STATE OF MICHIGAN

COURT OF APPEALS

JOANNE ROWLAND, a/k/a JOAN ROWLAND Plaintiff-Appellee,	UNPUBLISHED December 13, 2005
v	No. 253210 Washtenaw Circuit Court
WASHTENAW COUNTY ROAD COMMISSION, Defendant-Appellant.	LC No. 03-000128 – NO

Before: Donofrio, P.J., and Zahra and Kelly, JJ.

KELLY, J. *(concurring).*

I concur in the majority opinion. I write separately to note that I agree with defendant that the trial court erred in denying summary disposition because plaintiff failed to give timely or adequate notice of her claim as required by the plain language of MCL 691.1406. "The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). "Courts may not rewrite the plain language of the statute and substitute their own policy decisions for those already made by the Legislature." *DiBenedetto v West Shore Hosp*, 461 Mich 394; 405; 605 NW2d 300 (2000). Nonetheless, as the majority notes, both this Court and the trial court are bound by our Supreme Court precedent, which holds that if the governmental entity suffered no actual prejudice as a result of the failure of notice, then a plaintiff may still pursue a claim despite noncompliance with the notice provision. *Brown v Manistee Co Rd Comm*, 452 Mich 354; 550 NW2d 215 (1996); *Hobbs v Michigan State Hwy Dep't*, 398 Mich 90; 247 NW2d 754 (1976).

/s/ Kirsten Frank Kelly