STATE OF MICHIGAN

COURT OF APPEALS

NANCY ZELEK,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, and DEPARTMENT OF STATE POLICE,

Defendants-Appellants.

UNPUBLISHED
October 16, 2012

No. 305191
Court of Claims
LC No. 10-000055-MZ

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

Defendants appeal as of right the order denying their motion for summary disposition in this action that was brought pursuant to the motor vehicle exception to governmental immunity, MCL 691.1405. We reverse and remand for entry of an order granting summary disposition in favor of defendants.

On March 25, 2009, plaintiff was involved in a motor vehicle accident when her vehicle collided with a vehicle owned by the State of Michigan and driven by undercover Michigan State Police Trooper Garth Burnside. On July 21, 2010, plaintiff filed suit in the Court of Claims against defendants. On March 15, 2011, defendants moved for summary disposition pursuant to MCR 2.116(C)(4), arguing that plaintiff failed to comply with the applicable notice requirements of MCL 600.6431(3). The trial court denied defendants' motion on the ground that defendant did not show actual prejudice and on the ground that the notice provision in MCL 600.6431(3) is a statute of limitations that was tolled by MCL 600.5855.

We review de novo a trial court's ruling on a motion for summary disposition. *Jimkoski v Shupe*, 282 Mich App 1, 4; 763 NW2d 1 (2008). We also review de novo issues of statutory interpretation. *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011).

This case is governed by *McCahan v Brennan*, 291 Mich App 430; 804 NW2d 906 (2011), in which the plaintiff filed a negligence action in the Court of Claims against the University of Michigan Board of Regents seeking recovery for injuries incurred in an accident involving a university-owned vehicle. The plaintiff sent a letter to the university five months after the accident informing it that she intended to file suit. *Id.* at 432. The plaintiff did not file her notice of intent to file a claim with the Court of Claims, however, until nearly one year after the accident. *Id.* This Court noted that MCL 600.6431 "clearly states the steps a plaintiff must

take in order to make a claim against the state," including filing "either a written claim or a written notice of intention to file a claim against the state or any of its . . . institutions" with "the office of the clerk of the of claims." *Id.*, quoting MCL 600.6431(1). When the action is for "personal injuries," the plaintiff must file his or her notice "within 6 months following the happening of the event giving rise to the cause of action." *Id.*, quoting MCL 600.6431(3). The *McCahan* panel held that strict compliance with the statutory notice period is required and that "substantial compliance does not satisfy MCL 600.6431(3)." *Id.* at 433. As the plaintiff failed to file her notice within six months of the accident, she could not plead in avoidance of governmental immunity. *Id.* at 435-436. *In McCahan v Brennan*, ___ Mich ___; ___ NW2d ___ (Docket No. 142765, decided August 20, 2012), our Supreme Court affirmed this Court's decision, holding that the notice provisions of MCL 600.6431 are clear, unambiguous, and must be enforced exactly as written. In particular, the Court stated that "when the Legislature specifically qualifies the ability to bring a claim against the state or its subdivisions on a plaintiff's meeting certain requirements that the plaintiff fails to meet, no saving construction–such as requiring a defendant to prove actual prejudice–is allowed." *Id.*, slip op at 16-17. Further, "[c]ourts may not engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with statutory notice requirements." *Id.*, slip op at 17.

Here, it is undisputed that the accident occurred on March 25, 2009, and that plaintiff filed her complaint in the Court of Claims on July 21, 2010, far in excess of the six month requirement in MCL 600.6431(3). Thus, summary disposition in favor of defendants was appropriate.

Additionally, the trial court erred in applying the tolling provisions of MCL 600.5855[1] to the notice requirement in MCL 600.6431(3). MCL 600.6431 is not a statute of limitations, a tolling provision, or a savings provision. It is "a condition precedent to sue the state." *McCahan*, 291 Mich App at 432. Once a plaintiff has complied with the MCL 600.6431 notice requirements, his or her claim is governed by the shorter of either the "all-purpose" three-year limitation period of MCL 600.6452 or an otherwise applicable statute of limitations. See *Gleason v Dep't of Transp*, 256 Mich App 1, 2, 662 NW2d 822 (2003). The Court of Claims notice provision has no effect on the limitation period and is not subject to the tolling provisions of MCL 600.5855. Further, as our Supreme Court held, when a plaintiff fails to comply with the notice requirements of MCL 600.6431, "no saving construction . . . is allowed." *McCahan*, slip op at 16-17.[2]

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[1] MCL 600.5855 provides that an action may be commenced within two years after the person discovers or should have discovered the claim when a person fraudulently conceals the existence of the claim.

[2] The two cases cited by plaintiff and the trial court in support of the proposition that MCL 600.6431 is a statute of limitation were both decided before November 1, 1990, and are not binding on this Court. MCR 7.215(J)(1).

Reversed and remanded for entry of an order granting summary disposition in favor of defendants. Jurisdiction is not retained.

/s/ /E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra