STATE OF MICHIGAN

COURT OF APPEALS

WILFREDO CARDONA,

Plaintiff-Appellant,

V

H. SCHIRP GMBH & COMPANY KG d/b/a H. SCHIRP,

Defendant-Appellee,

and

SCHIRP BETEILIGUNGSGESELL,

Defendant.

UNPUBLISHED
July 28, 2000

No. 219651
Ottawa Circuit Court
LC No. 96-024490-NO

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

In this products liability action, plaintiff appeals by leave granted from an order of the Ottawa Circuit Court granting in part and denying in part his motion for summary disposition. We affirm.

This case centers on 1995 PA 161, a tort reform measure that amended certain provisions of the Revised Judicature Act and added other provisions. 1995 PA 161 was approved and filed on September 29, 1995, but was not ordered to take immediate effect. An act that is not ordered to take immediate effect takes effect at the expiration of ninety days from the end of the session at which the act was passed. Const 1963, art 4, § 27. Thus, 1995 PA 161 became effective on March 28, 1996. However, section four of 1995 PA 161 indicated that the amendment was to be applied retroactively by stating that the amendment was to take effect on September 1, 1995. Section three of 1995 PA 161 provided that the amendment was applicable to "cases filed on or after the effective date of this amendatory act." See Historical and Statutory Notes following MCL 600.2925d; MSA 27A.2925(4). Plaintiff contends that 1995 PA 161 cannot be applied retroactively to his cause of action, which was filed before March 28, 1996, the general effective date for 1995 legislation, but after September 1, 1995, the effective date set forth in § 4 of the act.

Plaintiff was injured on January 12, 1995, in the course of his employment at United Technologies Automotive when attempting to clean a fleecing machine manufactured by defendants. Plaintiff filed the instant lawsuit on January 10, 1996. Defendants' answer listed as an affirmative defense that defendants were entitled to the benefit of the 1995 tort reform legislation contained in 1995 PA 161. Plaintiff moved for partial summary disposition, arguing that 1995 PA 161 was not applicable to the instant case because his complaint was filed in January, 1996, before the March, 1996, general effective date of 1995 PA 161. The trial court concluded that 1995 PA 161 was applicable to plaintiff's claims because the act expressly stated that it applied to actions filed on or after September 1, 1995, and denied plaintiff's motion for partial summary disposition.

On appeal, plaintiff argues that the trial court erred in concluding that 1995 PA 161 was applicable to plaintiff's claims and that the amendment could properly be applied retroactively.

Generally, statutory amendments are presumed to operate prospectively. *Alma Piston Co v Dep't of Treasury*, 236 Mich App 365, 369; 600 NW2d 144 (1999). However, this general assumption of prospectivity does not apply where the Legislature has expressly or impliedly indicated its intent to give retroactive effect to the amendment, or where the statutes are remedial or procedural in nature. *Stanton v City of Battle Creek*, 237 Mich App 366, 373; 603 NW2d 285 (1999). Here, the Legislature has expressly indicated its intent to give retroactive effect to 1995 PA 161 by expressly stating in § 4 of the amendment that the act "shall take effect September 1, 1995."

Plaintiff argues, however, that the act should not be applied retroactively to the instant case because the language in § 4 of the act stating that the act was to take effect on September 1, 1995, violates Const 1963, art 4, § 27. We disagree. Whether retroactive application of 1995 PA 161 violates the Michigan Constitution is a question of law, which we review de novo. *Phinney v Perlmutter*, 222 Mich App 513, 552; 564 NW2d 532 (1997).

Const 1963, art 4, § 27 provides:

> No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.

Plaintiff essentially argues that, according to Const 1963, art 4, § 27, an act must either be given immediate effect or it must become effective ninety days after the end of the session at which it was passed, and that an act that provides any other effective date violates Const 1963, art4, § 27. However, we agree with this Court's rejection of plaintiff's argument in *Ludka v Dep't of Treasury*, 155 Mich App 250, 261; 399 NW2d 490 (1986):

> The flaw in plaintiffs' argument is that it assumes that this provision means that without a two-thirds vote of the Legislature there can be no retroactivity, because the law can only have effect on "transactions" occurring more than ninety days after its passage. This contention would give § 27 the effect of mandating a two-thirds vote of the Legislature in order to make a statute retroactive, which clearly was never the intent of the constitutional provision. Instead, the operation of this provision as it applies to the

instant case is to hold the effect of this amendment for ninety days, with the amendment being in full force with full retroactive effect after that point in time.

On the basis of *Ludka,* we conclude that retroactive application of 1995 PA 161 does not violate Const 1963, art 4, § 27. In addition, contrary to plaintiff's argument, we find no ambiguity in 1995 PA 161 regarding its effective date.

Plaintiff next argues that the retroactive application of 1995 PA 161 is unconstitutional because it impairs vested rights. We disagree. We review this issue de novo. *Phinney, supra.*

"[R]etrospective application of a law is improper where the law 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past.'" *In re Certified Questions (Karl v Bryant Air Conditioning Co),* 416 Mich 558, 572; 331 NW2d 456 (1982), quoting *Hughes v Judges' Retirement Board,* 407 Mich 75, 86; 282 NW2d 160 (1979). Plaintiff contends that certain provisions of 1995 PA 161 impair his vested property right in his cause of action.[1] Specifically, plaintiff contends that his vested property right was impaired by MCL 600.2956; MSA 27A.2956, which effectively abolished joint and several liability in tort actions, and MCL 600.2957; MSA 27A.2957, which requires that the trier of fact allocate liability in direct proportion to each person's percentage of fault, regardless of whether a person is, or could have been named as, a party in the action. In addition, MCL 600.2959; MSA 27A.2959 provides that a plaintiff's damages in a tort action are to be reduced by the percentage of the plaintiff's comparative fault, and abolishes a plaintiff's right to noneconomic damages if the plaintiff is over fifty percent comparatively negligent.

These provisions of 1995 PA 161 do not bar or impair plaintiff's cause of action. Rather, they merely operate to reduce the amount of damages according to the principles of comparative negligence. 1995 PA 161 is remedial in nature in that it was designed to reform existing rights. *Karl, supra* at 578; *Allstate Ins Co v Faulhaber,* 157 Mich App 164, 167; 403 NW2d 527 (1987). Specifically, 1991 PA 161 was intended to address the "explosion of product liability litigation, resulting in unfair and excessive judgments against manufacturers and sellers, bankruptcies, reduced capacity of firms to compete internationally, curtailed innovation, reduced funding for research, higher consumer costs, and unaffordable or unavailable casualty insurance." 1995 PA 161, Senate Fiscal Agency Bill Analysis, SB 344, January 11, 1996. Because the provisions at issue are remedial in nature and do not bar plaintiff's cause of action, but merely potentially change the remedy available, retroactive application of the amendment was proper. *Karl, supra* at 577-580.

Furthermore, we reject plaintiff's contention that the Legislature was required to provide a quid pro quo by enhancing in some way the recovery available to tort plaintiffs when it limited such recovery in other ways. Plaintiff has provided no support for his position that the legislature is required to provide a quid pro quo whenever it enacts a provision limiting a plaintiff's recovery. Moreover, "[t]he

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[1] A cause of action becomes a vested property right when the cause of action accrues, i.e. when "all of the facts become operative and are known." *In re Certified Questions, supra* at 573.

constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object." *Shavers v Attorney General*, 402 Mich 554, 612, n 36; 267 NW2d 72 (1978), quoting *Silver v Silver*, 280 US 117, 122, 50 S Ct 57; 74 L Ed 2d 221 (1929).

We therefore affirm the trial court's order denying plaintiff's motion for summary disposition.

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer

I concur in result only

/s/ Mark J. Cavanagh