STATE OF MICHIGAN

COURT OF APPEALS

WESTON RAYFIELD, formerly known as GARY SATTERFIELD, Plaintiff-Appellant, v STATE OF MICHIGAN – ONE COURT OF JUSTICE, 61ST DISTRICT COURT, and 63RD DISTRICT COURT, Defendants-Appellees.	UNPUBLISHED July 24, 2018 No. 340886 Court of Claims LC No. 17-000133-MM

Before: RONAYNE KRAUSE, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Weston Rayfield appeals by right an opinion and order granting summary disposition to defendants State of Michigan – One Court of Justice and 63rd District Court under MCR 2.116(C)(7) (claim barred) for failure to comply with the statutory notice requirements of MCL 600.6431. Rayfield also challenges the order of dismissal as to defendant 61st District Court, asserting that a default should have been entered. We affirm.

I. BACKGROUND

The circumstances giving rise to Rayfield's claims stem from a prior tenancy dispute between Rayfield and his former landlord, Susan Smith. In 2012, Rayfield entered into a verbal lease agreement with Smith, wherein Smith allowed Rayfield to occupy a dwelling located in Grand Rapids, Michigan in exchange for Rayfield's work remodeling Smith's various properties. The leasehold property was divided into two units, the other of which was occupied by Nancy Sawinski. In 2014, Rayfield and Smith's relationship "soured" and Smith initiated eviction proceedings in the 63rd District Court. The district court set the matter for a hearing, but Rayfield failed to appear. Consequently, the 63rd District Court entered a default judgment against Rayfield and denied his later motions to set aside the default.

On November 19, 2014, Rayfield filed an appeal in the Kent County Circuit Court, along with an appellate bond to prevent execution of the eviction order. Notwithstanding the bond and pending appeal, Smith and her son appeared at the property to remove Rayfield's personal belongings. An altercation ensued, which resulted in Rayfield's arrest and a charge of assault for allegedly grabbing Smith. Consequently, on March 27, 2015, the 61st District Court arraigned

Rayfield on the assault charge and allegedly entered a "no contact" order preventing Rayfield from returning to the property.

In the meantime, the circuit court denied Rayfield's appeal. On April 6, 2015, Rayfield attempted to extend the appellate bond and stay the eviction proceedings pending an appeal to this Court. On the same day, Smith filed an emergency motion for entry of an order of eviction and to release the bond. The 63rd District Court set a hearing for April 14, 2015; on that date, the court granted Smith's motion and she removed Rayfield's belongings from the property the same day. The district court released the appellate bond the next day. Rayfield filed an application for leave to appeal, but this Court denied the application for lack of merit in the grounds presented. *Smith v Satterfield*, unpublished order of the Court of Appeals, entered July 17, 2015 (Docket No. 326958).

On May 5, 2017, more than two years after the district court's last action in the tenancy dispute, Rayfield filed the instant three-count complaint against defendants in the Court of Claims. Rayfield alleged claims of inverse condemnation and a violation of his procedural and substantive due process rights, and sought compensation for loss of his property and emotional pain and distress. The state and the 63rd District Court, in lieu of answering the complaint, separately moved for summary disposition and argued, in relevant part, that Rayfield's claims were barred by the statutory notice requirement for claims against the state under MCL 600.6431. The 61st District Court never appeared or responded. Rayfield sought a default but the request was never addressed; instead, the clerk of the court entered an order dismissing the 61st District Court for failure to timely serve it with process consistent with the court rules. Thereafter, the Court of Claims entered an opinion and order granting summary disposition in favor of the state and the 63rd District Court, finding that Rayfield failed to strictly comply with the notice requirements of MCL 600.6431.

II. ORDER OF DISMISSAL

Rayfield first argues that it was error to dismiss the 61st District Court from this suit for lack of service or progress and that the Court of Claims should have entered a default against the 61st District Court for failure to plead or otherwise defend against the complaint. Rayfield asserts that he satisfied MCR 2.105(G)(8) by addressing a certified mailing to the 61st District Court at 180 Ottawa Avenue in Grand Rapids, Michigan. Whether the dismissal was proper turns on the construction and interpretation of the court rules, which is an issue that we review de novo. *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000).

MCR 2.105 governs service of process and subsection (G) pertains specifically to service on state entities. MCR 2.105(G) provides in relevant part:

> **(G) Public Corporations.** Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body *may be made by serving a summons and a copy of the complaint on*:
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> * * *

> (8) the president, the chairperson, the secretary, the manager, or *the clerk of any other public body organized or existing under the constitution or laws of Michigan*, when no other method of service is specially provided by statute.
>
> The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, *service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made and sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office.* [Emphasis added.]

Thus, the plain language of MCR 2.105(G)(8) permits service of the summons and a copy of the complaint on the clerk of the court; alternatively, service may be achieved through service of the summons and a copy of the complaint on an individual in charge of the office of the clerk *and* by sending the summons and copy of the complaint to the clerk of the court via registered mail. Service by registered mail may also be accomplished by certified mail, as long as the receipt of mailing is postmarked by the post office. MCR 2.105(K)(1).

Rayfield's mailing of the summons and complaint by certified mail addressed to the "61st District Court, 180 Ottawa Avenue NW, Grand Rapids, MI 49503" did not satisfy either method of service contemplated by MCR 2.105(G)(8). That is, he did not serve the summons and complaint on the clerk of the 61st District Court, nor did he serve the summons and complaint on an agent of the clerk, while also sending the clerk the summons and copy of the complaint by registered or certified mail. Moreover, even if Rayfield's certified mailing addressed to the "61st District Court" could somehow be deemed sufficient under MCR 2.105(G)(8), the record suggests that even that imperfect method of service was incomplete. Rayfield filed a proof of service indicating that the 61st District Court was served by certified mail on May 20, 2017. However, this assertion is unsupported by the tracking information attached to the proof of service, which merely states that the parcel mailed to the 61st District Court was in transit on May 20, 2017, but does not reflect actual delivery.[1]

MCR 2.102(E)(1) provides that when a summons expires without service on a defendant in accordance with the court rules and the defendant has failed to appear, the action is "deemed dismissed without prejudice" as to that defendant. In addition, under MCR 2.102(E)(2), upon expiration of the summons, the court clerk "shall examine the court records and enter an order dismissing the action as to" that defendant. Here, the 91-day life of the summons expired on August 14, 2017, at which point Rayfield had yet to demonstrate that he completed service upon the 61st District Court in accordance with MCR 2.105(G)(8). Accordingly, the clerk of the court properly entered an order dismissing the action as to the 61st District Court based upon Rayfield's failure to effect service consistent with the court rules.

[1] In addition, the attached certified mail receipt is not postmarked by the post office as required by MCR 2.105(K)(1).

This conclusion is unaffected by the fact that Rayfield's request for entry of a default was pending at the time the dismissal was entered. MCR 2.603(A)(1) provides that when a defendant "fail[s] to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party." Although the request for a default had been pending since June 28, 2017, we note that MCR 2.603(A)(1) does not expressly impose a deadline for the clerk to act upon the request. More importantly, a defendant is obligated to file an answer or otherwise respond to a complaint within 28 days after service of process when the service is achieved by registered mail, MCR 2.108(A)(2), but the record does not indicate that the 61st District Court was ever properly served. Because the clerk of the court could easily ascertain the inaccuracy of Rayfield's affidavit indicating that the 61st District Court failed to timely appear or defend, its obligation to enter a default under MCR 2.603(A)(1) was never triggered. Thus, the clerk did not err by failing to enter a default against the 61st District Court.

III. SUMMARY DISPOSITION

Rayfield next argues that the Court of Claims erred by granting summary disposition for defendants under MCR 2.116(C)(7) for failure to comply with the notice requirement for claims against the state under MCL 600.6431. Rayfield asserts that he satisfied the three-year limitations period of MCL 600.6452(1) and that any alleged non-compliance with MCL 600.6431 should be excused.

We review the Court of Claims' decision on a motion for summary disposition de novo. *Rusha v Dep't of Corrections*, 307 Mich App 300, 304; 859 NW2d 735 (2014). "When reviewing a motion under MCR 2.116(C)(7), a reviewing court must consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings and evidence in favor of the nonmoving party." *Anzaldua v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011). Absent a question of fact, the determination whether an action against the state is barred by operation of a statute is a question of law reviewed de novo. See *id.*

MCL 600.6431 "establish[es] those conditions precedent to pursuing a claim against the state." See *Fairley v Dep't of Corrections*, 497 Mich 290, 292; 871 NW2d 129 (2015). The statute 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.
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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. [MCL 600.6431(1) and (3).]

The Michigan Supreme Court, construing the language of these subsections, has held that "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 . . . .'" *McCahan v Brennan*, 492 Mich 730, 742; 822 NW2d 747 (2012) (alteration in original). According to the Court, failure to strictly comply with the notice requirements provides a "complete defense" in an action against the State. See *Fairley*, 497 Mich at 292-293.

In this case, Rayfield filed his complaint against defendants in the Court of Claims on May 15, 2017, more than two years after the last date on which the 63rd District Court took action on his case, i.e., April 15, 2015.[2] Nothing in the record shows that Rayfield ever filed a notice of intent to file a claim. As noted, MCL 600.6431 requires that the claim or a notice of intent to file a claim be filed within one year after the claim accrues, or six months if the matter involves property damage or personal injury. Rayfield's complaint was untimely under either of these measures and the failure to strictly comply with MCL 600.6431 constitutes a complete defense. See *Fairley*, 497 Mich at 292-293.

Rayfield, however, argues that his complaint was timely under the "all purpose" three-year limitations period of MCL 600.6452(1) for claims against the state. Rayfield's argument assumes that he satisfied the notice requirement of MCL 600.6431 and ignores the relationship between that provision and the limitations period of MCL 600.6452. As noted, MCL 600.6431 is not a limitations period, but a condition precedent or statutory notice requirement that must be met to sue the state. *Id*. Once a plaintiff complies with the requirements of MCL 600.6431, the plaintiff "retain[s] the full benefit of the applicable limitations period." *Rusha*, 307 Mich App at 310. In this case, consideration of whether Rayfield's claims fall within the three-year period is irrelevant, because Rayfield failed to satisfy MCL 600.6431.

Rayfield alternatively argues that he satisfied MCL 600.6431 because he had to exhaust his administrative remedies before his inverse condemnation claim could accrue—and being that his separate lawsuit against Sawinski terminated on July 18, 2016, his complaint qualifies as a "written claim" filed within one year. However, Rayfield's suit against Sawinski (allegedly for damage to his personal property) was not part of the factual allegations of the complaint; rather, that suit was first noted in Rayfield's response to summary disposition and was an apparent attempt to mitigate damages. Moreover, the doctrine of exhaustion of remedies applies to

[2] For purposes of determining when plaintiff's claim for inverse condemnation accrued, courts look to the date that a plaintiff is permanently deprived of his or her property. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003). Plaintiff's due process claims similarly accrued "at the time the wrong upon which the claim is based was done," MCL 600.5827; here, accrual occurred at the termination of the tenancy dispute before the 63rd District Court.

administrative decisions of an agency, not decisions of the judiciary, and that principle has no relevance to whether Rayfield complied with MCL 600.6431.

Relatedly, with respect to his due process claims, Rayfield argues that these claims are not impacted by MCL 600.6431 because this statute establishes an "administrative requirement." Rayfield cites *Cummins v Robinson Twp*, 283 Mich App 677, 690; 770 NW2d 421 (2009), which recognized that the failure to exhaust administrative remedies does not necessarily preclude a constitutional substantive due process claim brought under 42 USC 1983. By this logic, Rayfield suggests that he did not have to comply with MCL 600.6431 with regard to his due process claims, contrary to this Court's holding in *Rusha*, 307 Mich App at 310-311, that MCL 600.6431 applies to all claims against the state regardless of the theory of liability asserted.

This argument fails on multiple levels. First, MCL 600.6431 is not an "administrative" requirement akin to administrative rules in agency proceedings, but rather is a procedural requirement much like a statute of limitation. See *id*. (recognizing that MCL 600.6431 is a procedural requirement, analogous to a statute of limitation). The rule from *Cummins* is simply inapplicable because this matter does not involve exhaustion of administrative remedies. Second, Rayfield never pleaded a substantive due process claim under 42 USC 1983, rendering the applicability of the principle quoted from *Cummins* inherently suspect. And third, *Cummins* at no point addresses MCL 600.6431 and did not even involve a claim against the state. Given *Cummins*' complete inapplicability, Rayfield is wrong in his assertion that a "tension" exists between *Cummins* and *Rusha* and that this Court should apply *Cummins* to the facts at bar.

Rayfield next argues that his noncompliance with MCL 600.6431 should be excused because defendants were not prejudiced by his failure to provide notice, i.e., they knew of his claim because all the "bad acts" occurred on the court record. Michigan law has squarely rejected this position. In *McCahan*, 492 Mich at 738, the Michigan Supreme Court considered the language of MCL 600.6431 and affirmed "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." Rayfield argues that a conflict in the caselaw exists in this regard, but the cases Rayfield cites predate the precedent set in *McCahan* and would not be binding in any event because they were all issued by federal circuit courts or a panel of this Court before November 1, 1990. See *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 303 Mich App 441, 453 n 4; 844 NW2d 727 (2013) ("[C]ases decided before November 1, 1990 are not binding precedent under MCR 7.215(J)(1) . . . ."); *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004) (noting that state courts are not bound by the decisions of lower federal courts). Rayfield cites no binding authority in conflict with the Supreme Court's decision in *McCahan* and this Court is bound to follow that decision. *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007).

In sum, the Court of Claims did not err in concluding that Rayfield's claim was untimely and in dismissing the claim under MCR 2.116(C)(7). We do not consider Rayfield's remaining arguments, given that disposition of this matter was proper under MCR 2.116(C)(7).

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Anica Letica