint be dismissed, we need not address this issue since we reverse the ruling of the trial court.

909) (1980). See also *Owens v. City of Greenville*, 290 Ga. 557, 562(4) (722 SE2d 755) (2012) ("The information supplied will be deemed sufficient if it puts a municipality on notice of the general character of the complaint, and, in a general way, of the time, place, and extent of the injury. The act recognizes, by the use of the words as nearly as practicable, that absolute exactness need not be had." (citation modified)). In other words, "[s]ubstantial compliance with the requirements imposed by OCGA § 36-33-5(b) is all that is required." *Hicks v. City of Albany*, 378 Ga. App. 695, 696 (927 SE2d 323) (2026).

Here, Cain's ante litem notice substantially complied with the requirements of OCGA § 36-33-5(b). The letter notified the City of the date of the accident, the place where it occurred, the extent of Cain's injuries, and the negligence that caused those injuries. Because the notice provided the City with sufficient information to allow it to investigate Cain's claims of negligence and nuisance regarding the intersection where the accident occurred, the trial court's ruling was error. See *Owens*, 290 Ga. at 561-62(4) (reversing trial court where plaintiff's ante litem notice placed defendant on notice of the general character of the complaint and, therefore, substantially complied with ante litem notice statute); *Preston*, 155 Ga. App. at 380(1) (ante litem

notice sufficient where it alleged that a City was negligent in leaving a known road defect "without adequate warning signs and protective barriers").

(b) *Sovereign Immunity*. In its order, the trial court also granted partial summary judgment to the City "on all negligence claims arising out of the placement or installation of the stop sign and/or stop bar," concluding "that the City's placement of the stop sign and stop bar at the subject intersection is a government function for which the City has sovereign immunity." Cain argues that this ruling was error. Once again, we agree.

The record shows that *none* of Cain's negligence or premises liability claims – as opposed to her nuisance claims -- referred to the placement of the stop sign or stop bar. Instead, her negligence and premises liability claims all focus on the failure to prevent a potential defect -- i.e., overgrown landscaping that obstructed the vision of motorists on the roadway. And, as this Court held in *Mayor & Aldermen of City of Savannah v. Herrera*, 343 Ga. App. 424, 427-32(1) (808 SE2d 416) (2017), such a claim is not barred by sovereign immunity. Turning to Cain's nuisance claim, the trial court erred when it concluded that, because the City was exercising a government function, the claim was barred by sovereign immunity. See *City of Atlanta v. Dale*, 353

Ga. App. 817, 818(2) (840 SE2d 56) (2020) ("A municipality may be held liable for damages it causes to a third party from the operation or maintenance of a nuisance, irrespective of whether it is exercising a governmental or municipal function."); *Hibbs v. City of Riverdale*, 267 Ga. 337, 337–38 (478 SE2d 121) (1996) ("While a municipality enjoys sovereign immunity from liability for negligent acts done in the exercise of a governmental function, it may be liable for damages it causes to a third party from the creation or maintenance of a nuisance."). Consequently, the trial court's grant of summary judgment on these claims based upon sovereign immunity was error.

3. Next, Cain alleges that the trial court erred by granting summary judgment on her nuisance claims because, Cain argues, the trial court incorrectly focused solely on the absence of prior collisions in the intersection. Cain argues that she created a genuine issue of material fact through the testimony of her two experts (an accident reconstructionist and a traffic and transportation engineer) regarding the hazards created by the overgrown landscaping and the placement of the stop sign and stop bar. We disagree.

In granting summary judgment to the HOA and the City on the nuisance claims, the trial court determined that Cain's nuisance claims could not survive summary

judgment because "there is no admissible evidence in the record that anyone else has ever had a motor vehicle collision at the subject intersection due to a motorist's obstructed vision, either due to overgrown vegetation or the City's placement of the stop sign or stop bar." OCGA § 41-1-2 defines a public nuisance as "one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals." As this Court explained in *Herrera*,

> a public nuisance requires some act or omission which obstructs or causes inconvenience to the public in the exercise of rights common to all. The Supreme Court has set out three guidelines to define a nuisance for which a city may be held liable. First, the defect or degree of misfeasance must be to such a degree as would exceed the concept of mere negligence. Second, the act must be of some duration, and the maintenance of the act or defect must be continuous or regularly repetitious. Third, the city must have failed to act within a reasonable time after knowledge of the defect or dangerous condition.

343 Ga. App. at 435(4) (citation modified). "Notably, the [final] factor requires either knowledge or notice of the dangerous condition." *J.N. Legacy Grp., Inc. v. City of Dallas*, 322 Ga. App. 475, 480(2) (745 SE2d 721) (2013) (punctuation and citation omitted.) See also *Kicklighter v. Savannah Transit Auth.*, 167 Ga.App. 528, 531(3) (307 SE2d 47) (1983).

Here, while Cain produced evidence that the obstruction had existed for some time prior to her accident, she "failed to show that others had suffered injury from the obstruction so as to constitute a public nuisance that injures those of the public who may actually come in contact with it." *Howard v. Gourmet Concepts Int'l, Inc.*, 242 Ga. App. 521, 523(1)(b) (529 SE2d 406) (2000) (citation and punctuation omitted). Indeed, though Cain pointed out, via a website link, that numerous accidents had occurred at the intersection prior to her injuries, as noted by the trial court, the link relied upon by Cain does not provide any information regarding whether obstruction of the motorist's line of sight by the landscaping caused or contributed to the reported collisions. Accordingly, the trial court properly granted summary judgment to the City and the HOA on the public nuisance claim. Compare *Herrera*, 343 Ga. App. at 435(4) (genuine issue of material fact existed for public nuisance claim where City records showed over a decade of complaints to the City regarding a tree obstructing drivers' line of sight and numerous "near misses" in a 30-minute period reported by a City worker after the accident occurred), with *Mayor & Aldermen of City of Savannah v. Altman*, 374 Ga. App. 599, 602(2) (913 SE2d 729) (2025) (affirming summary judgment on public nuisance claim where plaintiff failed to create a genuine issue of

material fact regarding whether a damaged sidewalk "injures all members of the public who come in contact with it" where there was no evidence in the record that anyone other than the plaintiff had tripped and fallen over the damaged sidewalk).

4. Finally, Cain argues that the trial court erred by granting the HOA summary judgment on her claims of punitive damages and attorney fees. We address each in turn.

(a) "Punitive damages may be awarded only in such tort actions in which it is proven by clear and convincing evidence that the defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." OCGA § 51-12-5.1(b). "Under this Code section, it remains the rule that something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage. There is general agreement that, because it lacks this element, mere negligence is not enough." *Roberts v. Forte Hotels, Inc.*, 227 Ga. App. 471, 472(1) (489 SE2d 540) (1997) (citation modified). "Even gross negligence is inadequate to support a punitive damage award." Id. (citation modified). Here, we agree with the trial court that there is nothing in the record to create a

genuine issue of material fact as to punitive damages in this negligence case.[3] Accordingly, we affirm this portion of the trial court's judgment.

(b) Regarding attorney fees, pursuant to OCGA § 13-6-11, a plaintiff may recover these fees where she "has made prayer therefor and where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense, the jury may allow them." However, "the existence of a bona fide controversy between the parties precludes an award of attorney fees premised on stubborn litigiousness." *Nash v. Reed*, 349 Ga. App. 381, 384(2) (825 SE2d 853) (2019) (citation modified). Based upon the record before us, we cannot say that the trial court erred when it granted the HOA summary judgment on the issue of fees based upon the

[3] In support of her argument, Cain points to deposition testimony regarding the HOA's alleged knowledge "of prior issues and complaints by homeowners concerning tall vegetation at medians impairing visibility." However, the record evidence relied upon by Cain in support of her punitive damages claim shows that those complaints concerned medians and areas maintained by the Highlands Property Owners Association ("the HPOA"), not the HOA named in this lawsuit. The record shows that whenever the HOA received complaints about the medians and areas maintained by the HPOA, they would forward those complaints on to the correct entity.

finding of "a bona fide controversy regarding liability."[4] Consequently, we affirm this portion of the trial court's judgment.

Judgment affirmed in part and reversed in part. Dillard, P. J., and Gobeil, J., fully concur in Divisions 1, 3, and 4, and concur in judgment only as to Division 2.

[4] In its order, the trial court noted that Cain had made no allegation of bad faith in support of her request for attorney fees. On appeal, Cain argues that she did allege bad faith; however, a review of the operative complaint shows no prayer for attorney fees based upon a claim of bad faith.