STATE OF MICHIGAN

COURT OF APPEALS

JOHN LAUVE,

Plaintiff-Appellant,

v

GOVERNOR,

Defendant-Appellee.

UNPUBLISHED
January 17, 2017

No. 329985
Court of Claims
LC No. 15-000118-MM

Before: O'CONNELL, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Plaintiff John Lauve appeals as of right an order granting defendant Governor Rick Snyder's motion for summary disposition pursuant to MCR 2.116(C)(7) and MCL 600.6431. For the reasons stated herein, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves 2012 PA 396, an amendment to the Downtown Development Authority Act ("DDAA"), MCL 125.1651 *et seq*., which allowed for the authorization and funding of the Detroit Events Center, a development project that includes the new Detroit Red Wings hockey arena. Plaintiff filed a complaint against defendant in the Court of Claims asserting the Michigan Constitution, Const 1963, art 4, § 30, requires the appropriation of public funds for local or private purposes be approved by $^2/_3$ of both houses of the Legislature, and that 2012 PA 396 "failed to pass with the Constitutionally mandated $^2/_3$ vote of the House." As a result, plaintiff asked the court to find the amendment unconstitutional and consequently, "null and void."

In response, defendant filed a motion for summary disposition on several grounds. Defendant asserted summary disposition was appropriate under MCR 2.116(C)(4) (lack of subject matter jurisdiction) and (C)(8) (failure to state a claim upon which relief can be granted), as plaintiff failed to file a claim or notice of intent to file a claim within one year after the claim accrued, and failed to verify his complaint as required by MCL 600.6431. Defendant asserted summary disposition was appropriate under MCR 2.116(C)(5) (lack of capacity to sue) and (C)(8), because plaintiff lacked standing to bring his claim. Defendant asserted summary disposition was appropriate under MCR 2.116(C)(8), arguing plaintiff failed to state a claim against defendant upon which relief could be granted. Last, defendant asserted summary

disposition was appropriate under MCR 2.116(C)(10), arguing that 2012 PA 396 does not violate art 4, § 30 of the Michigan Constitution.

Plaintiff argued dismissal was inappropriate for several reasons. First, plaintiff asserted that MCL 600.6431 "does not apply" to constitutional challenges. However, plaintiff also argued that his claim did not accrue until "the fraud [was] discovered." Second, plaintiff asserted he had standing to bring his claim as "[e]very citizen has the right to have the Constitution enforced." Last, plaintiff asserted that he stated a claim upon which relief could be granted, as defendant signed the amendment into law "that was null and void."

The trial court issued a written opinion and order, concluding that in order to maintain an action against the state, MCL 600.6431 required plaintiff to file a verified written claim or notice of intent to file a claim against the state within one year after the claim had accrued. The court concluded that plaintiff's claim accrued on December 19, 2012—the effective date of the amendment—and that plaintiff did not file a complaint until over two years later. Further, the court acknowledged that, while signed by plaintiff, his complaint was not verified. Because plaintiff failed to comply with the notice filing requirements, the court held that "MCL 600.6431 precludes him from maintaining this action against defendant." Accordingly, the court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and MCL 600.6431.

Plaintiff filed a motion for reconsideration, arguing "[t]he Constitution should not be side stepped on procedure," and asserting that he complied with MCL 600.6431 as his claim actually accrued on December 10, 2014—when the Attorney General issued an opinion addressing the constitutionality of 2012 PA 396—and he filed a complaint within one year of that date However, the court held that plaintiff did not demonstrate a palpable error by which the court was misled and did not show that a different disposition of his motion was required. Accordingly, the court denied plaintiff's motion for reconsideration.

II. ANALYSIS

While raised as two separate issues, plaintiff argues that the court erred in granting defendant's motion for summary disposition.

The court granted summary disposition pursuant to MCR 2.116(C)(7).[1] "Under MCR 2.116(C)(7), the moving party is entitled to summary disposition if the plaintiff's claims are barred because of immunity granted by law." *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). "We review de novo a trial court's ruling under that subrule." *Rusha v Dept*

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[1] We note that the trial court is not constrained by the subrule under which a party moves for summary disposition. Instead, "[i]t is well settled that, where a party brings a motion for summary disposition under the wrong subrule, a trial court may proceed under the appropriate subrule if neither party is misled." *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 312; 696 NW2d 49 (2005), citing *Blair v Checker Cab Co*, 219 Mich App 667, 670-671; 558 NW2d 439 (1996); *Ruggeri Electrical Contracting Co, Inc v Algonac*, 196 Mich App 12, 18; 492 NW2d 469 (1992).

of Corr, 307 Mich App 300, 304; 859 NW2d 735 (2014), citing *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). Similarly, "whether MCL 600.6431 requires dismissal of a plaintiff's claim for failure to provide the designated notice raises questions of statutory interpretation," which this Court reviews de novo. *McCahan v Brennan*, 492 Mich 730, 736; 822 NW2d 747 (2012).

The Court of Claims has jurisdiction "[t]o hear and determine any claim or demand, statutory or constitutional, . . . ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief . . . against the state and any of its departments, commissions, boards, institutions, arms, or agencies." MCL 600.6419(1)(a). "This jurisdiction also extends to suits against state officers where the officer was acting in an official capacity when committing the acts complained of." *Carlton v Dep't of Corr*, 215 Mich App 490, 501; 546 NW2d 671 (1996). However, "it is well established that the Legislature may impose reasonable procedural requirements, such as a limitations period, on a plaintiff's available remedies even when those remedies pertain to alleged constitutional violations." *Rusha*, 307 Mich App at 307; *McCahan*, 492 Mich at 736. The procedural rules contained in MCL 600.6431(1) are examples of such "reasonable procedural requirement[s]." *Rusha*, 307 Mich App at 310.

MCL 600.6431(1) provides, in relevant part:

> [n]o 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 . . . , which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.

Our Supreme Court has stated that the requirements set forth in MCL 600.6431 "must be met in order to pursue a claim against the state," *McCahan*, 492 Mich at 744-745, and that the notice and verification requirements in MCL 600.6431 are "conditions precedent" to sustaining an action against the state, *Fairley v Dep't of Corr*, 497 Mich 290, 297-298; 871 NW2d 129 (2015). Accordingly, "a claimant's failure to comply strictly with this notice provision warrants dismissal of the claim." *Rusha*, 307 Mich App at 307, citing *McCahan*, 492 Mich at 746-747. Further, a plaintiff who brings a constitutional claim against the state must nevertheless comply with the procedural requirements contained in MCL 600.6431(1), and "is not excused from compliance by virtue of the fact that his action involves a constitutional issue." *Rusha*, 307 Mich App at 311-312.

Plaintiff argues that his claim accrued on December 10, 2014, when the Attorney General issued an opinion addressing the constitutionality of 2012 PA 396. However, a claim accrues "at the time the wrong upon which the claim is based was done." MCL 600.5827. Here, plaintiff argues the "wrong" occurred when defendant signed 2012 PA 396 into law despite the fact that it did not pass with $^{2}/_{3}$ vote of the Legislature. Defendant signed the amendment, and it became effective, on December 19, 2012. 2012 PA 396. Thus, the alleged wrong occurred—and plaintiff's claim accrued—on December 19, 2012. Plaintiff did not file a claim until May 26, 2015, more than two years later. Further, plaintiff's complaint was not verified. See *Fairley*, 497 Mich at 300 (holding a claim or notice of intent to file a claim that is not verified "fails to meet the conditions precedent to maintaining a suit against the [state]."). Thus, plaintiff's claim

against defendant is barred because he did not comply with the requirements of MCL 600.6431, and the Court of Claims, therefore, did not err in dismissing plaintiff's claim pursuant to MCR 2.116(C)(7). *Fairley*, 497 Mich at 300-301.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Christopher M. Murray