STATE OF MICHIGAN

COURT OF APPEALS

RICHARD LOUIS HALL, Plaintiff-Appellant,	UNPUBLISHED April 25, 2017
v	No. 331554 Court of Claims
DEPARTMENT OF TRANSPORTATION and CITY OF DETROIT, Defendants-Appellees.	LC No. 15-000184-MD

Before: RONAYNE KRAUSE, P.J., and K. F. KELLY and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's grant of summary disposition in favor of defendants. According to the complaint, plaintiff suffered a severe burn injury when he walked over a steam grate on M-85 (Fort Street) in Detroit. Little other factual background was alleged or established. The trial court granted summary disposition for the Department of Transportation (MDOT) on the grounds that plaintiff failed to file the requisite notice of intention to file claim within 120 days of the injury and that plaintiff filed his complaint after the expiration of the two-year limitations period. The trial court granted summary disposition for the City of Detroit on the grounds that the Court of Claims lacked subject-matter jurisdiction over the City and that the City, in turn, lacked jurisdiction over the place where plaintiff was allegedly injured. We affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id*. at 119. "In reviewing a grant of summary disposition pursuant to MCR 2.116(C)(4) or (C)(10), we consider the affidavits, pleadings, depositions, admissions and other documentary evidence submitted to determine whether the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact to warrant a trial." *Beulah*

Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm, 236 Mich App 546, 550; 600 NW2d 698 (1999).

As an initial matter, we agree with plaintiff that the trial court erred in granting summary disposition on the basis of the supposed untimeliness of his notice of intent, which, pursuant to MCL 600.6419(1)(a), he was required to file within 120 days of his alleged injury. Plaintiff was injured on June 28, 2012, and MDOT and the trial court stated that the notice was not filed until November 5, 2012. Nothing that we have found in the lower court record or any attachment to any pleading below or in this Court supports that conclusion. We do not doubt that the trial court's internal investigation was thorough, but we are a court of record. In contrast, plaintiff provided a copy of a timely date-stamped cover letter for such a notice. The November 5, 2012 letter MDOT provided acknowledging receipt of the notice and stating that it had been filed on that date is irrelevant. What little evidence there is strongly suggests that plaintiff did in fact submit the notice in a timely manner; if the clerk of court failed to handle it properly or promptly thereafter, that failure should be attributed to the court, not to the party.[1] See *Bellevue Ventures, Inc v Morang-Kelly Inv, Inc*, 302 Mich App 59, 62-63; 836 NW2d 898 (2013). The circumstances overwhelmingly show plaintiff to be entitled to the benefit of the doubt, so the trial court erred to the extent it granted summary disposition on the basis of plaintiff failing to timely file the notice of intent.

However, we also agree with the trial court that the timeliness of the notice was not ultimately relevant. Plaintiff did not commence this action by filing his complaint until more than three years after he sustained his alleged injury. The applicable limitations period, pursuant to MCL 691.1411(2), is two years. Plaintiff contends that the bankruptcy proceedings involving the City of Detroit tolled the limitations period, however plaintiff provides no explanation for why those proceedings should affect MDOT, which was not in any way involved in or pertinent to those proceedings. The trial court accurately observed that nothing in the bankruptcy court order referred to suits against third parties, and by default automatic stays would not affect third parties. *In re National Century Financial Enterprises, Inc*, 423 F 3d 567, 577-578 (CA6, 2005); *Patton v Bearden*, 8 F 3d 343, 348-349 (CA6, 1993). Any bankruptcy stay would apply only to the City of Detroit. Plaintiff has not provided us with any cogent reasoning or authority to the contrary. Consequently, plaintiff's untimely filing of his complaint is fatal to his case against MDOT, as the trial court found.

We presume, although we need not decide, that the limitations period was tolled as against the City of Detroit. The trial court correctly determined that both it and the City lacked appropriate jurisdiction. The purported order plaintiff provided from the bankruptcy court specified that any filing must be in a court of appropriate jurisdiction. The Court of Claims has exclusive jurisdiction to hear claims or counterclaims "against the state or any of its departments or officers." MCL 600.6419(1). The City of Detroit is not the state or a department or officer

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[1] Additionally, we take judicial notice of the fact that the Court of Claims was moved from the 30th Circuit Court to the Court of Appeals after the date plaintiff filed the notice, and that may potentially impact the record.

thereof. The Court of Claims therefore lacks subject-matter jurisdiction to hear plaintiff's claim against the City of Detroit. If a court lacks subject-matter jurisdiction, it may only either dismiss the case, *Fox v Bd of Regents of Univ of Mich*, 375 Mich 238, 242; 134 NW2d 146 (1965), or transfer the case to a court that does have subject-matter jurisdiction pursuant to MCR 2.227(A).

The Court of Claims could theoretically have done the latter. However, the City of Detroit also points out that under MCL 691.1402(2), "A municipal corporation has no duty to repair or maintain, and is not liable for injuries or damages arising from, a portion of a county or state highway." The City of Detroit is a municipal corporation. According to the complaint, plaintiff was injured on M-85, between Second and Third Avenues. According to what information we have been able to discover, the City correctly asserts that M-85 is a state highway at that location. It is possible that the City of Detroit is not deprived of *all* power over the roadway, so claiming that it lacks "jurisdiction" over that portion of the road may be a slight exaggeration. See *Michigan Towing Ass'n v City of Detroit*, 370 Mich 440; 122 NW2d 709 (1963). Nevertheless, it is unambiguous that the City of Detroit could not be held legally responsible for plaintiff's alleged injury, even in a court that had subject-matter jurisdiction. Transferring the case would have been an exercise in futility, and we would not expect the trial court to have wasted judicial resources in such a manner.

Plaintiff finally makes a vague reference to summary disposition having been in violation of the Constitution. It is unclear how plaintiff believes this to be the case. Parties appearing in propria persona are generally afforded a certain amount of leeway and relaxed requirements, but not infinitely so; they are still required to provide support for their claims. See *Hughes v Rowe*, 449 US 5, 9-10; S Ct 173; 66 L Ed 2d 163 (1980); *Estelle v Gamble*, 429 US 97, 106–108; 97 S Ct 285; 50 L Ed 2d 251 (1976). Even affording plaintiff the greatest leeway, this Court will not wholly invent an argument on his behalf. See *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). We are certain that plaintiff's plight is an unfortunate and sympathetic one, but we cannot discern from plaintiff's brief any understanding of a cognizable legal theory under which the trial court's grant of summary disposition here was in violation of either the Michigan or Federal Constitutions, so we cannot grant him any relief on that basis.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kirsten Frank Kelly
/s/ Michael F. Gadola