STATE OF MICHIGAN

COURT OF APPEALS

DONNA K. RAMSEY, Personal Representative for the Estate of WILLIAM RAY RAMSEY,

Plaintiff-Appellant,

v

BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
April 17, 2012

No. 303794
Court of Claims
LC No. 10-000092-MH

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

On October 2, 2005, William Ray Ramsey died in his room at the University of Michigan Hospital. Donna K. Ramsey, acting as the personal representative of William's estate, waited until July 17, 2009, to file a notice of intent to bring a medical malpractice action as required by MCL 600.2912b. Donna filed suit in the Court of Claims on September 24, 2010, on behalf of the estate, alleging that the hospital's malpractice resulted in William's wrongful death.[1] The July 17, 2009 notice of intent was filed more than three years after the expiration of the Court of Claims six-month notice period. MCL 600.6431(1), (3). Accordingly, we are bound to affirm the Court of Claims' summary dismissal of the estate's medical malpractice action. See *McCahan v Brennan*, 291 Mich App 430; 804 NW2d 906 (2011).

We review de novo a trial court's grant of summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition under MCR 2.116(C)(7) is appropriate when, based on the well-pleaded allegations in the complaint, the plaintiff fails to justify an exception to governmental immunity. *Johnson v Detroit*, 457 Mich 695, 700-701; 579 NW2d 895 (1998). We also review questions of statutory interpretation de novo. *Grimes v Mich Dep't of Transp*, 475 Mich 72, 76; 715 NW2d 275 (2006). We review a party's constitutional challenge to a statute de novo as well. *Dep't of Transp v Tomkins*, 481 Mich 184, 190; 749 NW2d 716 (2008).

[1] The University of Michigan is a state institution, MCL 390.1 *et seq.*, and the Court of Claims has exclusive jurisdiction over actions levied against it. MCL 600.6419(1)(a).

This case is governed by *McCahan*, 291 Mich App at 432, in which the plaintiff filed a negligence action in the Court of Claims against the University of Michigan Board of Regents seeking recovery for her injuries in an accident involving a university-owned vehicle. The plaintiff sent a letter to the university five months after the accident informing it that she intended to file suit. *Id.* The plaintiff did not file her notice of intent to file a claim with the Court of Claims, however, until nearly one year after the accident. *Id.* This Court noted that MCL 600.6431 "clearly states the steps a plaintiff must take in order to make a claim against the state," including filing "either a written claim or a written notice of intention to file a claim against the state or any of its . . . institutions" with "the office of the clerk of the court of claims." *Id.*, quoting MCL 600.6431(1). When the action is for "personal injuries," the plaintiff must file his or her notice "within 6 months following the happening of the event giving rise to the cause of action. *Id.*, quoting MCL 600.6431(3). The *McCahan* panel held that strict compliance with the statutory notice period is required and that "substantial compliance does not satisfy MCL 600.6431(3)." *Id.* at 433. As the plaintiff failed to file her notice within six months of the accident, she could not plead her claim in avoidance of governmental immunity. *Id.* at 435-436.

On March 6, 2012, the Michigan Supreme Court heard oral arguments to decide whether to grant leave to appeal in *McCahan*. See *McCahan v Brennan*, 489 Mich 985 (2011). Until and unless the Supreme Court actually reverses *McCahan*, however, we are bound to follow it. MCR 7.215(C)(2). As such, we must conclude that Donna's failure to file notice with the Court of Claims clerk's office by April 2, 2006, defeats the estate's claim.

Donna argues on behalf of the estate that MCL 600.6431's notice period is inapplicable because it conflicts with the medical malpractice notice provision of MCL 600.2912b. The two statutory notice provisions do not conflict and both can be met by a medical malpractice plaintiff. MCL 600.6431(3) requires that notice of intent to file a claim must be filed with the clerk of the Court of Claims within six months after the conduct giving rise to the claim. The notice must state "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." MCL 600.6431(1). MCL 600.2912b(1) requires that notice of the claim be provided to the medical malpractice defendant not less than 182 days before the action is commenced. That notice must state the "factual basis for the claim," the "applicable standard of practice or care," the manner in which the defendant breached the standard of care, how the defendant could have avoided the breach, how the breach caused the plaintiff's injury, and the "names of all health professionals and health facilities" being notified. MCL 600.2912b(4). Nothing prevents a plaintiff from complying with both statutory notice provisions. There simply is no conflict entitling the estate to avoid strict compliance.

Donna also argues on behalf of the estate that MCL 600.6431 unconstitutionally shortens or nullifies other statutes of limitations, tolling provisions, and savings provisions specific to medical malpractice and wrongful death actions. She further asserts that MCL 600.6431 denies plaintiffs the equal protection of law by favoring governmental over private tortfeasors.

MCL 600.6431 is not a statute of limitations, a tolling provision, or a savings provision. It is "a condition precedent to sue the state." *McCahan*, 291 Mich App at 432. Once a plaintiff has complied with the MCL 600.6431 notice requirements, his or her claim is governed by the shorter of either the "all-purpose" three-year limitation period of MCL 600.6452 or an otherwise

applicable statute of limitations. See *Gleason v Dep't of Transp*, 256 Mich App 1, 2, 662 NW2d 822 (2003). Here, the estate's claim was governed by the two-year medical malpractice statute of limitations. MCL 600.5838a(1). The Court of Claims notice provision has no effect on that limitation period. Moreover, both the Supreme Court and this Court have repeatedly upheld the constitutionality of statutory notice provisions and have rejected the idea that such requirements unconstitutionally favor governmental defendants. See *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 210; 731 NW2d 41 (2007); *McCahan*, 291 Mich App at 435-436; *Gleason*, 256 Mich App at 3.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher