STATE OF MICHIGAN

COURT OF APPEALS

GRANT BAUSERMAN, KARL WILLIAMS and TEDDY BROE, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs-Appellees,	UNPUBLISHED July 18, 2017
v	No. 333181 Court of Claims
UNEMPLOYMENT INSURANCE AGENCY, Defendant-Appellant.	LC No. 15-000202-MM

Before: GADOLA, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

In this class action lawsuit, defendant Unemployment Insurance Agency (UIA) appeals as of right the trial court's order denying its motion for summary disposition. Plaintiffs Grant Bauserman (Bauserman), Karl Williams (Williams) and Teddy Broe (Broe) in this case are individuals who have filed a class action alleging that defendant violated their rights to due process when investigating whether plaintiffs committed fraud in receiving unemployment benefits. We reverse.

I. FACTS AND PROCEDURAL HISTORY

This appeal arises from a class action lawsuit initiated by the plaintiffs against defendant arising from their claims for unemployment benefits with defendant. On September 9, 2015, Bauserman filed a class action complaint against defendant in the Court of Claims alleging that defendant "utilizes an automated decision-making system to detect and adjudicate suspected instances of employment benefit fraud." Bauserman further alleged that defendant's "automated decision-making system[,] known as the Michigan Integrated Data Automated System ("MiDAS") deprives UIA claimants of due process and fair and just treatment because it determines guilt without providing notice, without proving guilt and without affording claimants an opportunity to be heard before penalties are imposed." The complaint alleged, with regard to Bauserman, that after a determination that Bauserman had engaged in fraudulent conduct with regard to his unemployment benefits, "[defendant] seized [Bauserman's] property without notice of the specific grounds for the allegations against him, without providing 60 days in which to present evidence, without providing him an opportunity to present evidence, . . . and without the notice and other due process required by federal law and the Michigan constitution."

Bauserman received unemployment benefits from October 2013 until March 29, 2014. Defendant's determination that Bauserman had engaged in fraud apparently arose after Bauserman received a payment from his former employer that was a "deferred payment of his pro-rated 2013 bonus," earned during his employment with his former employer in the 2013 calendar year. This followed defendant sending Bauserman and his former employer questionnaires to investigate the matter. While Bauserman and his former employer did eventually respond to defendant's inquiries, the nature of the payment from Bauserman's former employer was still unclear to defendant. According to the complaint, defendant then determined that it had overpaid unemployment benefits to Bauserman, and assessed penalties and interest. Bauserman was issued both an "Ineligibility Determination" as well as a "Fraud Redetermination[.]" Bauserman was also informed that penalties would include "interception of [his] state income tax refund, interception of his federal tax refund, garnishment of his wages, and legal collection activity through a court of law." Bauserman alleged that defendant seized the proceeds of his federal income tax refund and his state income tax refund. The parties do not dispute that defendant ultimately reconsidered its earlier determinations that Bauserman was ineligible for unemployment benefits and had engaged in fraud after receiving notice from Bauserman that the payment at issue from his former employer was a bonus he received while still employed by his former employer. Bauserman was ultimately not liable to pay back any unemployment benefits or have any penalties or interest assessed. Any monies seized from Bauserman were returned by defendant.

Plaintiffs filed their first amended complaint on October 19, 2015 naming Williams and Broe as plaintiffs in addition to Bauserman. Where the facts with respect to Williams and Broe are not disputed, we will refer to the portion of the trial court's written ruling addressing the facts pertinent to Williams and Broe.

> Plaintiff Teddy Broe's factual scenario is similar to that alleged by Bauserman. According to the amended complaint, between February 15, 2013 and April 15, 2013, Broe worked for Fifth Third Bank under a seasonal tax trust internship to assist with filings for the 2012 tax year. When the internship concluded, plaintiff applied for UIA benefits and represented that employment terminated due to "seasonal discharge." UIA approved Broe's claim for unemployment benefits and plaintiff received approximately $2,200.00 in UIA benefits before he obtained new employment in November 2013. However, UIA continued to send requests for information and other communications regarding ineligibility or disqualification to Broe's [online account with defendant]. Indeed, in the summer of 2014, UIA sent to Broe's [online account] [a] notice of determination indicating that Broe had committed fraud and would be liable for restitution, interest and penalties. However, Broe did not receive any of these notices because they were sent only to his [online account], an online account he no longer accessed because he was re-employed and not claiming any UIA benefits. In 2015, Broe received a notice from UIA that he owned [sic] a debt of approximately $8,800.00 representing overpayment, interest and penalties for fraud. Broe filed a protest with the UIA, however his protests were denied as untimely. Then, in May 2015, UIA intercepted Broe's state and federal income tax refunds. Finally, . . . UIA issued a redetermination on November 4, 2015, wherein UIA determined that Broe did not owe restitution or penalties.

> Plaintiff Williams's factual allegations demonstrate yet a different scenario. Williams began his employment with Wingfoot Commercial Tire System in May 2011. At the time he began this employment, Williams was receiving UIA benefits based on his unemployment from a previous employer. After the Wingfoot employment began, Williams continued to contact UIA's automated MARVIN system. When doing so, he reported that he was receiving some earnings from Wingfoot. UIA, however, did not adjust Williams' benefits to reflect an offset for his Wingfoot wages; additionally Williams believed that he was still entitled to UIA benefits because his Wingfoot wages were, at that time, less than 1½ times his weekly UIA benefit rate. On June 22, 2012, the UIA issued a redetermination holding Williams ineligible for benefits. Also on that date, the UIA ordered Williams to pay restitution in the amount of $9,875.00 and penalties of $39,500.00. Also on June 22, 2012, in a second determination of penalty correspondence, UIA found Williams liable for "unpaid Fraud Weeks" and assessed an additional $11,584.00 penalty.
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> Plaintiff Williams filed a late protest of these determinations. Then, on July 1, 2014, an administrative law judge concluded that Williams could not establish good cause for failing to timely protest the June 22, 2012 determinations. On October 29, 2013, Williams received a garnishment notice from UIA for the amount of $64,069.00. Then, on February 19, 2015, Williams received notice that his Federal income tax refund would be intercepted and seized by the UIA. The agency is currently reviewing the account to verify the accuracy of the restitution, penalties and interest . . . .[1]

II. STANDARD OF REVIEW

On appeal, defendant argues that the trial court erred in denying its motion for summary disposition where plaintiffs' claims were not filed in compliance with the governing provision of the Court of Claims Act, MCL 600.6401 *et seq*. We agree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010). As relevant to this appeal, defendant moved for summary disposition of plaintiffs' claims pursuant to MCR 2.116(C)(7) which provides that "dismissal of the action . . . is appropriate because of . . . immunity granted by law, [or the statute of limitations.]" Defendant also moved for dismissal of plaintiffs' claims pursuant to MCR 2.116(C)(8), which provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." The trial court did not specify under which subrule of MCR 2.116 it was denying summary disposition, however it is apparent from its ruling that it considered documentary evidence outside of the pleadings. "A motion for summary disposition under subrule (C)(8) tests the legal sufficiency of the pleadings alone." *Nuculovic*, 287 Mich App at 61 (citations omitted). Accordingly, the trial court's decision should be reviewed in accordance with MCR 2.116(C)(7). As this Court recently recognized in

[1] In its brief on appeal, defendant states that defendant is still collecting its debt from Williams.

Goodhue v Dep't of Transp, ___ Mich App ___, ___; ___ NW2d ___ (2017) (Docket No. 332467); slip op at 2:

> Summary disposition is appropriate under MCR 2.116(C)(7) if a claim is barred because of, among other things, "immunity granted by law." When reviewing a motion for summary disposition under this subrule, a court accepts "all well-pleaded factual allegations as true and construe[s] them in favor of the plaintiff, unless other evidence contradicts them." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). Further,
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> > [i]f any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue for the court. [*Id*. at 429 (citations omitted).]

Summary disposition is also properly granted pursuant to MCR 2.116(C)(7) where a claim is barred by the applicable statute of limitations. *Henry v Dow Chemical Co*, ___ Mich App ___, ___; ___ NW2d ___ (2017) (Docket No. 328716); slip op at 4.

This appeal also requires us to undertake a de novo review of the statutory language of MCL 600.6431(3). *Lewis v Farmers Ins Exch*, 315 Mich App 202, 209; 888 NW2d 916 (2016). In *McCahan v Brennan*, 492 Mich 730, 736; 822 NW2d 747 (2012), the Michigan Supreme Court set forth the inquiry this Court must undertake when construing statutory language.

> [This Court's] primary objective when interpreting a statute is to discern the Legislature's intent. This task begins by examining the language of the statute itself. The words of a statute provide the most reliable evidence of its intent[.] When the Legislature has clearly expressed its intent in the language of the statute, no further construction is required or permitted. [Footnotes and quotation marks omitted.]

III. ANALYSIS

The relevant statute, MCL 600.6431, which is part of the Court of Claims Act, provides as follows:

> (1) No claim may be maintained against the state unless the claimant, within 1 year after such 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 the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.
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> (2) Such claim or notice shall designate any department, commission, board, institution, arm or agency of the state involved in connection with such claim, and

> a copy of such claim or notice shall be furnished to the clerk at the time of the filing of the original for transmittal to the attorney general and to each of the departments, commissions, boards, institutions, arms or agencies designated.
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> (3) *In 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*. [Emphasis added.]

In *Fairley v Dep't of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015), the Michigan Supreme Court recognized that "[t]he purpose of MCL 600.6431 is to establish those conditions precedent to pursuing a claim against the state." In *Fairley*, the Michigan Supreme Court considered whether the plaintiffs' failure to strictly comply with the notice verification provisions of MCL 600.6431(1) provided the defendant state agencies with a complete defense to the plaintiffs' claims. *Fairley*, 497 Mich at 292, 293. In undertaking its analysis, the *Fairley* Court noted that the defendant state agencies, the Department of Corrections and the Michigan State Police, as "governmental agencies, are broadly shielded from tort liability." *Id*. at 297.

> [W]hile MCL 600.6431 does not confer governmental immunity, it establishes conditions precedent for avoiding the governmental immunity conferred by the [government tort liability act (GTLA), MCL 691.1401 *et seq*.,] which expressly incorporates MCL 600.6431. As a result, [a] plaintiff[ ] must adhere to the conditions precedent in MCL 600.6431(1) to successfully expose the defendant state agencies to liability. [*Fairley*, 497 Mich at 297-298 (footnote omitted).]

Where the plaintiffs' notices of intent did not meet the requirements of MCL 600.4831(1), the *Fairley* Court ultimately concluded that the plaintiffs "failed to defeat the protection of governmental immunity to which [the defendant state agencies] are entitled." *Fairley*, 497 Mich at 301 (footnote omitted).

In the present appeal, the parties concede that plaintiffs' cause of action is one for "property damage or personal injuries," MCL 600.6431(3), and that the determinative question for us to decide is what event gave rise to their cause of action. Put another way, we are asked to determine whether the six months within which plaintiffs were required to file a notice of intention to file a claim, or the claim itself, began to run (1) when defendant issued notices informing plaintiffs that they were disqualified from receiving unemployment benefits, or (2) when defendant actually seized plaintiffs' property.

In *McCahan*, 492 Mich at 730, the Michigan Supreme Court recognized that it is "the sole province of the Legislature to determine whether and on what terms the state may be sued[.]" Notably, the *McCahan* Court observed that "the judiciary has no authority to restrict or amend those terms." *Id*. The *McCahan* Court, confronted with the issue of how subsections (1) and (3) of MCL 600.6431 are to be construed, also urged "a contextual understanding" of the statute. *McCahan*, 492 Mich at 738. In *McCahan*, the plaintiff asserted that her claim for personal injuries was not "subject to the dictates or bar-to-claims language of MCL 600.6431(1)." *McCahan*, 492 Mich at 738. The plaintiff further argued that where her claim was governed by MCL 600.6431(3), and the Legislature did not include language in that

subsection barring her claim if there was any deficiency with regard to notice, her claims against the state were not prohibited as a result. *McCahan*, 492 Mich at 739. In *McCahan*, the plaintiff was injured by a vehicle driven by a student that was owned by the University of Michigan, and she did not file a notice of intention to file a claim or her claim within six months of the subject accident. *Id.* at 733-734. Rejecting the plaintiff's argument that "only subsection (3) [of MCL 600.6431] governs her claim and acts as an independent provision that excludes application of subsection (1)[,]" the *McCahan* Court ruled, in pertinent part, as follows:

> When undertaking statutory interpretation, the provisions of a statute should be read reasonably and in context. *Doing so here leads to the conclusion that MCL 600.6431 is a cohesive statutory provision in which all three subsections are connected and must be read together*. Subsection (1) sets forth the general notice required for a party to bring a lawsuit against the state, while subsection (3) sets forth a special timing requirement applicable to a particular subset of those cases—those involving property damage or personal injury. Subsection (3) merely reduces the otherwise applicable one-year deadline to six months. In this regard, subsection (3) is best understood as a subset of the general rules articulated in subsection (1), and those general rules and requirements articulated in subsection (1)-including the bar-to-claims language-continue to apply to all claims brought against the state unless modified by the later-stated specific rules. [*McCahan*, 492 Mich at 739 (emphasis added; footnote omitted).]

The *McCahan* Court went on to observe that "a reasonable person reading the statute would understand that subsections (1) and (3) are related and interdependent." *Id*. at 741.

> Most important, the *context* of the entire statutory provision indicates that the six-month filing requirement for personal injury or property damage cases is a *modification* of the generally applicable one-year filing requirement. There is no indication from the language used that the provisions of subsection (1) do not apply to subsection (3), and the Legislature need not be overly repetitive in reasserting the requirements for notice in each subsection when the only substantive change effectuated in subsection (3) is a reduction in the timing requirement for specifically designated cases.
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> Moreover, the various subsections of MCL 600.6431 refer to each other. For example, subsection (3) employs the phrase "notice of intention to file a claim," which is the same phrase that is used and defined in detail in subsection (1). Similarly, subsection (2) directly refers to subsection (1) by noting that "[s]uch claim or notice" as described in subsection (1) must designate the responsible governmental agency; this language clearly indicates that subsection (2) is an elaboration of the requirements stated in subsection (1). *Reading this statute as a whole, it is reasonably clear that these subsections are not independent entities that happen to be grouped together in the same statutory provision. Instead, they are related and interdependent, and thus cannot be read in isolation*. [*McCahan*, 492 Mich at 741-742 (emphasis added).]

The *McCahan* Court further clarified that MCL 600.6431 is to be "understood as a cohesive whole. Subsection (1) sets forth the general rule, for which subsection (2) sets forth additional requirements and which subsection (3) modifies for particular classes of cases that would otherwise fall under the provisions of subsection (1)." *McCahan*, 492 Mich at 742. Therefore, rejecting the plaintiff's argument that she was not subject to the consequence of having her claim against the state barred in its entirety as set forth in subsection (1) of MCL 600.6431 where she did not comply with the dictates of subsection (3) of MCL 600.6431, the *McCahan* Court concluded, in pertinent part, as follows:

> *Accordingly, subsection (3) incorporates the consequence for noncompliance with its provisions expressly stated in subsection (1) and does not otherwise displace the specific requirements of subsection (1) other than the timing requirement for personal injury or property damage cases*. Therefore, the failure to file a compliant claim or notice of intent to file a claim against the state within the relevant time periods designated in either subsection (1) or (3) will trigger the statute's prohibition that "[n]o claim may be maintained against the state . . . ." [*Id*. at 742 (emphasis in original).]

Accordingly, on the basis of the Court's directive in *McCahan* that MCL 600.6431 is to be read as a "cohesive whole[,]" it is reasonable to interpret the language in subsection (3), that a party must file "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[ ]" consistent with the language in subsection (1) requiring a claimant to file a claim, or written notice of intention to file a claim, "within 1 year after such claim *has accrued*." MCL 600.6431(1), (3). MCL 600.5827, also part of the Revised Judicature Act (RJA), MCL 600.101 *et seq*., provides in pertinent part, as follows with respect to the accrual of a cause of action:

> Except as otherwise provided, the period of limitations runs from the time *the claim accrues*. The claim accrues at the time provided in [MCL 600.5829 to MCL 600.5838], *and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results*. [Emphasis added; footnote omitted.][2]

Thus, it reasonably follows that plaintiffs' cause of action accrued when the wrong on which they base their claims was done. MCL 600.6431(3); MCL 600.5827.

The thrust of plaintiffs' claims in their 39-page first amended complaint are encapsulated in Count I of the first amended complaint, which alleges a violation of Const 1963, art I, § 17, which provides, in pertinent part, as follows:

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[2] MCL 600.6452(2) provides that, "[e]xcept as modified by this section, the provisions of RJA chapter 58, relative to the limitation of actions, shall also be applicable to the limitation prescribed in this section."

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. . .

Count I of the first amended complaint provides, in pertinent part, as follows:

160. One essential requirement of due process is that claimants should be afforded the opportunity to be heard at a meaningful time and in a meaningful manner before being deprived of life, liberty or property.

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162. Plaintiffs and the proposed Class Members have a property interest in unemployment benefits, tax refunds and wages that are garnished by the State without due process and fair and just treatment.

163. The State of Michigan's due process obligations to Plaintiffs and the Class Members include the obligation to follow the minimum due process standards required under federal law with respect to the collection of unemployment debts, including overpayment and penalties.

164. The State of Michigan's Unemployment Insurance Agency has violated and is continually violating the rights of Plaintiff[s] and the Class Members by improperly intercepting tax refunds, garnishing wages and forcing repayments from claimants:

a. without providing the required notice of the bases asserted for disqualification.

b. without providing at least 60 days for claimants to present evidence;

c. without consideration of the factual basis or proof for or against the finding of culpable conduct;

d. without a hearing;

e. without providing claimants an opportunity to be heard at a meaningful time and in a meaningful manner; and

f. By utilizing an automated decision-making system for the detection and determination of fraud cases, whereby the computer code in the automated decision-making process contains the rules that are used to determine a claimant's guilt, and those rules change the substantive standard for guilt or are otherwise inconsistent with the requirements of due process.

g. By routinely and on a wholesale basis over-assessing penalties, charging interest on penalties and utilizing authorized collection methods to improperly collect penalties, the defendant has established a government policy

which constitutes a violation of the due process and fair treatment provisions of the Michigan Constitution of 1963.

A review of the first amended complaint therefore demonstrates that plaintiffs are claiming that the wrong on which their claims are based took place when defendant intercepted federal and state tax refunds, garnished their wages and forced repayment of unemployment benefits. However, to the extent that plaintiffs are alleging a violation of Const 1963, art I, § 17, "[a] fundamental requirement of due process in [proceedings where the government seeks to take property from its owner] is "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and [to] afford them an opportunity to present their objections.'" *Sidun v Wayne Co Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008), quoting *Mullane v Central Hoover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950).[3] Additionally, the United States Supreme Court has recognized that "'[t]he fundamental requisite of due process of law is the opportunity to be heard.'" *Mullane*, 339 US at 315, quoting *Grannis v Ordean*, 234 US 385, 394; 34 S Ct 779; 58 L Ed 1363 (1914). Accordingly, we disagree with plaintiffs' argument that the events giving rise to their causes of action took place only when they encountered an "economic deprivation" arising from defendant's interception of their federal and state tax returns and garnishment of their wages. Instead, in a constitutional claim alleging a deprivation of due process, "the [alleged] wrong upon which [plaintiffs' claims are] based was done[,]" MCL 600.5827, when defendant issued notices informing plaintiffs of its determination that plaintiffs had engaged in fraudulent conduct, and they were not given the requisite notice and opportunity to be heard. *Mullane*, 339 US at 315; *Sidun*, 481 Mich at 509. The subsequent forfeiture of their monetary assets implicates the "damage result[ing]" from the wrongful conduct plaintiffs allege that they endured, MCL 600.5827, but in our view, cannot be said to meet the requirement of being "the event giving rise to the cause of action[,]" as set forth in MCL 600.6431(3), where MCL 600.6431(1) clearly specifies that the notice provisions of the statute apply "after such claim has accrued[.]" Therefore, to the extent that the trial court misconstrued the nature of plaintiffs' due process claims, its conclusion that "plaintiffs could [only] fully allege the elements of their constitutional claim[ ]" once defendant determined that "plaintiffs had not committed fraud and were . . . eligible for benefits[ ]" was incorrect, and warrants reversal. Instead, put simply, plaintiffs' causes of action accrued, as contemplated by MCL 600.6431(3), on the date that defendant notified them of their alleged fraudulent conduct, and the impact it would have on their unemployment benefits.

We note that this conclusion accords with the Michigan Supreme Court's recent decision in *Frank v Linkner*, ___ Mich ___, ___; 894 NW2d 574 (2017) (Docket No. 151888). In *Frank*, the Michigan Supreme Court, quoting *Moll v Abbott Laboratories*, 444 Mich 1, 12; 506 NW2d 816 (1993), observed that "the date of the wrong referred to in MCL 600.5827 is 'the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant

[3] US Const, Am V, which is applicable to Michigan by way of the Fourteenth Amendment, also provides, "nor shall any person . . . be deprived of life, liberty or property, without due process of law." *Sidun*, 481 Mich at 509.

breached his duty.'" *Frank*, ___ Mich at ___; slip op at 14. The *Frank* Court also stated that the "relevant 'harms'" to be considered "are the actionable harms alleged in a plaintiff's cause of action." *Id*. The *Frank* Court also rejected the plaintiffs' contention that "their claims did not accrue until they first incurred a calculable financial injury . . . ." *Id*.; slip op at 16. In its analysis, the *Frank* Court considered a case relied on by the trial court in this case, *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 151; 200 NW2d 70 (1972), where in the context of a personal injury case resulting from an industrial accident, the Michigan Supreme Court held that "[i]n the case of an action for damages arising out of tortious injury to a person, the cause of action accrues when all of the elements of the cause of action have occurred and can be alleged in a proper complaint[.]" *Frank*, ___ Mich at ___; slip op at 16, quoting *Connelly*, 388 Mich at 150-151. Like the plaintiffs in this case, the plaintiffs in *Frank* argued that their causes of action did not accrue until monetary damages occurred. *Frank*, ___ Mich at ___; slip op at 16. The *Frank* Court held that the plaintiffs' argument "conflates monetary damages with 'harm[,]'" and further ruled, in pertinent part, as follows:

> [w]hile the actionable harm in a claim for tortious injury to a person typically consists of some personal injury inflicted by another that is remedied by monetary damages, . . . the actionable harm for a member oppression claim under MCL 450.4515 consists of actions taken by the managers that "substantially interfere with the interests of the member as a member," and monetary damages constitute just one of many potential remedies for that harm. . . . Accordingly, unlike an action for tortious injury to a person, an action for LLC member oppression does not necessarily accrue when a plaintiff incurs a calculable financial injury. Instead, it accrues when a plaintiff incurs the actionable harm under MCL 450.4515, i.e., when defendants' actions allegedly interfered with the interests of a plaintiff as a member, making the plaintiff eligible to receive some form of relief under MCL 450.4515(1). [*Frank*, ___ Mich at ___; slip op at 16-17.]

Accordingly, while *Frank* involved a shareholder oppression action governed by MCL 450.4515, the reasoning the Michigan Supreme Court employed is instructive here. Specifically, the "actionable harm" in a due process challenge consists of the actions allegedly taken by defendant that deprived plaintiffs of their right to notice and an opportunity to be heard, and occurred on the date defendant issued notices informing plaintiffs of their alleged fraudulent conduct. Like the plaintiffs in *Frank*, plaintiffs in this case erroneously focus on the potential consequence of a due process violation, the taking of their property, rather than the hallmark of a due process claim, the right to notice and an opportunity to be heard. Thus, in our view, where the trial court did not properly consider when plaintiffs were harmed, instead placing its focus on its conclusion that whether plaintiffs were in fact found to have engaged in fraud "was an inherent element" of the theory of their claims, reversal of its decision is warranted.

The parties do not dispute that Bauserman's notices of redetermination regarding his unemployment benefits were dated December 3, 2014. Likewise, Broe's notices of determination advising him of his disqualification for unemployment benefits are dated July 15, 2014. Finally, Williams's notice of determination/redetermination is dated June 22, 2012.

Accordingly, where plaintiffs did not institute their action until September 9, 2015, their claims were not filed in compliance with MCL 600.6431(3), "within 6 months following the happening of the event giving rise to the cause of action."[4]

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael F. Gadola
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

[4] Where we have concluded that plaintiffs' claims were not filed in compliance with MCL 600.6431(3), we decline to address defendant's remaining issue on appeal concerning whether plaintiffs' claims are barred on the basis of governmental immunity where plaintiffs alleged a "constitutional tort" against defendant.