STATE OF MICHIGAN

COURT OF APPEALS

ERIC HAZLEY, Plaintiff-Appellant,	UNPUBLISHED June 7, 2011
v	No. 297118 Court of Claims
DEPARTMENT OF TRANSPORTATION, Defendant-Appellee.	LC No. 09-000046-MD

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

In this action involving an allegedly defective highway, plaintiff appeals as of right from a Court of Claims order granting defendant's motion for summary disposition because plaintiff failed to file notice of his claim with the Court of Claims as required by MCL 691.1404(2). We affirm.

This Court reviews de novo both a trial court's decision on a motion for summary disposition and questions of statutory interpretation. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007).

MCL 691.1404 states, in part:

> (1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.
>
> (2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. *In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims*. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948,

> requiring the filing of notice of intention to file a claim against the state. . . . [Emphasis added.]

Plaintiff does not dispute that he failed to file the required notice with the Court of Claims, contrary to MCL 691.1404(2). He argues, however, that dismissal was not warranted because defendant was not prejudiced by his noncompliance. We disagree.

In *Rowland*, the Supreme Court overruled prior decisions and held that a plaintiff's failure to comply with the notice requirements of MCL 691.1404(1) requires dismissal, regardless of actual prejudice to the defendant. *Rowland*, 477 Mich at 219. Plaintiff argues that the rejection of the actual-prejudice standard in *Rowland* is not controlling here because this case concerns a notice provision in subsection (2) of MCL 691.1404, whereas the Court in *Rowland* considered only subsection (1) of MCL 691.1404. See *Rowland*, 477 Mich at 200. Plaintiff relies on Chief Justice Kelly's concurring statement accompanying an order denying leave to appeal in *Beasley v State of Mich*, 483 Mich 1025, 1025; 765 NW2d 608 (2009), in which she concluded that the decision in *Rowland* was not controlling in that case, which involved a different statute, namely, MCL 600.6431(3). Plaintiff contends that MCL 691.1404(2) is also a "different statutory provision," see *Beasley*, 483 Mich at 1025, than was at issue in *Rowland* and that MCL 691.1404(2) is comparable to MCL 600.6431(3), the statute at issue in *Beasley*.

The Supreme Court's denial of leave to appeal in *Beasley*, 483 Mich at 1025, has no precedential value. *Tebo v Havlik*, 418 Mich 350, 363 n 2; 343 NW2d 181 (1984) (BRICKLEY, J., joined by BOYLE and CAVANAGH, JJ.), 371 (RYAN, J.), 379 (LEVIN, J.). Plaintiff agrees with this proposition. Moreover, whatever favorable inferences might have been drawn from Chief Justice Kelly's concurring statement in *Beasley* no longer exist in light of this Court's recent decision in *McCahan v Brennan*, ___ Mich App ___; ___ NW2d ___; 2011 WL 309413 (Docket No. 292379, issued February 1, 2011).

In *McCahan*, this Court held that the *Rowland* rationale applies to other statutory notice provisions, including MCL 600.6431(3). *McCahan*, slip op at 2-3. This Court recognized that *Rowland* dealt with a different provision and discussed Justice Corrigan's and Chief Justice Kelly's statements in *Beasley*. *Id*. This Court then stated:

> We conclude that Justice CORRIGAN's view represents the better interpretation of the issue. While *Rowland* did directly deal with a claim arising under the defective highway exception to governmental immunity, we, like Justice CORRIGAN, are not persuaded that the *Rowland* rationale is somehow limited to MCL 691.1404. Indeed, one of the cases that *Rowland* reviewed and rejected, *Carver v McKernan*, 390 Mich 96; 211 NW2d 24 (1973), dealt with a six-month notice requirement under the Motor Vehicle Accident Claims Act, MCL 257.1118. In rejecting *Carver* and other cases, *Rowland* stated that "[i]n reading an 'actual prejudice' requirement into the statute, this Court not only usurped the Legislature's power but simultaneously made legislative amendment to make what the Legislature wanted—a notice provision with no prejudice requirement—impossible." *Rowland*, 477 Mich at 213. Ultimately, *Rowland*, 477 Mich at 219, concluded that "MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect. Accordingly, we conclude that it

must be enforced as written." The same can be said of MCL 600.6431(3). [*McCahan*, slip op at 3.]

Assuming, for the sake of argument, that MCL 691.1404(2) could be considered a "different statutory provision" than was at issue in *Rowland*, its characterization as such does not preclude application of the *Rowland* rationale. Rather, *McCahan* establishes that the *Rowland* rationale is not limited to MCL 691.1404(1). Thus, under *Rowland* and *McCahan*,[1] defendant was not required to demonstrate actual prejudice from plaintiff's noncompliance with MCL 691.1404(2). Because it is undisputed that plaintiff failed to comply with the notice requirement of MCL 691.1404(2), the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Patrick M. Meter

[1] In *Kline v Dep't of Transportation*, ___ Mich App ___; ___ NW2d ___; 2011 WL 711042 (Docket No. 295652, issued March 1, 2011), slip op at 3, a panel of this Court declared a conflict with *McCahan* and followed *McCahan* only because it was required to under MCR 7.215(J)(1). This Court declined to convene a conflict panel and *McCahan* remains good law. *Klein* [sic] *v Dep't of Transportation*, unpublished order of the Court of Appeals, issued March 14, 2011 (Docket No. 295652).