STATE OF MICHIGAN

COURT OF APPEALS

AUDREY OLSCHEFSKI, Plaintiff-Appellant,	UNPUBLISHED July 9, 2002
v	No. 229770 Wayne Circuit Court
NORTHVILLE PUBLIC SCHOOLS, Defendant-Appellee.	LC No. 99-937786-CZ

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition based on the statute of limitations and dismissing her claims. We affirm.

On appeal, plaintiff first argues that the trial court erred in applying the three-year statute of limitations rather than the six-year statute of limitations. "Generally, an issue not raised before and considered by the trial court is not preserved for appellate review." *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). In response to defendant's motion for summary disposition, plaintiff argued that the six-year statute of limitations should apply because she was claiming financial loss rather than damage to persons or property. However, on appeal, plaintiff argues that the six-year statute of limitations should apply because her claims are based on statute rather than common-law tort. Although plaintiff raised the statute of limitations issue in the trial court, she did not advance the same argument in the trial court as she does on appeal. Therefore, plaintiff's argument on appeal was not preserved in the trial court. Where an appellant raises an argument for the first time on appeal, this Court may address the unpreserved issue "if it is one of law for which all the necessary facts were presented." *Joe Panian Chevrolet, Inc v Young*, 239 Mich App 227, 233; 608 NW2d 89 (2000). A trial court's decision whether a plaintiff's claim is statutorily time-barred is a question of law that is reviewed de novo. *DiPonio Construction Co, Inc v Rosati Masonry Co, Inc*, 246 Mich App 43, 47; 631 NW2d 59 (2001). All of the necessary facts were presented in this case. Therefore, we will address plaintiff's argument.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), but argued that plaintiff's claims were barred by the statute of limitations. A motion for summary disposition based on the argument that a claim is barred by the statute of limitations is properly brought under MCR 2.116(C)(7). Where a party brings a motion for summary disposition under the wrong subrule, "the trial court may proceed under the appropriate subrule

as long as neither party is misled." *Blair v Checker Cab Co*, 219 Mich App 667, 670-671; 558 NW2d 439 (1996). The trial court granted defendant's motion for summary disposition because plaintiff's claims were barred by the statute of limitations. The trial court did not state under which subrule it granted defendant's motion for summary disposition. This Court's ability to review the issue is not affected by the trial court's failure to specify which subrule it granted defendant's motion. *Verna's Tavern, Inc v Heite*, 243 Mich App 578, 584-585; 624 NW2d 738 (2000). Because the trial court granted defendant's motion for summary disposition based on its finding that plaintiff's claims were barred by the statute of limitations, it granted defendant's motion under MCR 2.116(C)(7), which provides that summary disposition may be granted on the ground that a claim is barred by the statute of limitations.

When reviewing a grant of summary disposition pursuant to MCR 2.116(C)(7), this Court must consider the affidavits, pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A court "must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor." *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999). The contents of the complaint are accepted as true unless contradicted by documentation submitted by the moving party. *Maiden, supra.* If none of the facts are in dispute and reasonable minds could not differ regarding the legal effect of those facts, whether a plaintiff's claim is barred by the statute of limitations is a question of law for the court to decide. *Jackson Co Hog Producers, supra*. A trial court's decision on a motion for summary disposition under MCR 2.116(C)(7) is reviewed de novo. *DiPonio Construction Co, Inc, supra* at 46.

In granting defendant's motion for summary disposition, the trial court applied the three-year statute of limitations under MCL 600.5805(9)[1], which states: "The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property." Plaintiff argues that because her claims are based on statute rather than common-law tort, the trial court should have applied the "catch-all" statute of limitations, which states: "All other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes." MCL 600.5813.

Plaintiff's claims are partly[2] based on the Revised School Code under MCL 380.1236(1) and (2),[3] which presently state:

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[1] When plaintiff filed her complaint, the three-year statute of limitations was codified as MCL 600.5805(8). However, MCL 600.5805 was amended and renumbered effective February 17, 2000. 2000 PA 2. The former MCL 600.5805(8) is now MCL 600.5805(9). We will refer to the statute by its present numbering system and will hereinafter refer to the three-year statute of limitations as MCL 600.5805(9).

[2] Plaintiff made claims based on the Revised School Code under MCL 380.1236(1) and (2) and under the teacher tenure act, MCL 38.83 and MCL 38.172. On appeal, plaintiff does not dispute the dismissal of her claims under the teacher tenure act.

[3] Before April 7, 1986, MCL 380.1236(2) stated:

(continued…)

> (1) If a teacher is employed as a substitute teacher with an assignment to 1 specific teaching position, then after 60 days of service in that assignment the teacher shall be granted for the duration of that assignment leave time and other privileges granted to regular teachers by the school district, including a salary not less than the minimum salary on the current salary schedule for that district.
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> (2) A teacher employed as a substitute teacher for 150 days or more during a legal school year of not less than 180 days, or employed as a substitute teacher for 180 days or more by an intermediate school district that operates any program for 220 days or more as required by administrative rule, shall be given during the balance of the school year or during the next succeeding legal school year only the first opportunity to accept or reject a contract for which the substitute teacher is certified, after all other teachers of the school district are reemployed in conformance with the terms of a master contract of an authorized bargaining unit and the employer.

This Court recently addressed the issue regarding whether the three-year statute of limitations applies to claims of statutory violations in *DiPonio Construction Co, Inc, supra*. In *DiPonio Construction Co, Inc*, this Court applied the analyses in *Citizens for Pretrial Justice v Goldfarb*, 415 Mich 255; 327 NW2d 910 (1982), and *National Sand, Inc v Nagel Construction, Inc*, 182 Mich App 327; 451 NW2d 618 (1990), and determined that "a civil cause of action arising from a statutory violation is subject to the six-year limitation period found in § 5813, if the statute itself does not provide a limitation period." *DiPonio Construction Co, Inc, supra* at 56. Even more recently, this Court stated, "This Court has found that the six-year 'catch-all'

(…continued)

> A teacher employed as a substitute teacher for 120 days or more during a school year shall be given first opportunity to accept or reject a contract for which the person is certified, after all other teachers of the school district are reemployed in conformance with the terms of a master contract of an authorized bargaining unit and the employer. [1976 PA 451, § 1236.]

1986 PA 72, § 1, effective April 7, 1986, amended MCL 380.1236(2):

> A teacher employed as a substitute teacher for 120 days or more during a legal school year of not less than 180 days, or employed as a substitute teacher for 150 days or more by an intermediate school district that operates any program for 220 days or more as required by administrative rule, shall be given during the balance of the school year or during the next succeeding legal school year only, the first opportunity to accept or reject a contract for which the substitute teacher is certified, after all other teachers of the school district are reemployed in conformance with the terms of a master contract of an authorized bargaining unit and the employer.

1995 PA 289, § 1, effective March 28, 1996, again amended MCL 380.1236(2) to the present version of the statute that is quoted above.

period of limitation of MCL 600.5813 . . . applies when the right to recovery arises from a statute." *Estes v Idea Engineering and Fabricating, Inc*, 250 Mich App 270, 283; ___ NW2d ___ (2002). Therefore, because plaintiff's claims in the instant case arise from alleged violations of the Revised School Code, rather than traditional common-law torts, the six-year statute of limitations under MCL 600.5813 applies. Therefore, the trial court erred in applying the three-year statute of limitations to plaintiff's claims.

Applying the six-year statute of limitations, only plaintiff's claim for the 1994-1995 school year under MCL 380.1236(1) is not time-barred. Similarly, plaintiff alleges that defendant violated MCL 380.1236(2) in the 1981-1982, 1983-1984, 1984-1985, 1985-1986, and 1995-1996 school years. But applying the six-year statute of limitations, only plaintiff's 1995-1996 claims under MCL 380.1236(2) are not time-barred.

Plaintiff further argues that several exceptions to the statute of limitations apply to toll the statute of limitations for her 1981-1982, 1983-1984, 1984-1985, and 1985-1986 claims. First, plaintiff argues that the trial court erred in declining to incorporate a discovery rule into the limitations period for a private cause of action based on MCL 380.1236. "Although some statutory limitation provisions include a discovery rule, most do not." *Goodridge v Ypsilanti Twp Bd*, 451 Mich 446, 453; 547 NW2d 668 (1996).

> The statute of limitations is a procedural device designed to promote judicial economy and protect defendants' rights. However, our courts have applied the discovery rule to prevent unjust results "[w]hen a plaintiff would otherwise be denied a reasonable opportunity to bring suit due to the latent nature of the injury or the inability to discover the causal connection between the injury and the defendant's [action] . . . ." [*Brennan v Edward D Jones & Co*, 245 Mich App 156, 157-158; 626 NW2d 917 (2001) (citations omitted).]

Generally, the limitation period accrues and begins to run "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827; *Brennan, supra* at 158. However, under the discovery rule, the statute of limitations does not begin to run "until the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, that he had a possible cause of action." *Brennan, supra* at 159, quoting *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 142; 530 NW2d 510 (1995).

As discussed, the six-year statute of limitations applies to claims brought under MCL 380.1236. Therefore, plaintiffs filing claims under MCL 380.1236 are given six years from the accrual of their claims. Plaintiffs bringing claims under MCL 380.1236 would generally know or could discover with reasonable diligence how many days they worked as a substitute teacher during the year. Claims under MCL 380.1236 are not similar to claims for negligent misrepresentation, products liability, medical malpractice, or other cases where the discovery rule has been applied because plaintiffs suing under MCL 380.1236 could know, without the school district informing them, that they might have worked over the number of days required for a claim. Because the substitute teacher bringing the claim actually worked the days required for the claim, the school district does not have sole control over the facts giving rise to the cause of action. When the school district has teaching positions available the next year and plaintiff is not given first opportunity for the positions, the teacher should generally be aware that an event has occurred that triggered the school district's potential liability. We find that six years gives

plaintiffs "a fair opportunity to bring [the claim]" under MCL 380.1236. See *Goodridge, supra* at 454. Therefore, we decline to incorporate the discovery rule into causes of action based on MCL 380.1236.

Next, plaintiff argues that the trial court erred in finding that the fraudulent concealment exception to the statute of limitations does not apply. We disagree. The fraudulent concealment exception to the statute of limitations provides as follows:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations. [MCL 600.5855.]

> Under MCL 600.5855 . . . , the statute of limitation is tolled when a party conceals the fact that the plaintiff has a cause of action. The plaintiff must plead in the complaint the acts or misrepresentations that comprised the fraudulent concealment. The plaintiff must prove that the defendant committed affirmative acts or misrepresentations that were designed to prevent subsequent discovery. Mere silence is insufficient. [*Sills v Oakland General Hosp*, 220 Mich App 303, 310; 559 NW2d 348 (1996)(citations omitted).]

In the instant case, plaintiff argues that defendant fraudulently concealed the existence of plaintiff's claim by telling her that it was legal to sign the waivers of rights when such waivers were in fact illegal. Plaintiff argues that in 1997, this Court issued an opinion in *Waits v Ann Arbor Public Schools*, 221 Mich App 183; 561 NW2d 851 (1997), where it found that such waivers were illegal. Plaintiff argues that defendant should not have informed her that it was legal to sign the waivers when, in reality, the signing of such waivers was not necessarily legal. Plaintiff testified in her deposition that the only thing she remembered about signing the waivers was that a representative from the school district told her that "it was a legal way for me to continue employment, it was perfectly all right for me to sign it." In her affidavit, plaintiff swore that the representative told her that it was legal to sign the waivers.

We find that because plaintiff discovered the facts that were the basis of her cause of action when the cause of action accrued, the trial court correctly found that plaintiff's fraudulent concealment claim should fail. Plaintiff argues that "the operative fact of which [plaintiff] was not aware and did not learn until she read the Ann Arbor newspaper article [on August 13, 1999,] was that the waiver signing was not necessarily legal."

> This Court has consistently held that a plaintiff's discovery of his injury does not coincide with his discovery that it may be legally compensable. A plaintiff need not know he has suffered an invasion of a legal right before a cause of action accrues. Nor is a cause of action held in abeyance until a plaintiff obtains professional assistance to determine the existence of a cause of action. [*Mascarenas v Union Carbide Corp*, 196 Mich App 240, 244-245; 492 NW2d 512 (1992)(citations omitted).]

The evidence in the instant case shows that plaintiff was aware in the 1981-1982, 1983-1984, and 1984-1985 school years that she had worked over 120 days, had signed a waiver, and had not been given first opportunity to available teaching positions. The fact that she did not believe that defendant's actions were illegal until August 13, 1999, is irrelevant. Plaintiff's own deposition testimony shows that she was aware of the injury and discovered her claims when all of the necessary elements occurred. Therefore, even if defendant concealed the existence of plaintiff's claims, plaintiff discovered her 1981-1982, 1983-1984, and 1984-1985 claims when she was not given first opportunity to available teaching positions.

In regard to the 1985-1986 school year, plaintiff swore in her affidavit that she did not know that she had worked over 120 days as a substitute teacher. However, plaintiff testified in her deposition that she knew that she worked over 120 days during the 1985-1986 school year because she had kept track of the days she had worked on a calendar. Plaintiff gave her deposition testimony before signing her affidavit. Parties may not contrive factual issues by asserting facts in an affidavit that are contrary to their damaging deposition testimony. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 480-481; 633 NW2d 440 (2001). Therefore, we will only consider the deposition testimony that plaintiff knew that she worked over 120 days during the 1985-1986 school year. Furthermore, plaintiff testified in her deposition that she knew that defendant had violated the law by failing to give her first opportunity to an available teaching position, but she did not complain because she did not think it would do any good. Because plaintiff's deposition shows that she knew that she worked over 120 days in the 1985-1986 school year, plaintiff discovered her claims for that year when she was not offered first opportunity to an available teaching position the next year.

In regard to the 1995-1996 school year, plaintiff swore in her affidavit that she did not know that she had worked over 120 days as a substitute teacher. However, plaintiff testified in her deposition that she kept a calendar of the number of days she worked during the 1995-1996 school year. Therefore, assuming that plaintiff did not know that she had worked over 120 days during the 1995-1996 school year, she could have discovered the number of days she worked by merely counting the days on her calendar. Through reasonable diligence, she should have discovered that she had worked over 120 days and that she was not offered first opportunity to an available teaching position the next year.

In regard to plaintiff's claims under MCL 380.1236(1), plaintiff alleges that defendant failed to give her the appropriate salary and benefits after she had substituted sixty days for one specified teaching position. Plaintiff alleges that she did not discover her claims until August 13, 1999. However, the evidence shows that plaintiff knew that she had substituted sixty days for one teacher and approached several people, including the principal of the school, regarding extra pay and other privileges under MCL 380.1236(1). Plaintiff does not argue that she discovered her injury any later than when she was denied her right to extra compensation and privileges under MCL 380.1236(1). Therefore, plaintiff discovered her potential claims under MCL 380.1236(1) when she was not given a salary and other privileges after substituting for sixty days for one teacher.

We find that because plaintiff discovered or should have discovered the facts surrounding her claims as they occurred, plaintiff has not met the requirements for fraudulent concealment. Furthermore, as discussed, *infra*, we find that defendant did not make any fraudulent representation. Therefore, the statute of limitations was not tolled on this account.

Next, plaintiff argues that the trial court erred in finding that defendant was not equitably estopped from asserting the statute of limitations defense to her claims. Again, we disagree. In *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997), the Supreme Court discussed equitable estoppel as it applies to the statute of limitations:

> In *Lothian v Detroit*, 414 Mich 160, 176; 324 NW2d 9 (1982), this Court emphasized that the doctrine of equitable estoppel is a judicially created exception to the general rule that statutes of limitation run without interruption. It is essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar.
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> One who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party. This Court has been reluctant to recognize an estoppel absent intentional or negligent conduct designed to induce a plaintiff to refrain from bringing a timely action. *Id.* at 177. [Emphasis deleted.]

Plaintiff argues that the doctrine of equitable estoppel applies in this case because representatives for defendant told plaintiff that it was legal for her to sign the waivers of rights, and plaintiff relied on defendant's superior legal knowledge and representations in signing the waivers. We find that defendant did not knowingly falsely represent any material facts. When defendant represented to plaintiff the legality of the waivers, *Waits* had not yet been decided. Although defendant told plaintiff that signing the waivers was legal, defendant did not tell plaintiff that their legality had been judicially tested or that she could not challenge their legality in court. See *Lothia, supra* at 178. As discussed, plaintiff knew all of the material facts surrounding her claims. "A plaintiff need not know of the invasion of a legal right in order for the claim to accrue." *Adams v City of Detroit*, 232 Mich App 701, 706; 591 NW2d 67 (1998), quoting *Harris v City of Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992). Plaintiff may not sit back on her claim and then seek a retroactive application of this Court's decision in *Waits*, irrespective of the delay involved. *Lothian, supra* at 179.

Furthermore, in *Waits*, this Court did not find such waivers unenforceable under MCL 380.1236. In *Waits*, the plaintiff, a substitute teacher, signed a wavier of her right to continued employment in order to continue substitute teaching. *Waits, supra* at 185. This Court found that by signing the waiver, the plaintiff did not waive her rights under the teacher tenure act. *Waits, supra* at 188. This Court stated that because the plaintiff was entitled to employment pursuant to the teacher tenure act, it "need not address plaintiff's rights under § 1236 of the Revised School Code, MCL 380.1236; MSA 15.41236, which would entitle plaintiff to only 'the first opportunity to accept' further employment." *Waits, supra* at 189. Because this Court did not address whether such waivers are invalid under § 1236 of the Revised School Code, defendant did not misrepresent any facts by telling plaintiff that it was legal to sign the waivers. Defendant's representation to plaintiff that it was legal for her to sign the waivers may have been an honest and reasonable reflection of defendant's interpretation of the waivers. Under the test set forth in *Cincinnati Ins Co, supra* at 270, the representing or concealing party must have knowledge of the actual facts. Defendant did not have knowledge that the waivers might not be

legal. Therefore, the trial court did not err in finding that defendant was not equitably estopped from asserting the statute of limitations as a defense to plaintiff's claims.

Next, plaintiff argues that the continuing violations doctrine applies to her claims. Under the continuing violations doctrine, "an alleged timely actionable event will allow consideration of and damages for connected conduct that would be otherwise barred." *Sumner v The Goodyear Tire & Rubber Co*, 427 Mich 505, 510; 398 NW2d 368 (1986).

> The continuing-wrongful-acts doctrine states that "[w]here a defendant's wrongful acts are of a continuing nature, the period of limitation will not run until the wrong is abated; therefore, a separate cause of action can accrue each day that defendant's tortious conduct continues." [*Jackson Co Hog Producers, supra* at 81, quoting *Horvath v Delida*, 213 Mich App 620, 626; 540 NW2d 760 (1995).]

"'[A] continuing wrong is established by continual tortious *acts*, not by continual harmful effects from an original completed act.'" *Id.*, quoting *Horvath, supra* at 627 (emphasis in original).

Plaintiff simply states that "the five occasions on which defendant failed to offer [plaintiff] 'first opportunity' after she had worked more than 120 days represents a continuing violation." We disagree. MCL 380.1236(2) provides that teachers who work the required number of days shall be given first opportunity to teaching positions "during the balance of the school year or during the next succeeding legal school year only." Therefore, after the school years following the years when plaintiff worked over 120 days, defendant was no longer required under the statute to give her first opportunity to teaching positions. Accordingly, defendant was no longer violating the statute for those years. Because defendant's alleged violations came to an end at the end of the school year after plaintiff worked 120 days, defendant was not continuously violating the statute for those years. Therefore, the trial court did not err in finding that the continuing violations doctrine does not apply to plaintiff's claims.

Next, plaintiff argues that defendant's obligation to give plaintiff first opportunity for a teaching position also obligated defendant to make installment salary payments to her. Plaintiff argues that defendant is responsible for paying plaintiff the salary she would have earned from December 1993 to the present, which would fall within the six-year statute of limitations. We disagree. In *Adams, supra* at 704-705, this Court held that retirement benefits are similar to an installment contract where each deficient periodic payment constitutes a separate breach of contract action. This Court held that the plaintiff was entitled to proceed against the defendant for all retirement benefits withheld within the limitations period. *Id.* at 705. Similarly, in *H J Tucker & Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 562-563; 595 NW2d 176 (1999), this Court held that the plaintiff's claims for breach of contract regarding periodic monthly commissions were not barred by the statute of limitations when the unpaid monthly commissions fell within the limitations period.

We find that *Adams* and *H J Tucker & Associates, Inc* are distinguishable from the instant case. In the instant case, plaintiff was never hired as a full-time teacher, and thus, did not work full-time. Defendant's alleged violation occurred when it did not give her first opportunity to the position—not when it did not pay her for work she never did. Defendant did not violate any contract or deprive plaintiff of any money to which she was entitled because plaintiff never worked to earn the salary. The plaintiffs in *Adams* and *H J Tucker & Associates, Inc*, on the

other hand, were entitled to the periodic payments that the defendants failed to pay. If plaintiff had been working full-time during the limitations period and defendant had refused to pay her during this time, then the "installment payment" argument against the statute of limitations might apply. However, because plaintiff did not earn a salary, and the alleged violations occurred outside the six-year limitations period (excepting plaintiff's 1995-1996 school year allegations), the "installment payment" argument is not applicable to the instant case. Therefore, summary disposition of plaintiff's 1981-1982, 1983-1984, 1984-1985, and 1985-1986 claims under MCL 380.1236(2) was proper based on the statute of limitations.

In sum, we find that the six-year statute of limitations applies in this case and that neither the discovery rule, the fraudulent concealment exception to the statute of limitations, the equitable estoppel doctrine, nor the continuing violations doctrine apply to plaintiff's claims. Therefore, plaintiff's 1981-1982, 1983-1984, 1984-1985, and 1985-1986 claims are barred by the statute of limitations. The only alleged violations that fall within the six-year statute of limitations are violations that accrued in the 1994-1995 and 1995-1996 school years.

In its brief, defendant argues that if the six-year statute of limitations applies to plaintiff's claims, this Court should affirm the trial court's grant of its motion for summary disposition on MCR 2.116(C)(8) or (C)(10) grounds. First, defendant makes two arguments concerning why the trial court did not err in granting its motion for summary disposition regarding plaintiff's teacher tenure act claims. However, we need not address defendant's arguments supporting affirmance of the trial court's grant of summary disposition regarding plaintiff's teacher tenure act claims because plaintiff does not argue on appeal that the trial court erred in granting defendant's motion for summary disposition in regard to her teacher tenure act claims.

Next, defendant argues that plaintiff's claims under MCL 380.1236(2) regarding the 1995-1996 school year should be dismissed under MCR 2.116(C)(8) and (C)(10). Effective March 28, 1996, MCL 380.1236(2) was amended to increase from 120 to 150 the number of days the substitute teacher had to work in order to have a claim. 1995 PA 289, § 1. The evidence plaintiff presented shows that she did not work over 150 days during the 1995-1996 school year. Defendant argues that the amendment of the statute should apply retroactively. We agree.

"[R]etrospective application of a law is improper when the law takes away or impairs vested rights acquired under existing laws or attaches a new disability with respect to transactions or consideration already passed." *Morgan v Taylor School Dist*, 187 Mich App 5, 9-10; 466 NW2d 322 (1991). In *Morgan, supra* at 10, this Court held that retroactive application of MCL 380.1236(2) was proper because the plaintiff did not have a vested right to first opportunity to employment, but only had only the potential of a future job offer. This Court held that the plaintiff's cause of action accrued only when the school district had available teaching positions. *Id.* Before the plaintiff's cause of action accrued, she only had a "mere expectancy" to a position. *Id.* at 12.

In the instant case, in the 1995-1996 school year, plaintiff did not work over 120 days as a substitute teacher until June 1996. The amendment of MCL 380.1236(2) became effective on March 28, 1996. 1995 PA 289, § 1. Therefore, when the amendment became effective, plaintiff had not yet worked 120 days as required under the statute and did not yet have a vested right in first opportunity for employment in the 1995-1996 school year. Instead, at the time the

amendment became effective, plaintiff merely had the potential to first opportunity to a job offer. Therefore, the amended version of MCL 380.1236(2) applies retroactively to plaintiff's claims regarding the 1995-1996 school year. Consequently, plaintiff was not entitled to first opportunity to a teaching position after working more than 120 days, but less than 150 days, during the 1995-1996 school year. We conclude that defendant is entitled to summary disposition, pursuant to MCR 2.116(C)(8), of plaintiff's claims regarding defendant's alleged violation of MCL 380.1236(2) during the 1995-1996 school year.

Next, defendant argues that plaintiff's claim that defendant violated MCL 380.1236(1) by failing to give her a salary and benefits after she worked more than sixty days in a specific teaching assignment lacks merit because plaintiff could not identify any assignment to one specific teaching position with any certainty and she only substituted for one teacher for fifty-six straight days during the 1994-1995 school year. We agree. MCL 380.1236(1) states:

> If a teacher is employed as a substitute teacher with an assignment to 1 specific teaching position, then after 60 days of service in that assignment the teacher shall be granted for the duration of that assignment leave time and other privileges granted to regular teachers by the school district, including a salary not less than the minimum salary on the current salary schedule for that district.

In interpreting MCL 380.1236(1), we employ the rules of statutory construction:

> The primary goal of statutory interpretation is to discern and give effect to the intent of the Legislature:
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> 'This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent. . . ." If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.' [*Crowe v Detroit*, 465 Mich 1, 6; 631 NW2d 293 (2001) (citations omitted).]

We conclude that plaintiff's MCL 380.1236(1) claim should be dismissed because the evidence shows that she did not work for "1 specific teaching position" for over sixty days. The evidence presented by plaintiff shows that she substituted for the same teacher for fifty-six consecutive days between January 30, 1995, and May 4, 1995. Plaintiff also substituted for this teacher for six days between July 1, 1994, and July 22, 1994, and substituted for her on September 8, 1994, September 9, 1994, and December 16, 1994. Therefore, plaintiff substituted for the same teacher for over sixty days during the 1994-1995 school year. However, because the substitution assignments were sporadic and during different parts of the year, they cannot be considered to be "1 specific teaching position" under MCL 380.1236(1). Plaintiff may not add the extra sporadic days she substituted for the teacher to the fifty-six day assignment in order to meet the sixty-day threshold. Therefore, plaintiff's MCL 380.1236(1) claims should have been dismissed under MCR 2.116(C)(10). "When this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning." *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001), quoting *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998). In light of our disposition above,

we need not address defendant's arguments in support of other alternative grounds for affirmance.

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra