

STATE OF MICHIGAN
COURT OF APPEALS

CALISTRO VALINTIN VEGA,
Plaintiff-Appellant,

UNPUBLISHED
November 7, 2013

v

ANDREW CHARLES GILLETTE, JR., and
STATE OF MICHIGAN,

No. 313124
Court of Claims
LC No. 10-000009-MZ

Defendants-Appellees.

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant summary disposition pursuant to MCR 2.116(C)(7) (governmental immunity). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff was injured in an automobile collision. He was traveling northbound on US-31, which was covered with snow, when he reached his turnoff. Defendant Andrew Gillette¹ was traveling behind plaintiff on the same road. Gillette saw plaintiff put on his turn signal and stop. Gillette, who was driving a vehicle owned or leased by the State of Michigan, applied his brakes but instead of stopping his vehicle slid into the rear of plaintiff's vehicle. Plaintiff asserted that he sustained serious injuries because of the accident.

It is undisputed that plaintiff failed to file a notice of intent to file a claim with the Clerk of the Court of Claims within the requisite six months after the accident pursuant to MCL 600.6431(3). Defendant moved the trial court for summary disposition on the grounds of governmental immunity.

The trial court considered whether the case should be dismissed in light of *McCahan v Brennan*, 492 Mich 730; 822 NW2d 747 (2012), which was issued during the pendency of

¹ By stipulation, the claims against Gillette were dismissed without prejudice. Accordingly, any references to "defendant" will only refer to the State of Michigan.

plaintiff's suit, and which held that the plain language of MCL 600.6431(3) requires a plaintiff to file a claim or notice of claim with the Court of Claims "within 6 months following the happening of the event giving rise to the cause of action[.]" *McCahan*, 492 Mich at 752. *McCahan* further held that courts "may not engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with statutory notice requirements." *Id.* at 746-747. Although the trial court concluded that *McCahan* created a new rule of law because it addressed erroneous prior interpretations of the clear statutory language, it nonetheless held that it should be given retroactive effect because "the reliance on [prior caselaw] has not been significant enough to warrant limiting application of *McCahan* to prospective application." Accordingly, the court granted defendants' motion for summary disposition.

II. STANDARD OF REVIEW

The trial court's decision on whether to grant or deny summary disposition is reviewed de novo. *McCahan*, 492 Mich at 735. Furthermore, this Court also reviews de novo issues of statutory interpretation. *Id.* at 736. "Whether a judicial decision should be limited to prospective application is a question of law that we review de novo." *Adams v Dep't of Transportation*, 253 Mich App 431, 434-435; 655 NW2d 625 (2002).

III. DISCUSSION

The trial court held that *McCahan* applied retroactively and that, as a result, plaintiff's claim was barred because plaintiff failed to meet the notice requirements of MCL 600.6431. We agree.

Generally, governmental agencies in Michigan are statutorily immune from tort liability. However, because the government may voluntarily subject itself to liability, it may also place conditions or limitations on the liability imposed. One such condition on the right to sue the state is the notice provision of the Court of Claims Act, MCL 600.6431 [*McCahan*, 492 Mich at 736.]

MCL 600.6431 provides in relevant part:

(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.

In *McCahan*, our Supreme Court “reaffirm[ed] that when the Legislature conditions the ability to pursue a claim against the state on a plaintiff’s having provided specific statutory notice, the courts may not engraft an ‘actual prejudice’ component onto the statute before enforcing the legislative prohibition.” *McCahan*, 492 Mich at 738. The Court reasoned:

In *Rowland* [*v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007)], we interpreted the highway exception to governmental immunity, and in particular, its statutory requirement that “[a]s a condition to any recovery for injuries,” an injured person must provide notice within 120 days from the time the injury occurred. The plaintiff in *Rowland* served notice on the defendant after 140 days, thus failing to meet the 120-day deadline. Examining whether this failure precluded the plaintiff from maintaining her claim, this Court rejected earlier caselaw that had assumed that notice provisions are constitutional only if they contain a prejudice requirement. Instead, *Rowland* held that when the plain language of a statute requires particular notice as a condition for recovery, “no ‘saving construction’ [is] necessary or allowed. Thus, the engrafting of [a] prejudice requirement onto the statute [is] entirely indefensible.” [*McCahan*, 492 Mich at 743-744 (quotation marks in original; alterations by *McCahan* Court).]

“As in *Rowland*,” the Court explained, “the statutory language at issue [in MCL 600.6431] is clear”: if a plaintiff failed to file notice of intent to pursue a claim against a defendant with the Court of Claims within the six month notice period, the plaintiff’s claim is “barred by the plain language of the statute.” *Id.* at 744-745.

Plaintiff’s accident occurred on February 12, 2008. Suit was not filed until February 2, 2010, almost 24 months later and well outside the statutory notice provision, and a notice of claim was not filed prior to the commencement of suit. Plaintiff argues, however, that *McCahan* should be given only prospective effect, because the holding in *McCahan* announced a new principle of law. Further, plaintiff argues that extensive litigation was conducted in reliance on pre-*McCahan* precedent, and such reliance extended even to the timing of the filing of plaintiff’s suit, as plaintiff would have not waited beyond the notice period if the law clearly indicated his lawsuit would be dismissed as a result.

Generally, “judicial decisions are given full retroactive effect.”² *Pohutski v City of Allen Park*, 465 Mich 675, 695; 641 NW2d 219 (2002). In determining whether to apply a decision retroactively or prospectively, the reviewing court should consider three factors: “(1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice.” *Id.* at 696. In the civil context, an “additional threshold question [is] whether the decision clearly established a new principle of law.” *Id.*

² Retroactivity means, in this context, that the decision would be applied to all cases pending before the trial court or on appeal before either this Court or the Supreme Court. See *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 566; 702 NW2d 539 (2005).

A judicial decision does not create a new rule of law just because it overrules prior precedent. *Adams*, 253 Mich App at 436-437. In *Adams*, this Court was asked to only apply *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2000) prospectively. *Adams*, 253 Mich App at 434. *Adams* provided the following guidance on whether to apply a decision retroactively or prospectively:

In determining whether a decision is to be applied only prospectively, a reviewing court must consider whether the decision clearly established a new principle of law, which results from overruling case law that was clear and uncontradicted. If a reviewing court concludes that the decision does not overrule clear and uncontradicted case law, the product of which is a new principle of law, the decision must be applied retroactively. [*Adams*, 253 Mich App at 435 (citations and quotation marks omitted).]

Adams determined that in spite of expressly overruling prior precedent, the decision in *Nawrocki* “clearly establishe[d] that judicial interpretations of the governmental immunity statute generally, MCL 691.1407(1), and the highway exception to governmental immunity specifically, MCL 691.1402(1), were neither clear nor without contradiction.” *Adams*, 253 Mich App at 437. *Adams* noted that the Supreme Court observed that the state of the law was “confusing and contradictory” because of “inconsistent judicial interpretations,” and that its intent in deciding *Nawrocki* was “to restore ‘a stable rule of law in this difficult area of law’ by properly interpreting the plain language of the statute.” *Id.* at 437-438, quoting *Nawrocki*, 463 Mich at 149-150, 175. In other words, because the prior rule was not “clear and uncontradicted,” the decision in *Nawrocki* did not announce a new rule of law. See *id.* at 436.

Similarly, in *McCahan*, the Supreme Court recognized that there “has been some dispute in the Court of Appeals as to whether the holding of *Rowland* [was] limited to cases involving the highway exception to governmental immunity, MCL 691.1404(1), which *Rowland* interpreted.” *McCahan*, 492 Mich at 745. The Court stated that the dispute was likely caused by concurrences filed in several of Michigan Supreme Court orders that called into question whether *Rowland* was limited to the specific statute interpreted in that case. *Id.* However, in *McCahan*, the Supreme Court clarified the impact of *Rowland*:

We can discern no principled reason to limit artificially the principles or logical import of *Rowland* to the circumstances of that case. Indeed, such a conclusion would be peculiar in all of our jurisprudence—a system of jurisprudence premised on the development of precedents to be followed in similar future cases, thereby ensuring that like cases are treated alike. There is nothing unique about the notice language of the highway exception to governmental immunity that would limit the principle stated in *Rowland* to the specific facts of that case or the interpretation of that statute. Further, there can be no dispute that the notice provision interpreted in *Rowland* and the notice provision at issue here, both of which contain bar-to-claims language, are similarly situated. ■ Instead, the principle of *Rowland* is clear: ■ 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.

Accordingly, we clarify that *Rowland* applies to similar statutory notice or filing provisions, such as the one at issue in this case. To the extent that caselaw from the Court of Appeals or statements by individual members of this Court imply or provide otherwise, we disavow them as inconsistent with both the statutes that they sought to interpret and the controlling law of this state as articulated in *Rowland*. Courts may not engraft an actual prejudice requirement or otherwise reduce the obligation to comply fully with the statutorily required requirements. Filing notice outside the statutorily required notice period does not constitute compliance with the statute. [*Id.* at 746-747.]

Thus, it is apparent that the caselaw before *McCahan* was not “clear and uncontradicted.” See *Adams*, 253 Mich App at 437. Further, our Supreme Court explicitly stated that it was “reaffirm[ing] and apply[ing]” the “fundamental principle articulated in *Rowland* to the interpretation of MCL 600.6431.” *McCahan*, 492 Mich at 732.

We therefore affirm the trial court’s holding, albeit for a different reason. *Taylor v Laban*, 241 Mich App 449, 457; 616 NW2d 229 (2000). Because *McCahan* did not announce a new rule of law, but rather clarified an existing rule of law from *Rowland* (issued prior to the filing of plaintiff’s suit), the “threshold question” of *Pohutski*, 465 Mich at 695, must be answered in the negative. Therefore, we need proceed no further in our analysis. *Id.*

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra