STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL BREWER,

Plaintiff-Appellant,

and

MARY BREWER,

Plaintiff,

v

CENTRAL MICHIGAN UNIVERSITY BOARD OF TRUSTEES,

Defendant-Appellee.

UNPUBLISHED
November 21, 2013

No. 312374
Court of Claims
LC No. 11-000104-MZ

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Plaintiff, Michael Brewer,[1] appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (governmental immunity). We affirm.

I. FACTUAL BACKGROUND

In June 1995, plaintiff was on active duty in the United States Military when he was assigned to the Reserve Officer Training Corps (ROTC) program at Central Michigan University (CMU). His duties included shooting instructions at CMU's shooting range in Finch Field House, which was open to students, faculty, staff, and the general public. The students receiving shooting instructions included both ROTC cadets and ordinary university students taking plaintiff's Military Science 101 course. According to plaintiff, during his tenure at the shooting range, he suffered from peripheral neuropathy, headaches, seizures, memory loss, and other disabling physical ailments. In April 1998, plaintiff claimed that due to his ongoing medical

[1] Because only Michael Brewer has appealed, he will be referred to as "plaintiff" in this opinion.

issues, he was forced to leave his position at the shooting range and eventually obtained a medical retirement from the Armed Forces.

Plaintiff claimed that after he left the range, defendant closed it due to lead contamination and repaired the faulty ventilation and target retrieval systems. According to plaintiff, he was diagnosed with lead poisoning in May 2011. In August 2011, plaintiff provided notice of his injury to defendant and subsequently filed suit, alleging fraud, misrepresentation and deceit, as well as negligence. He claimed that defendant knew the shooting range was contaminated but did nothing to rectify the condition, and was therefore liable for damages under MCL 691.1406, the public-building exception to governmental immunity.

However, defendant moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiff failed to satisfy the 120-day notice provision in MCL 691.1406, the three-year statute of limitations in MCL 600.6452(1), and the six-month notice provision in the Court of Claims, MCL 600.6431(3). In response, plaintiff moved to amend his complaint to allege the existence of a fiduciary relationship between the parties and fraudulent concealment. The trial court granted defendant's motion for summary disposition and denied plaintiff's motion to amend his complaint. Plaintiff now appeals.

II. SUMMARY DISPOSITION

A. Standard of Review

We review a trial court's decision to grant a motion for summary disposition de novo. *Young v Sellers*, 254 Mich App 447, 449; 657 NW2d 555 (2002). "Under MCR 2.116(C)(7), the moving party is entitled to summary disposition if the plaintiff's claims are barred because of immunity granted by law." *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008) (quotation marks and citation omitted). We review questions of law, like statutory interpretation, de novo. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 309; 645 NW2d 34 (2002).

B. Analysis

When a party files an action in the Court of Claims, he generally has to provide notice of his intent to file the claim. Pursuant to MCL 600.6431(3), "[i]n all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action." In the instant case, the trial court agreed with defendant that plaintiff failed to satisfy MCL 600.6431(3) because he did not bring his claim until September 2011, over 10 years after the injury occurred in or before April 1998. Plaintiff, however, argues that because of fraudulent concealment, MCL 600.5855, and the fiduciary relationship he had with defendant, the notice provisions of MCL 600.6431(3) were not triggered until May 2011, when a doctor informed him about his lead poisoning.

However, plaintiff's arguments are premised on exceptions to the statute of limitations. Such arguments may be valid as they relate to MCL 600.6452(1), the applicable statute of limitation in this case. See *Gleason v Michigan Dep't of Transp*, 256 Mich App 1, 2; 662 NW2d 822 (2003). Yet, the notice requirement of MCL 600.6431(3) is not a statute of limitations, a savings provision, or a tolling provision. Instead, it "is a condition precedent to sue the state."

McCahan v Brennan, 291 Mich App 430, 433; 804 NW2d 906 (2011). Strict compliance with MCL 600.6431(3) is required, and a plaintiff's failure to comply strictly with the notice provision warrants dismissal of the claim, even if no prejudice resulted. *Id*. at 433-436.

In this case, "the happening of the event giving rise to the cause of action," MCL 600.6431(3), was the alleged lead poisoning that occurred, at the latest, in 1998 at CMU. Plaintiff spent years knowingly exposing himself to lead particles while working at the range, as he had observed lead dust in the water and on the floor. He also was aware of his injuries in 1998 or before, as he claimed he was experiencing significant medical issues like peripheral neuropath seizures, memory loss, headaches, and other disabling physical ailments when working at CMU. However, plaintiff did not notify defendant of any possible connection to his position at the University nor did he provide the requisite notice under MCL 600.6431(3) until years after the six-month period had expired. Because the undisputed record shows that plaintiff failed to satisfy MCL 600.6431(3), the trial court correctly granted defendant's motion for summary disposition.

Furthermore, to the extent that plaintiff argues defendant should be equitably estopped from relying on MCL 600.6431(3), our Supreme Court has held in the context of MCL 600.6431, "when the Legislature specifically qualifies the ability to bring a claim against the state or its subdivisions on a plaintiff's meeting certain requirements that the plaintiff fails to meet, no saving construction—such as requiring a defendant to prove actual prejudice—is allowed." *McCahan v Brennan*, 492 Mich 730, 746; 822 NW2d 747 (2012). "Courts may not . . . reduce the obligation to comply fully with statutory notice requirements." *Id.* at 746-747. Moreover, because plaintiff was aware of the presence of lead and of his injuries when he was still working at the shooting range, the application of equitable estoppel is not warranted. *Moore v First Security Casualty Co*, 224 Mich App 370, 376; 568 NW2d 841 (1997) (requiring both justifiable reliance and prejudice in order for a party to succeed under an equitable estoppel defense). Thus, in accordance with the Supreme Court's ruling in *McCahan*, we agree with the lower court that plaintiff is not excused from his failure to comply with MCL 600.6431(3).

Therefore, the trial court did not err in granting defendant's motion for summary disposition for failure to comply with MCL 600.6431(3). For this reason, any amendment to plaintiff's complaint would be futile, see *Franchino v Franchino*, 263 Mich App 172, 190; 687 NW2d 620 (2004), as would any additional discovery, see *CMI Intern, Inc v Intermet Intern Corp*, 251 Mich App 125, 135; 649 NW2d 808 (2002). Given our conclusion, it is unnecessary to address whether the trial court properly granted defendant's motion for summary disposition for failure to comply with the 120-day notice provision in MCL 691.1406 or for failure to comply with the statute of limitations, MCL 600.6452(1).[2]

[2] Further, consistent with *Ward v Michigan State Univ (On Remand)*, 287 Mich App 76, 80-83; 782 NW2d 514 (2010), plaintiff's arguments based on MCL 691.1406 are likewise meritless as he failed to comply with the notice provisions in that statute.

III. CONCLUSION

Because plaintiff failed to comply with the mandatory notice provision in MCL 600.6431, we agree with the trial court that summary disposition is appropriate. We have reviewed all remaining arguments in plaintiff's brief and find them to be without merit. We affirm.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan