STATE OF MICHIGAN

COURT OF APPEALS

KAREN ZARZA,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN BOARD OF REGENTS,

Defendant-Appellee.

UNPUBLISHED
May 27, 2021

No. 352926
Washtenaw Circuit Court
LC No. 19-000988-CD

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendant. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

I. BACKGROUND

Plaintiff filed a complaint and demand for jury trial in the circuit court, alleging that defendant violated Michigan's Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*, and Michigan's Worker's Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq.* Defendant moved for summary disposition under MCR 2.116(C)(7) on governmental immunity grounds, arguing that plaintiff's claim was barred because defendant is an arm of the state and plaintiff had not filed a notice of intention to file a claim with the clerk of the Court of Claims pursuant to MCL 600.6431. Plaintiff argued that because the action was filed in the circuit court rather than the Court of Claims, this requirement involving procedures for actions in the Court of Claims did not apply in the instant case.

The circuit court granted defendant's motion for summary disposition and dismissed the action with prejudice. The circuit court concluded that "plaintiff's failure to file a Notice of Intent with the Clerk of the Court of Claims, as required by the Court of Claims Act, MCL 600.6431, bars her retaliation claims under the Persons With Disabilities Civil Rights Act and the Workers Disability Compensation Act." Plaintiff now appeals.

II. STANDARD OF REVIEW

We review a circuit court's summary disposition ruling "de novo 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). The circuit court granted defendant's motion for summary disposition under MCR 2.116(C)(7), which provides that "[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action."

III. ANALYSIS

At issue in this appeal is whether plaintiff was required to comply with MCL 600.6431(1) of the Court of Claims Act (COCA), MCL 600.6401 *et seq*., in pursuing her claims against defendant in the circuit court where she sought a jury trial.[1]

MCL 600.6431(1) provides as follows:

> Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, *files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim* against this state or any of its departments, commissions, boards, institutions, arms, or agencies. [Emphasis added.]

This Court recently held in *Tyrrell v Univ of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349020); slip op at 9, that "absent the Legislature conditioning its consent to suit on compliance with the COCA, a plaintiff properly bringing a claim in circuit court against the state or a state defendant to which MCL 600.6431 applies is not required to comply with MCL 600.6431 for his or her claim to proceed in that court." In reaching this holding, this Court resolved the question whether the text of MCL 600.6431 indicated that the Legislature's intent was "that no claim may be maintained against the state *in any court in the state* unless certain conditions were met" or that "no claim may be maintained against the state *in the Court of Claims* unless certain conditions were met." *Tyrrell*, ___ Mich App at ___; slip op at 7. The *Tyrrell* Court determined that it was the later: The Court acknowledged that a plaintiff obviously "must comply with MCL 600.6431 when filing a claim against a state defendant in the Court of Claims" but rejected the argument that a plaintiff must always comply with MCL 600.6431 in any other forum, concluding that "the requirements in MCL 600.6431 do not apply to claims *properly* filed in circuit court." *Id*. at ___; slip op at 5-6 (emphasis added).

[1] Defendant does not argue that the circuit court lacked jurisdiction over plaintiff's claims in which she sought a jury trial. Defendant acknowledges the concurrent jurisdiction existing between a circuit court and the Court of Claims where a right to a jury trial exists. See MCL 600.6419; MCL 600.6421(1); *Doe v Dep't of Transp*, 324 Mich App 226, 238; 919 NW2d 670 (2018); *Tyrrell v Univ of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349020); slip op at 2.

The circuit court in this case adopted the following quotation from defendant's brief as its reasoning in support of granting summary disposition, placing this quotation on the record at the conclusion of the summary disposition hearing:

> "By it's [sic] clear language, the notice requirement applies to all claims against the state and its political subdivisions, not merely, as Plaintiff argues, to all claims filed or pending in the Court of Claims. Had the legislature intended to limit the broad, statutory language required in the notice filing, it could have used language applying that requirement only to those cases filed or pending in the Court of Claims. It did not. The statutory language should be applied as written."

Accordingly, the foundational premise of the circuit court's ruling was erroneous pursuant to *Tyrrell*. *Tyrrell*, ___ Mich App at ___; slip op at 5-6, 9. For that reason, we reverse. Defendant agrees on appeal that our holding in *Tyrrell* mandates reversal.[2] On remand, any further proceedings shall be conducted pursuant to and in light of this Court's holding in *Tyrrell* that "absent the Legislature conditioning its consent to suit on compliance with the COCA, a plaintiff properly bringing a claim in circuit court against the state or a state defendant to which MCL 600.6431 applies is not required to comply with MCL 600.6431 for his or her claim to proceed in that court." *Id*. at ___; slip op at 9.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded to either party, a public question being involved. MCR 7.216(A)(7) and MCR 7.219(A). *City of Bay City v Bay County Treasurer*, 292 Mich App 156, 172; 807 NW2d 892 (2011).

/s/ Thomas C. Cameron
/s/ Stephen L. Borrello
/s/ James Robert Redford

[2] We decline defendant's request to issue a conflicting opinion under MCR 7.215(J)(2).