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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SCOTT B. CROUCH,

Plaintiff-Appellant,

v

NEWAYGO COUNTY ROAD COMMISSION,

Defendant-Appellee.

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UNPUBLISHED

October 21, 2021

No. 347489

Newaygo Circuit Court

LC No. 18-020392-NO

ON REMAND

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

This matter returns to us on remand from the Supreme Court for reconsideration in light of *Pearce v Eaton Co Rd Comm*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2021) (Docket No. 158069), and its companion case *Brugger v Midland Co Bd of Rd Comm’rs* (Docket No. 158304). *Crouch v Newaygo Co Rd Comm*, \_\_\_ Mich \_\_\_ (2021) (Docket No. 161989). For the reasons stated in this opinion, we reverse the trial court order granting summary disposition in favor of defendant, Newaygo County Road Commission.

The relevant factual background was stated in our prior opinion:

On September 11, 2016, [plaintiff, Scott Crouch,] lost control of his motorcycle on Comstock Avenue in Newaygo County after encountering a defect in the roadbed surface. He served the Road Commission notice of his accident 102 days later. Subsequently, he filed suit against the Road Commission claiming damages arising out of the crash. The Road Commission moved for summary disposition under MCR 2.116(C)(7), arguing that Crouch failed to comply with the 60-day notice provision in MCL 224.21(3). In response, Crouch argued that the applicable presuit-notice statute is MCL 691.1404(1), which requires a plaintiff suing a governmental agency to provide notice within 120 days. Relying on this Court’s decision in *Streng v Mackinac Co Rd Comm’r[s]*, 315 Mich App 449; 890 NW2d 680 (2016), the trial court determined that the 60-day notice provision was

applicable and granted the Road Commission's motion for summary disposition. [*Crouch v Newaygo Co Rd Comm*, unpublished per curiam opinion of the Court of Appeals, issued September 10, 2020 (Docket No. 347489); unpub op at 1.]

In our prior opinion, we acknowledged that the Supreme Court in *Brown v Manistee Co Rd Comm*, 452 Mich 354; 550 NW2d 215 (1996), held that the 60-day notice requirement in MCL 224.21(3) was unconstitutional. *Id.* at 2. But we also noted that *Brown* was subsequently overruled by the Supreme Court in *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197 (2007). *Id.* Further, in *Streng*, this Court concluded that the 60-day notice provision in MCL 224.21(3) of the County Road Law, MCL 224.1 *et seq.*, applied to negligence actions against county road commissioners, rather than the 120-day notice provision in MCL 691.1404(1) of the governmental tort liability act (GTLA), MCL 691.1401 *et seq.* *Id.* We applied *Streng* and held that because the 60-day-notice provision applied, and because *Crouch* did not serve his notice until 102-days after his motorcycle crash, the trial court did not err by granting the Road Commission's motion for summary disposition. *Id.* at 3.

*Crouch* applied to the Supreme Court for leave to appeal. Initially, the Supreme Court held the application in abeyance pending its decisions in *Pearce* and *Brugger*.<sup>1</sup> Thereafter, in *Pearce*, the Supreme Court examined this Court's decision in *Streng* and concluded that it was wrongly decided because it failed to follow the Supreme Court's decision in *Brown*. *Pearce*, \_\_\_ Mich at \_\_\_; slip op at 1. The *Pearce* Court noted that in *Brown*, it "decided that the GTLA's notice provisions control, and we have not overruled that holding." *Id.* The Court summarized:

The *Streng* panel should have following this Court's decision in *Brown* and applied the GTLA's presuit requirements, not the requirements provided in the County Road Law; it could not decide this question for itself. *Brown*'s holding on that point survived this Court's decision in *Rowland*, and it was therefore binding on the *Streng* panel. Whether *Brown* correctly decided this question is for this Court to decide. But because it was not raised by the parties here, we save it for another day. [*Pearce*, \_\_\_ Mich at \_\_\_; slip op at 13.]

Accordingly, the *Pearce* Court very clearly directed that, until the Supreme Court says otherwise, the GTLA's 120-day notice provision applies to negligence actions against county road commissioners. Here, because *Crouch* served his notice 102 days after his motorcycle crash, the notice is timely under the GTLA's presuit notice provision. Accordingly, we reverse the trial court's order granting summary disposition in favor of the Road Commission.

Reversed. No taxable costs are awarded. MCR 7.219(A).

/s/ James Robert Redford

/s/ Jane M. Beckering

/s/ Michael J. Kelly

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<sup>1</sup> *Crouch v Newaygo Co Rd Comm*, 951 NW2d 667 (2020).