

STATE OF MICHIGAN
COURT OF APPEALS

RONALD MILLER,¹

Plaintiff-Appellant,

MARK MCCLISH, TERRY WILLIAMS,
MICHAEL VANOS, RICHARD VANSETTON,
NATHANIEL MCCARTHY, and ALEXANDER
D. SMITH,

Plaintiffs,

v

WESTERN MICHIGAN UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
September 20, 2002

No. 231445
Court of Claims
LC No. 00-017674-CM

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We affirm.

During the late 1980's and early 1990's, defendant entered into several contracts with construction contractors to renovate its student recreational facilities. See *Western Michigan University Board of Control v Michigan*, 455 Mich 531, 533; 565 NW2d 828 (1997). Plaintiff's employer, Van Haren Electric, was one of the contractors. Defendant made its final contractual payment for this project to Van Haren Electric on August 17, 1995. On July 29, 1997, our Supreme Court released its decision holding that the renovation project was subject to the prevailing wage act, MCL 408.551, requiring that "certain contracts for state projects contain a provision obligating the contractor to pay workers on the project the wage rate and fringe benefits prevailing in the locality where the construction is to occur." *Western Michigan, supra* at 533, 536, 541. On June 19, 2000, plaintiff sued defendant in the Court of Claims, alleging that defendant breached its contractual and statutory duty to pay the prevailing wage.

¹ Ronald Miller filed the only notice of appeal. Therefore, we refer to him as "plaintiff."

The trial court granted defendant's motion for summary disposition, concluding that plaintiff's lawsuit was barred by the statute of limitations. In addition, the trial court opined that there was no private cause of action for a violation of MCL 408.551. Further, the trial court implicitly found that plaintiff failed to comply with the notice provisions of MCL 600.6431. Plaintiff challenges these rulings on appeal.

Generally, we review de novo a trial court's decision on a motion for summary disposition. *Todorov v Alexander*, 236 Mich App 464, 467; 600 NW2d 418 (1999). Similarly, absent disputed issues of fact, we review de novo a trial court's determination that a statute of limitation bars a cause of action. *Id.*

MCL 600.6452 bars all claims within the jurisdiction of the Court of Claims, unless filed with the court "within three years after the claim first accrues." A claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827.

Plaintiff filed his claim almost five years after defendant made final payment to plaintiff's employer. To avoid the obvious statute of limitations problem, plaintiff argues that a claim does not accrue until all elements of the claim are present and that the "duty" element of his claim did not accrue until our Supreme Court released its decision in *Western Michigan, supra*. Plaintiff fails to cite any authority for his contention.

Our Supreme Court cannot create a statutory duty; rather, "the primary purpose of statutory interpretation is to ascertain and effectuate legislative intent." *Donajkowski v Alpena Power Co*, 460 Mich 243, 266; 596 NW2d 574 (1999). In fact, judicial construction of a statute is permitted *only* when the meaning of the statutory language is ambiguous. *DeVormer v DeVormer*, 240 Mich App 601, 605-606; 618 NW2d 39 (2000). Moreover, nothing will be read into a statute that is not within the manifest intent of the Legislature as gathered from the act itself. *Id.* at 605. To do otherwise would constitute impermissible judicial legislation. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997).

We believe that plaintiff's cause of action accrued in August 1995, or earlier, when defendant paid the disputed wages to plaintiff's employer. See *Brown v Dep't of Military Affairs*, 386 Mich 194, 202; 191 NW2d 347 (1971). Thus, the statutory limitations period expired three years later, in August 1998. MCL 600.5827. Because plaintiff failed to file his claim within the statutory period, MCL 600.6452 barred his lawsuit. Therefore, the trial court properly granted summary disposition on that basis. In light of our decision, we need not address plaintiff's other issues raised on appeal.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens