# STATE OF MICHIGAN

# COURT OF APPEALS

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CHRISTINE WYLIE,

Plaintiff-Appellant,

and

BRANDON WYLIE, by His
Co-Conservators KEVIN RIGGS
and CHRISTINE WYLIE,

Plaintiff,

v

JAMES TREMAINE ANDERSON,

Defendant,

and

CITY OF DETROIT and WAYNE COUNTY,

Defendants-Appellees.

UNPUBLISHED
July 29, 1997

No. 193051
Wayne Circuit Court
LC No. 94-429665 NI

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Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

By leave granted, plaintiff appeals summary disposition of her claim against these governmental defendants due to asserted failure to file the claim within the two years allowed by §11 of the Governmental Immunity Act, MCL 691.1411; MSA 3.996(111). This case is being decided without oral argument pursuant to MCR 7.214(E).

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* Circuit judge, sitting on the Court of Appeals by assignment.

The accident occurred on October 9, 1991; plaintiff was rendered unconscious and remained in a coma for several weeks. She claims the injury sustained has rendered her "insane" for purposes of the tolling provision of RJA §5851(2). Suit was not filed until October 6, 1994.

In 1992, an attorney, on behalf of plaintiff and her son, notified the governmental defendants pursuant to §2 of the Governmental Immunity Act of a possible claim. Based on this and plaintiff's deposition testimony, the trial court opined that "in 1994, she had already been thinking about getting justice done" and concluded that "that in and of itself indicates that she was aware what had happened to her and that some action could in fact have been taken." That reasoning was erroneous. First, by 1994, the two years allowed for filing suit had already expired, and if it was only during that year when plaintiff became aware of her legal rights and had the ability to comprehend them, her action was timely. The fact that plaintiff may have retained counsel within one year of the accident is relevant, but not dispositive; the mere fact of conferring with an attorney is not conclusive evidence of mental competence for this purpose. *Makarow v Volkswagen of America, Inc*, 157 Mich App 401, 409-410; 403 NW2d 563 (1987).

Plaintiff's traumatic insanity, which arose, if at all, simultaneously with her tort cause of action, is within the ambit of the tolling provision of the statute. *Hill v Clark Equipment Co*, 42 Mich App 405, 408; 202 NW2d 530 (1972). Where, as here, reasonable minds could differ on whether plaintiff was "insane" at relevant times, and trial by jury has been demanded, these factual issues must be resolved by the jury. *Hogan v Allstate Ins Co*, 124 Mich App 465, 467-468; 335 NW2d 6 (1983); *Kermizian v Sumcad*, 188 Mich App 690; 470 NW2d 500 (1991).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn