STATE OF MICHIGAN

COURT OF APPEALS

JOEL SUPER and MADELEINE SUPER as Next Friend of KATERINA SUPER, a Minor,

Plaintiffs-Appellees,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant,

and

MELISSA KAE KANE,

Defendant.

UNPUBLISHED
July 14, 2009

No. 282636
Court of Claims
LC No. 07-000085-MZ

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant Michigan Department of Transportation appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7). We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of injuries allegedly sustained by the minor on August 14, 2006, after a car accident involving Melissa Kae Kane, an agent of defendant's, while she was driving defendant's vehicle. Plaintiffs asserted that defendant was liable for the minor's injuries resulting from the negligent operation of the vehicle driven by Kane. Plaintiffs filed the instant action against defendant in the Court of Claims on July 24, 2007.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' claims were barred because they failed to file a notice of intention to file a claim within six months as required by MCL 600.6431(3). Plaintiffs argued that its claims were not barred because the minor tolling provision, MCL 600.5851(1), applied to the notice provisions of MCL 600.6431(3). The trial court denied defendant's motion for summary disposition finding that the notice provisions had been tolled because the claimant was a minor.

This Court reviews de novo a trial court's ruling to either grant or deny a motion for summary disposition under MCR 2.116(C)(7). *Oliver v Smith*, 269 Mich App 560, 563; 715 NW2d 314 (2006). MCR 2.116(C)(7) tests whether a claim is barred because of immunity

granted by law and requires consideration of all documentary evidence filed or submitted by the parties. *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). Proper statutory interpretation is also a question of law reviewed de novo on appeal. *Allen v Bloomfield Hills School Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

As a general rule, a governmental agency is immune from tort liability when it is "engaged in the exercise or discharge of a governmental function." *Rowland v Washtenaw Co Road Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007); MCL 691.1407(1). The governmental tort liability act (GTLA), MCL 691.1401 *et seq*., broadly shields a governmental agency from tort liability and enumerates several narrowly drawn exceptions to governmental immunity, including the motor vehicle exception, which is at issue in this case. *Id.* at 202-204. The motor vehicle exception, MCL 691.1405, provides that a governmental agency is liable for bodily injury or property damage caused by the negligent operation of an agency-owned vehicle by one of its employees. The GTLA also incorporates the Court of Claims Act. MCL 691.1410(1). The Court of Claims Act provides for procedure and time limits for filing notice and a claim, as follows:

> (1) No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.
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> (3) In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action. [MCL 600.6431.]

Plaintiffs argued below and on appeal that the tolling provisions of MCL 600.5851(1) apply to the notice requirements of MCL 600.6431. MCL 600.5851(1) provides that:

> Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.

When construing a statute, this Court's primary goal is to ascertain the legislative intent that may reasonably inferred from the words in the statute. *Allen, supra* at 52-53; *Klida v Braman*, 278 Mich App 60, 64; 748 NW2d 244 (2008). The words and phrases of a statute should be accorded their plain and ordinary meaning, considering the context in which the words

are found. *Klida, supra*. If the statutory language is clear and unambiguous, this Court assumes that the Legislature intended its plain meaning and the statute is enforced as written. *Id.*

This Court has concluded that a statutory notice provision is not the same as a statute of limitations. *Davis v Farmers Ins Group*, 86 Mich App 45, 47; 272 NW2d 334 (1978). Statutory notice provisions provide time to investigate and appropriate funds for settlement purposes. *Id.* Statutes of limitations prevent stale claims and put an end to the fear of litigation. *Id*.

MCL 600.6431(3) serves as a notice requirement. MCL 600.6431(3) provides that if a claimant alleges property damage or personal injuries, the claimant shall file a notice of intention to file a claim or the claim itself within 6 months following the accident. This statute does not limit or curtail the allotted time that a potential litigant may bring her claim. Instead, the provision requires a timely written notice of the intention to file a claim. Accordingly, the six-month notification requirement is a notice provision and not a period of limitations. Because the plain language of MCL 600.5851(1) applies to "periods of limitations" and MCL 600.6431(3) is not a period of limitations, MCL 600.5851(1) did not apply to the notice provisions of MCL 600.6431.

Plaintiffs argue that this six-month notice requirement has deprived the minor of her rights. However, the Michigan Supreme Court has held that the Legislature is within its authority to structure governmental immunity solely as it deems appropriate. *Mack v City of Detroit*, 467 Mich 186, 202; 649 NW2d 47 (2002). In *Rowland, supra*, the Michigan Supreme Court advised that, as the Legislature is not required to provide exceptions to governmental immunity, it has the authority to allow such suits only upon compliance with rational notice limits. *Rowland, supra* at 212.

Plaintiffs' claim for personal injuries was barred because they did not file a notice of intention to file a claim for damages within six months of the accident. The trial court erred in denying MDOT's motion for summary disposition.

Reversed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood