STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of SANDRA D. MARQUARDT.

SARON E. MARQUARDT, Personal Representative of the Estate of SANDRA D. MARQUARDT,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN BOARD OF REGENTS,

Defendant-Appellee.

UNPUBLISHED
November 27, 2012

No. 307917
Court of Claims
LC No. 10-000004-MH

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right the order granting summary disposition in favor of defendant on the ground that plaintiff failed to comply with the notice provision of MCL 600.6431(3). We affirm.

On July 20, 2007, Sandra Marquardt underwent mitral valve replacement surgery at the University of Michigan Hospital and Health Center. Defendant University of Michigan Board of Regents governs the hospital, MCL 390.3, and may sue and be sued on behalf of the hospital. MCL 390.4. According to plaintiff's complaint, during the surgery the hospital negligently administered to Marquardt the drug Trasylol. Marquardt died on January 27, 2010, allegedly as a result of complications resulting from administration of the Trasylol.

On July 20, 2009, counsel sent a notice of intent to file a medical malpractice claim pursuant to MCL 600.2912b to defendant and three doctors who performed the surgery. On January 19, 2010, Marquardt filed a complaint alleging medical malpractice in the Court of Claims. After Marquardt's death, plaintiff was appointed personal representative of Marquardt's estate and the estate was substituted as plaintiff in this action.

Defendant moved for summary disposition on the grounds that plaintiff failed to file her cause of action within the statute of limitations and that she failed to satisfy the notice provision

of MCL 600.6431(3). The trial court granted summary disposition in favor of defendant on the ground that plaintiff failed to satisfy the notice provision in MCL 600.6431(3).

We review de novo a trial court's ruling on a motion for summary disposition. *Jimkoski v Shupe*, 282 Mich App 1, 4; 763 NW2d 1 (2008). We also review de novo issues of statutory interpretation. *Driver v Naini*, 490 Mich 239, 246; 802 NW2d 311 (2011).

There is no dispute that the Court of Claims has jurisdiction over this personal injury claim. MCL 600.6419(1)(a). Cases brought in the Court of Claims are subject to the notice provisions of MCL 600.6431. MCL 600.6431(3) provides:

> 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.

"A claim based on the medical malpractice . . . accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1); see also *McKiney v Clayman*, 237 Mich App 198, 203-204; 602 NW2d 612 (1999). Thus, the "happening of the event giving rise to the cause of action" in this case was the allegedly negligent administration of Trasylol during Marquardt's surgery on July 20, 2007. MCL 600.6431(3). In order to pursue her claim against defendant, Marquardt was required to file "a notice of intention to file a claim or the claim itself" in the Court of Claims within six months of July 20, 2007. *Id*. The claim was not filed until January 19, 2010. Thus, summary disposition in favor of defendant was appropriate.

Plaintiff argues on behalf of the estate that MCL 600.6431's notice provision 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.

Plaintiff argues that, despite her failure to comply with MCL 600.6431(3), the trial court should not have dismissed the action without a showing of actual prejudice by defendant. This argument was considered and rejected in *McCahan v Brennan*, ___ Mich ___; ___ NW2d ___ (Docket No. 142765, decided August 20, 2012), slip op at 16-17 ("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"). Thus, the trial court did not err in ruling that defendant was not required to prove actual prejudice and dismissing plaintiff's claim.

We decline to address plaintiff's unpreserved argument that the application of MCL 600.6431(3) to medical malpractice cases has no "rational basis." The "interest of justice and judicial economy" do not dictate that we disregard the preservation requirements in this case. See *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 538; 669 NW2d 594 (2003). Further, decisions of our Supreme Court and this Court have repeatedly upheld the constitutionality of notice provisions and rejected the idea that such provisions unconstitutionally favor government defendants. See, e.g., *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 210; 731 NW2d 41 (2007); *Gleason v Dep't of Transp*, 256 Mich App 1, 2-3; 662 NW2d 822 (2003).

Affirmed.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens