

STATE OF MICHIGAN
COURT OF APPEALS

TED WEIMAN, DENNIS J. PRESTON, MADGE E.
SMITH, MARTIN D. GARCHOW, TERRANCE T.
TORKA, JERRY A. THOMAS, DARWIN E.
SEBRING, GARY W. THOMPSON, MICHAEL J.
LASECKI, SUSANN M. PAWLOSKI and LINDA
L. ROOSE,

UNPUBLISHED

July 19, 1996

Plaintiffs–Appellees,

v

No. 186534

LC No. 91-013215 CM

STATE OF MICHIGAN, DEPARTMENT OF
MILITARY AFFAIRS and DEPARTMENT OF
TREASURY,

Defendants–Appellants.

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,* JJ.

PER CURIAM.

Plaintiffs, current and former members of the Michigan National Guard, brought a claim against defendants for per diem benefits mandated by MCL 32.261; MSA 4.694. The Court of Claims granted plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants appeal as of right. We affirm.

Defendants argue that the trial court's construction of MCL 32.261; MSA 4.694 results in a mandate to the Legislature that it must appropriate the funds to make the payments and that this is improper because one legislature cannot bind the actions of a future legislature. However, a plain reading of the statute does not show an intention to mandate appropriation. Instead, the funds due under MCL 32.261; MSA 4.694, are to come from appropriations already passed for maintenance of the Michigan National Guard. Because this statute does not provide for a remedy if the state fails to

* Circuit judge, sitting on the Court of Appeals by assignment.

meet its obligations, defendants' reliance on *Grand Traverse Co v State of Michigan*, 450 Mich 457; 538 NW2d 1 (1995), is misplaced. Further, this argument can be rejected based on the reasoning of *City of Adrian v Michigan*, 420 Mich 554, 564-565; 362 NW2d 708 (1994).

Defendants also claim that sovereign immunity precludes any recovery for plaintiffs. However, plaintiffs properly assert that their claim was brought under contract. *United States v Larinoff*, 431 US 864; 97 S Ct 2150; 53 L Ed 2d 48 (1977). Therefore, sovereign immunity is not a defense. *AuSable Manistee Action Council, Inc v State of Michigan*, 182 Mich App 596, 598; 452 NW2d 832 (1989).

Finally, defendants argue that plaintiffs' claim is barred by MCL 600.6431; MSA 27A.6431 because plaintiffs failed to file a notice of intention to file suit one year before actually filing suit. This argument is without merit. Section 6431 requires that a written claim or notice of intention to file a claim be filed within one year "after such claim has accrued." A reading of the plain language evinces no requirement that a notice of claim be filed one year before suit is actually filed.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson