STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINA McCAHAN, Plaintiff-Appellant, v SAMUEL KELLY BRENNAN, Defendant, and UNIVERSITY OF MICHIGAN REGENTS, Defendant-Appellee.	FOR PUBLICATION February 1, 2011 9:00 a.m. No. 292379 Court of Claims LC No. 08-000147-MZ Advance Sheets Version

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

SAWYER, P.J.

Plaintiff appeals the Court of Claims' order granting the University of Michigan Regents (the university) summary disposition. MCR 2.116(C)(8) and (10). We affirm.

On December 12, 2007, plaintiff was injured in a car accident with a student, Samuel Brennan, on the University of Michigan's campus. The student was driving a car owned by the university, while on university business. On May 7, 2008, plaintiff's counsel sent a letter to the university indicating that plaintiff's counsel intended to represent plaintiff in a lawsuit over the car accident. On October 31, 2008, plaintiff filed a notice of intent to file a claim in the Court of Claims that was signed by plaintiff and plaintiff's counsel. After plaintiff filed an action against Brennan and the university, the trial court granted summary disposition in favor of the university because plaintiff had not complied with MCL 600.6431(3).

The language of MCL 600.6431 clearly states the steps a plaintiff must take in order to make a claim against the state:

> (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.

* * *

(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.

The filing requirement is a condition precedent to sue the state. See *Reich v Hwy Comm*, 43 Mich App 284, 287-289; 204 NW2d 226 (1972). When interpreting statutes, the court looks to the language of a statute first. Only if a statute is ambiguous or in conflict with another provision does a court clarify through judicial construction. *Lansing Mayor v Pub Serv Comm*, 470 Mich 154, 157, 166; 680 NW2d 840 (2004). The Legislature is presumed to have written the statute to mean what the Legislature intended it to mean. *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008); *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). MCL 600.6431(3) clearly states that plaintiffs with personal injury claims shall file a notice of intention to file the claim or the claim itself in the Court of Claims within six months of the event giving rise to the claim.

Plaintiff argues that she has substantially complied with the statute, but substantial compliance does not satisfy MCL 600.6431(3). Subsection (3) clearly states that a "claimant *shall* file with the clerk of the court of claims . . . within 6 months following the happening of the event . . . ." (Emphasis added.) The word "shall" designates a mandatory provision. *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008); *People v Francisco*, 474 Mich 82, 87; 711 NW2d 44 (2006). Clear statutory language must be enforced as written. *Fluor Enterprises, Inc v Treasury Dep't*, 477 Mich 170, 174; 730 NW2d 722 (2007); *People v Gillis*, 474 Mich 105, 115; 712 NW2d 419 (2006). Here, because plaintiff brought a personal injury claim, plaintiff had to file a notice of intention to file a claim with the Court of Claims within six months of the accident. She did not. The facts show that plaintiff filed a notice of intention to file a claim with the Court of Claims months past the six-month statutory requirement. Plaintiff did not comply with the requirements of MCL 600.6431(3).

Plaintiff also argues that the state must show prejudice when a plaintiff does not comply with a statutory filing requirement. But in *Rowland*, the Michigan Supreme Court overturned several cases that had required the state to show actual prejudice when a plaintiff failed to comply with a statutory filing requirement. *Rowland*, 477 Mich at 200, 213. The Court in *Rowland* stated that because the language of the statute at issue in that case was clear regarding its notice requirement, the Court would not give the statute any judicial construction. The filing requirement was strictly applied. *Id.* at 200 (interpreting the 120-day filing requirement of MCL 691.1404). The Court in *Rowland* returned to the well-founded principle that the Legislature is presumed to have written what the Legislature meant, and courts will not use judicial construction where the meaning of a statute is clear. *Id*. at 219. The filing requirement must be applied as it is written.

We recognize that *Rowland* dealt with a different notice requirement than does this case. There does not appear to be any published decision of either this Court or the Supreme Court that definitively determines whether the *Rowland* rationale should also be applied to the notice requirements of MCL 600.6431. Indeed, two justices of the Supreme Court disagreed on this point in separate statements to an order denying leave to appeal in *Beasley v Michigan*, 483 Mich 1025 (2009). Then Chief Justice KELLY, in her concurring statement, rejected the defendant's argument that *Rowland* should be applied to the notice provision of MCL 600.6431(3), concluding that *Rowland* was distinguishable because it dealt with a different statutory provision. *Id*. at 1025 (KELLY, C.J., concurring). Justice CORRIGAN, on the other hand, in her dissenting statement to the order denying leave to appeal, opined that *Rowland* does apply to the notice provisions of MCL 600.6431. In particular, she noted that *Rowland* "rejected earlier caselaw that had assumed notice provisions are unconstitutional if they do not contain a prejudice requirement," as well as the fact that the notice requirement in *Rowland* "is substantively identical" to the notice provisions of MCL 600.6431. *Id.* at 1028 (CORRIGAN, J., dissenting). Justice CORRIGAN also noted that the statute clearly provides that no claim may be maintained unless the notice is filed with the Court of Claims, which did not happen. *Id.*

We conclude that Justice CORRIGAN's view represents the better interpretation of the issue. While *Rowland* did directly deal with a claim arising under the defective-highway exception to governmental immunity, we, like Justice CORRIGAN, are not persuaded that the *Rowland* rationale is somehow limited to MCL 691.1404. Indeed, one of the cases that *Rowland* reviewed and rejected, *Carver v McKernan*, 390 Mich 96; 211 NW2d 24 (1973), overruled by *Rowland*, 477 Mich 197, dealt with a six-month notice requirement under the Motor Vehicle Accident Claims Act, MCL 257.1118. In rejecting *Carver* and other cases, *Rowland* stated that "[i]n reading an 'actual prejudice' requirement into the statute, this Court not only usurped the Legislature's power but simultaneously made legislative amendment to make what the Legislature wanted—a notice provision with no prejudice requirement—impossible." *Rowland*, 477 Mich at 213. Ultimately, *Rowland*, 477 Mich at 219, concluded that "MCL 691.1404 is straightforward, clear, unambiguous, and not constitutionally suspect. Accordingly, we conclude that it must be enforced as written." The same can be said of MCL 600.6431(3).[1]

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[1] Judge SAWYER acknowledges that he was previously a member of a Court of Appeals panel that issued an opinion that reached a different conclusion. *Cunmulaj v Chaney*, unpublished opinion per curiam of the Court of Appeals, issued February 12, 2009 (Docket Nos. 282264 and 282265). Specifically, that opinion reached the conclusion that "[t]here is no reason to extend our Supreme Court's holding [in *Rowland*] to overturn the previous standard of substantial compliance with statutory notice requirements in other statutes." *Id.* at 3. Because *Cunmulaj* is an unpublished opinion, it is of course not precedentially binding. MCR 7.215(C)(1). Judge SAWYER, upon giving the matter further consideration, is now persuaded that *Cunmulaj* erroneously decided this point and disavows that opinion to the extent that it conflicts with the opinion in the case at bar.

In sum, plaintiff did not comply with the plain language of the filing requirement of MCL 600.6431(3). Subsection (3) clearly requires that a plaintiff with a personal injury claim against the state must file a notice of intention to file the claim or the claim itself with the clerk of the Court of Claims within six months of the event giving rise to the claim. Plaintiff did not file her notice of intention to file a claim with the Court of Claims until several months after the six-month deadline had passed. Accordingly, the Court of Claims properly granted summary disposition to the university.

Affirmed. Defendant University of Michigan Regents may tax costs.

/s/ David H. Sawyer
/s/ Henry William Saad