STATE OF MICHIGAN

COURT OF APPEALS

PROPERTY AND CASUALTY INSURANCE COMPANY OF THE HARTFORD and SEDGWICK CLAIMS MANAGEMENT SERVICES, Plaintiffs-Appellees,	UNPUBLISHED April 22, 2010
v	No. 285749 Court of Claims LC No. 08-000020-MZ
DEPARTMENT OF TRANSPORTATION, Defendant-Appellant.	

Before: METER, P.J., and MURPHY, C.J., and ZAHRA, J.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of its motion for summary disposition based on governmental immunity. We reverse and remand.

This case presents the question whether a government defendant must show that it was prejudiced by a plaintiff's noncompliance with the Court of Claims Act's notice provision in order to bar the plaintiff's claim(s). The case arises from the alleged negligence of defendant's employee on March 1, 2007, which caused damage to the Hometown Hardware Store. The Property and Casualty Insurance Company of the Hartford ("Hartford") was Hometown Hardware's insurer, and Sedgwick Claims Management Services ("Sedgwick") was the claims administrator. Hartford and Sedgwick ("plaintiffs") reimbursed Hometown Hardware for the alleged damage, and on February 27, 2008, plaintiffs filed a complaint against defendant alleging negligence and seeking reimbursement of the payments made to Hometown Hardware.

Defendant moved for summary disposition on several grounds, including failure of plaintiffs to file a claim, or notice of intention to file a claim, with the clerk of the Court of Claims within six months of the incident (or by September 1, 2007), in violation of MCL 600.6431(3),[1] the applicable notice provision of the Court of Claims Act, MCL 600.6401 *et seq*.

[1] MCL 600.6431(3) provides: "In all actions for property damage or personal injuries, claimant (continued…)

Plaintiffs responded, in part, that summary disposition should be denied because defendant was not prejudiced by plaintiffs' noncompliance with the notice requirement. Defendant replied that as a matter of law it was not required to show it was prejudiced by the noncompliance. The Court of Claims denied defendant's motion for summary disposition, holding, among other things, that defendant was required to show it was prejudiced by plaintiffs' noncompliance.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

Plaintiffs undisputedly failed to comply with the notice requirement of MCL 600.6431(3). In *May v Dep't of Natural Resources*, 140 Mich App 730; 365 NW2d 192 (1985), this Court held that a plaintiff's claims are not barred by failure to comply with MCL 600.6431(3) unless the defendant showed that it was prejudiced by the noncompliance. *May* has not been reversed or explicitly overruled. The question presented here is whether *May* was constructively overruled by *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007).

Rowland did not specifically address the notice provisions of MCL 600.6431; rather, it addressed the notice provision applicable to the defective highway exception to governmental immunity, MCL 691.1404(1). *Rowland* held that the notice provision of that statute contains no prejudice requirement and that the judiciary cannot read such a requirement into the statute. Defendant argues that *Rowland* stands more broadly for the proposition that when a claim against the government is involved, a prejudice requirement cannot be read into a statutory notice provision that contains no such requirement. MCL 600.6431 contains no prejudice requirement.

Defendant similarly relies on *Jones v Dep't of Transportation*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2007 (Docket No. 275076),[2] which addressed the notice provision applicable to the public building exception to governmental immunity, MCL 691.1406. *Jones* noted that no appellate decision had determined that a defendant was not required to show it was prejudiced by noncompliance with MCL 691.1406 to bar a plaintiff's claim. Citing *Rowland*, however, *Jones* held that the plaintiff's claims were in fact barred by such noncompliance, even if the defendant was not prejudiced. *Jones* found that the two notice provisions were identical in all relevant respects and were both part of the governmental tort liability act, MCL 691.1401 *et seq*., so they should be interpreted in the same manner.

Plaintiffs argue that *Rowland* does not apply to this case because it does not address the notice provision at issue here, and no case has extended *Rowland*'s holding to this notice provision. Furthermore, plaintiffs argue that the notice provisions of MCL 600.6431 (*May*) differ significantly from those in the defective highway exception (*Rowland*) and public building exception (*Jones*) to governmental immunity. Plaintiffs point out that the latter two notice

(…continued)

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."

[2] Being an unpublished opinion, *Jones* is without precedential effect. MCR 7.215(C)(1). We discuss it here only for its reasoning because it is relied on by defendant.

provisions require notice to be served "[a]s a condition to any recovery for injuries sustained," MCL 691.1404, 691.1406, which plaintiffs argue imposes a condition on claimants to recover for their injuries. In contrast, MCL 600.6431(3) states: "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. . . ." Plaintiffs argue that this language does not impose such a condition on claimants. However, plaintiffs do not explain how this difference in wording creates any difference in effect. All three notice provisions require a plaintiff to provide notice within a specified time, and nothing in MCL 600.6431(3) suggests that a plaintiff can recover without providing the required notice.

The determinative question in this case is to what degree *Rowland*'s rationale and holding apply to other, arguably similar, statutory notice provisions. Relevant case law has been inconsistent.[3] *Rowland*'s plain-language analysis, however, is clear and unequivocal, as can been seen from the first sentence of the case, in which the Supreme Court stated simply that the issue was whether the notice provision "should be enforced as written." 477 Mich at 200. *Rowland* held that "MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect. Accordingly, we conclude that it must be enforced as written." *Id*. at 219. MCL 600.6431 is similarly straightforward, clear and unambiguous; *Rowland*'s language therefore commands us to enforce it as written—with no prejudice requirement.

Although *Rowland* did not state that its holding should be applied to statutory notice provisions other than MCL 691.1404(1), its language and analysis broadly reflect the current jurisprudence on this issue. In its historical overview of notice statutes, *Rowland* discussed not only governmental immunity notice provisions but also the notice provision of the Motor Vehicle Accident Claims Act, MCL 257.1101 *et seq.* ("MVACA"). *Rowland* did not differentiate between the notice provision in the MVACA and the notice provision of MCL 691.1404(1) when it rejected the prejudice requirement that had been wrongfully "engrafted" onto both. We conclude that the Supreme Court would thus not differentiate between the notice provisions of MCL 691.1404(1) and MCL 600.6431(3).

We find additional support for our conclusion by examining the relationship between the Court of Claims Act and the governmental tort liability act. The latter provides that "[c]laims against the state authorized under this act shall be brought in the manner provided in" the Court of Claims Act. MCL 691.1410(1). MCL 691.1404(2) specifically states that complying with its notice requirements "shall constitute compliance with [MCL 600.6431], requiring the filing of notice of intention to file a claim against the state."[4] This Court has instructed that "[t]he Court of Claims act should be interpreted in light of the governmental immunity act. The latter statute,

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[3] Compare *Jones, supra*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2007 (Docket No. 275076), and *Chambers v Wayne Co Airport Auth*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2008 (Docket No. 277900), rev'd, 482 Mich 1136; 758 NW2d 302 (2008), aff'd on reconsideration, 482 Mich 1136; 758 NW2d 302 (2009).

[4] The notice provision applicable to the public building exception, in turn, states that "[n]otice to the state of Michigan shall be given as provided in [MCL 691.1404]." MCL 691.1406.

which was enacted three years after the former, refers to the same class of persons and shares a common objective of regulating claims against the state. Such statutes are 'in pari materia' and should be interpreted so as to be complementary and not contradictory." *Doan v Kellogg Community College*, 80 Mich App 316, 359; 263 NW2d 357 (1977). Reading a prejudice requirement into the notice provision of the Court of Claims Act but not the notice provision of the governmental immunity act is inconsistent with this command as well as with the legislative intent of the governmental immunity act.

We conclude that the trial court erred in denying summary disposition to defendant on the ground that it was required to show it was prejudiced by plaintiffs' noncompliance with MCL 600.6431(3).

Reversed and remanded to the Court of Claims for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Brian K. Zahra