STATE OF MICHIGAN

COURT OF APPEALS

TORIANO HUDSON,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

FOR PUBLICATION
July 29, 2025
10:28 AM

No. 367902
Wayne Circuit Court
LC No. 22-007764-CD

Before: MALDONADO, P.J., and GADOLA, C.J., and SWARTZLE, CAMERON, REDFORD, FEENEY, AND YOUNG, JJ.

MALDONADO, P.J.

MCL 600.6431(1) provides that a plaintiff cannot sue the state of Michigan without first filing a notice within one year after the date at which the claim accrued. However, some discord has emerged regarding the application of this statute, so this special panel was convened pursuant to MCL 7.215(J) to lay this issue to rest.

In *Tyrrell v Univ of Mich*, 335 Mich App 254, 272; 966 NW2d 219 (2020), this Court held that MCL 600.6431(1) applies only to Court of Claims proceedings, and compliance with the statute is not necessary for cases in which the plaintiff sues the state in the circuit court. This holding stood for approximately two-and-a-half years until it was overruled by the Supreme Court. In *Christie v Wayne State Univ*, 511 Mich 39, 52; 993 NW2d 203 (2023), the Supreme Court held that plaintiffs always must comply with MCL 600.6431(1) to sue the state, regardless of the forum.

In late 2024, this Court issued three published opinions addressing *Christie*'s retroactivity. In *Flamont v Dep't of Corrections*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367863); slip op at 5-6, this Court held that *Christie* has full retroactive effect because it did not establish a new rule of law. However, in *Landin v Dep't of Health & Human Servs*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367356); slip op at 8-9, a subsequent panel held that *Christie* does not apply retroactively to cases in which the one-year notice period lapsed while *Tyrrell* was still good law. Finally, in *Hudson v Dep't of Corrections*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367902); slip op at 1 (*Hudson I*), the panel acknowledged that

it was bound by *Landin* but believed that *Landin* conflicted with *Flamont*. Therefore, the *Hudson I* panel requested convening a special panel to resolve the conflict.

Consistent with MCR 7.215(J)(3)(a), the judges of this Court were polled, and it was determined that this special panel would be formed to resolve the conflict. We conclude that this Court's decision in *Flamont* bound the panel in *Landin* to apply *Christie* and affirm the trial court's dismissal of the plaintiff's lawsuit. Applying *Christie* in the present case, we affirm the trial court's order granting summary disposition pursuant to MCR 2.116(C)(7).

I. LEGAL BACKGROUND

A. MCL 600.6431, *TYRRELL*, AND *CHRISTIE*

The structure and jurisdiction of the Court of Claims is laid out in the Court of Claims Act (COCA), MCL 600.6401 *et seq*. Section 6431 dictates that the state must be notified prior to the initiation of a lawsuit against it:

> Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the 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 this state or any of its departments, commissions, boards, institutions, arms, or agencies. [MCL 600.6431(1).]

This Court was charged with interpreting MCL 600.6431(1) when it decided *Tyrrell*. In *Tyrrell*, the plaintiff sued the University of Michigan *in the circuit court* for alleged civil rights violations. *Tyrrell*, 335 Mich App at 258. The University moved for summary disposition on the basis of the plaintiff's failure to comply with the notice requirement in MCL 600.6431. *Id.* This Court concluded "that MCL 600.6431 does not apply to claims filed in circuit court . . . ." *Id.* at 271. *Tyrrell* was subsequently overruled by *Christie*, 511 Mich at 52. In that case, the Supreme Court held that "MCL 600.6431(1) applies to all claims against the state, including those filed in the circuit court, except as otherwise exempted in MCL 600.6431 itself." *Id.*

However, the Supreme Court did not address whether its holding would apply retroactively. Accordingly, this Court had to decide how to handle post-*Tyrell*, pre-*Christie* cases in which the plaintiff filed suit in the circuit court without complying with the notice requirements in MCL 600.64319(1).

B. *FLAMONT*

In *Flamont*, the plaintiff filed a sex-discrimination lawsuit against the Michigan Department of Corrections (MDOC) in the Washtenaw Circuit Court. *Flamont*, ___ Mich App at ___; slip op at 1-2. The lawsuit was filed in 2019, before *Tyrrell* was decided, and the plaintiff did not comply with the MCL 600.6431(1) notice requirement. *Id.* at ___; slip op at 2. The MDOC moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that the plaintiff's failure to file a notice was fatal to her claim. *Id.* During the pendency of the plaintiff's lawsuit, *Tyrrell* was decided and then overruled by *Christie*. *Id.* The trial court concluded that *Christie* does not apply retroactively and, accordingly, denied the MDOC's motion for summary disposition. *Id.*

On appeal, this Court identified "the 'general rule' that judicial decisions are given full retroactive effect." *Id*. at ___; slip op at 3 (quotation marks and citation omitted). This Court then acknowledged that "a more flexible approach" is allowed to avoid injustice and laid out the test for retroactivity:

> There is a threshold question whether the decision clearly establishes a new principle of law. If a decision establishes a new principle of law, we then consider three factors: (1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect of retroactivity on the administration of justice. [*Id*. at ___; slip op at 4 (quotation marks, citations, and alterations omitted).]

However, this Court did not reach those three factors because it concluded that *Christie* did not establish a new rule:

> It is evident from the Supreme Court's reasoning in *Christie* that the Court's decision was based on construing the plain and unambiguous language of MCL 600.6431 to reach a determination that was further supported by the operation of the COCA as a limited waiver of the state's sovereign immunity. Our Supreme Court has explained that it does not announce a new rule of law when it overrules a decision of the Court of Appeals that misinterpreted a statute contrary to the statute's plain language, legislative intent, and existing precedent because in that situation, the Supreme Court has reaffirmed the existing law that was misinterpreted by the Court of Appeals. . . .
>
> * * *
>
> In *Christie*, our Supreme Court clearly declared the meaning of the law as it existed, based on the unambiguous statutory language, and corrected a relatively short-lived misinterpretation of the law that had served to thwart the legislative intent and the mandated result. [*Id*. at ___; slip op at 5-6 (quotation marks and citations omitted).]

Because it concluded that *Christie* did not establish a new rule, this Court held that *Christie* "has *full retroactive effect* and therefore applies in the present case." *Id*. at ___; slip op at 6 (emphasis added).

C. *LANDIN*

In *Landin*, the plaintiff brought a lawsuit against the Department of Health and Human Services (DHHS) after *Tyrrell* was decided but before *Christie* overruled *Tyrrell*. *Landin*, ___ Mich App at ___; slip op at 1. Relying on *Tyrrell*, the plaintiff did not file a notice pursuant to MCL 600.6431(1). *Id*. After *Christie* was decided, the circuit court dismissed the plaintiff's complaint on the basis of her failure to comply with the notice requirement, and the plaintiff appealed. *Id*. On appeal, this Court acknowledged the prior panel's holding in *Flamont* but explained why it viewed the case before it as distinguishable:

> While [the plaintiff's] appeal was pending, a panel of the Court of Appeals held in [*Flamont*], a case filed before the decision in *Tyrrell* was issued, that in that circumstance *Christie* did not establish a new rule of law and should be applied retroactively. We take no issue with *Flamont*'s application of *Christie* to cases not affected by the *Tyrrell* decision. However, the question whether it should be applied retroactively to those cases in which the plaintiff relied upon the then-binding precedent of *Tyrrell* did not arise in *Flamont*. Indeed, *Flamont* makes no reference to cases filed in reliance on *Tyrrell* which is not surprising since the plaintiff could not and did not assert any such reliance given that the notice period applicable in *Flamont* had run before *Tyrrell* was decided.
>
> The question whether *Christie* should be applied retroactively to post-*Tyrrell*/pre-*Christie* cases is now before us. [*Landin*, ___ Mich App at ___; slip op at 1-2 (footnote omitted).]

This Court then undertook a retroactivity analysis of *Christie* as applied to cases filed after *Tyrrell* was decided and before it was overruled. For those particular cases, this Court determined "that retroactive application of *Christie's* construction of MCL 600.6431(1) would be patently unjust and inequitable." *Id*. at ___; slip op at 6-7.[1]

D. *HUDSON I*

The present case is materially indistinguishable from *Landin*. As noted, plaintiff filed her claim against the MDOC in the circuit court after *Tyrrell* and before *Christie*, and she did not comply with the notice requirement in MCL 600.6431(1). *Hudson I*, ___ Mich App at ___; slip op at 1-2. The MDOC sought dismissal on the basis of governmental immunity, and the trial court, reasoning that *Christie* applies retroactively, granted the motion and dismissed the case. *Id*. at ___; slip op at 2. This Court acknowledged that, given the procedural posture, it was bound by this Court's opinion in *Landin* to reverse the grant of summary disposition and remand for the lawsuit to proceed. *Id*. at ___; slip op at 1. However, because the panel believed that *Landin* conflicted with *Flamont*, it "call[ed] for the convening of a special panel under MCR 7.215(J)(3) to consider the conflict between *Flamont* and that of *Landin* relative to the retroactivity of *Christie*." *Id*. Therefore, the entire bench was polled, and this special panel was convened.

[1] This Court's decision in *Landin* was not unanimous. In his dissenting opinion, Judge Yates expressed agreement with the majority's "concerns about the propriety of invoking MCL 600.6431(1) to close the courthouse doors" to the plaintiff, but he concluded that such an "outcome is mandated by this Court's published decision" in *Flamont.* *Landin*, ___ Mich App at ___ (YATES, J., concurring in part and dissenting in part); slip op at 1. Judge Yates reasoned that "the appropriate avenue for addressing those concerns flowing from the retroactive application of *Christie* is review by our Supreme Court." *Id*. at ___; slip op at 2.

II. STARE DECISIS

It is clear from the analysis in *Hudson I* that the basis for the conflict was the Court's opinion that *Landin* violated *Flamont*. Accordingly, our task is to analyze whether the panel deciding *Landin* was bound by this Court's decision in *Flamont*. We conclude that it was. Accordingly, we affirm the trial court's order dismissing plaintiff's lawsuit.

"A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." MCR 7.215(C)(2). "The essence of the common law doctrine of precedent or stare decisis is that the rule of the case creates a binding legal precept." *People v Eliason*, 300 Mich App 293, 312; 833 NW2d 357 (2013) (quotation marks and citation omitted). This doctrine "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Ligons v Crittenton Hosp*, 490 Mich 61, 76 n 46; 803 NW2d 271 (2011) (quotation marks and citation omitted). Accordingly, "[a] panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals . . . ." MCR 7.215(J)(1).

In *Flamont*, this Court declared that *Christie* has "full retroactive effect." *Flamont*, ___ Mich App at ___; slip op at 6. The analysis in *Landin* regarding *Christie*'s application to post-*Tyrrell* cases was thorough, detailed, and well thought out; however, it was irreconcilable with *Flamont*'s holding that *Christie* is fully retroactive.

The only way that *Landin* and *Flamont* could coexist is if the statement in *Flamont* that *Christie* is entirely retroactive can be construed as dictum. "Obiter dicta are not binding precedent. Instead, they are statements that are unnecessary to determine the case at hand and, thus, lack the force of an adjudication." *Auto Owners Inc Co v Seils*, 310 Mich App 132, 160 n 7; 871 NW2d 530 (2015) (quotation marks and citation omitted). "Stare decisis does not arise from a point addressed in obiter dictum. However, an issue that is intentionally addressed and decided is not dictum if the issue is germane to the controversy in the case, even if the issue was not necessarily decisive of the controversy in the case." *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007) (citation omitted).

We conclude that the statement in *Flamont* that *Christie* is fully retroactive was not dictum. In *Flamont*, this Court was squarely presented with the question of whether *Christie*'s application was retroactive or prospective. This Court's answer that *Christie* is fully retroactive was directly germane to the question with which it was presented. Therefore, although this Court raised important questions in *Landin* about the equity of enforcing *Christie* against those whom lost their claims in reliance on *Tyrrell*, the *Landin* panel was nevertheless bound by the *Flamont* panel.

III. CONCLUSION

We agree with *Hudson I* that this Court's opinion in *Landin* conflicted with this Court's binding opinion in *Flamont*. Therefore, *Landin* shall no longer have precedential effect. See MCR 7.215(J)(6). The trial court's order granting summary disposition in favor of defendant is affirmed. Defendant, being the prevailing party, may tax costs. MCR 7.219(A).

/s/ Allie Greenleaf Maldonado
/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron
/s/ James Robert Redford
/s/ Adrienne N. Young

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YOUNG, J. (*concurring*).

I concur with the majority but write separately for two reasons.

First, I disagree with the dissent that "our task is to analyze which case—*Flamont* or *Landin*—was correctly decided in light of the Michigan Supreme Court's ruling in *Christie*.[1]" This Court's December 30, 2024 order directs this panel to "resolve the conflict between this case [*Hudson*] and *Landin v Dep't of Health & Human Servs*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 367356)."[2] I agree with the majority that "this Court's decision in *Flamont* bound the panel in *Landin* to apply *Christie* and affirm the trial court's dismissal of plaintiff's lawsuit."

Second, because our review is limited to *Landin*'s interpretation of the scope of *Flamont*, the holding of the majority opinion does not bar subsequent panels from requesting a special panel to address disagreement with *Flamont*'s retroactivity analysis. Ideally, our Supreme Court will address this, as *Flamont* remains pending in that Court as of the time of this writing. I am

[1] *Christie v Wayne State Univ*, 511 Mich 39; 993 NW2d 203 (2023).

[2] *Hudson v Dep't of Corrections*, unpublished order of the Court of Appeals, entered December 30, 2024 (Docket No. 367902).

particularly interested in a response to the dissent's observations on *Mich Ed Employees Mut Ins Co v Morris*, 460 Mich 180; 596 NW2d 142 (1999) with which I agree.

On the one hand, the *Mich Ed* case emphasizes that things are not unexpected when interpreting clear, plain statutory language, as with MCL 600.6431. "It can hardly be considered 'unexpected' or 'indefensible' that this Court would reverse a Court of Appeals decision that was contrary to the clear and unambiguous language of the statute, the legislative intent behind the statute, and two prior opinions of this Court." *Mich Ed Employees*, 460 Mich at 195. But as that very quote illustrates, the plain language of the statute is not mentioned in isolation in *Mich Ed*. The *Mich Ed* opinion also consistently references the two prior opinions of the Court. *Id*. ("[T]his argument fails to recognize the hierarchal nature of the court system, as well as the clear and unambiguous language of the statute."). Given this, it is possible, and certainly more just[3] if, as the dissent proposes, "*Flamont* was incorrect and went too far by determining that *Christie* did not constitute a new law merely on the basis of the 'plain and unambiguous language' of the statute. See *Flamont*, ___ Mich App at ___; slip op at 5-6." But, like Judge Yates stated in *Landin*, "I believe the appropriate avenue for addressing those concerns flowing from the retroactive application of *Christie* is review by our Supreme Court." *Landin*, ___ Mich App at ___ (YATES, J., dissenting); slip op at 9.

/s/ Adrienne N. Young

[3] See generally, *Landin*, ___ Mich App at ___ (YATES, J, dissenting); slip op at 7-8 (discussing the "injustice" born by the reliance plaintiffs rightfully had on *Tyrrell*).

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FEENEY, J. (*dissenting*).

I respectfully dissent.

Although I acknowledge that "[a] published opinion of the Court of Appeals has precedential effect under the rule of stare decisis," MCR 7.215(C)(2), I disagree that "our only task is to analyze whether the panel deciding *Landin*[1] was bound by this Court's decision in *Flamont*."[2] *Hudson v Dep't of Corrections*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 367902); slip op at 6 (*Hudson II*). A "special panel must limit its review to resolving the conflict that would have been created but for the provisions of [MCR 2.15(J)(1), which explains the precedential effect of binding decisions,] and applying its decision to the case at bar." MCR 7.215(J)(5). Therefore, our job is not simply to determine which case—*Flamont* or *Landin*—was first decided by this Court, and therefore binding on the other case. Instead, I propose that our task is to analyze which case—*Flamont* or *Landin*—was correctly decided in light of the Michigan

[1] *Landin v Dep't of Health & Human Servs*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 367356).

[2] *Flamont v Dep't of Corrections*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 367863).

Supreme Court's ruling in *Christie*.[3] To that question, I submit that *Flamont's* retroactivity analysis is incorrect, and *Landin's* retroactivity analysis is sound.

Concerning the question of whether the rule in *Christie* created a new rule of law, *Flamont* stated that it was

> evident from the Supreme Court's reasoning in *Christie* that the Court's decision was based on construing the plain and unambiguous language of MCL 600.6431 to reach a determination that was further supported by the operation of the [Court of Claims Act] as a limited waiver of the state's sovereign immunity. [*Flamont v Dep't of Corrections*, ___ Mich App ___, ___; ___NW3d ___ (2024) (Docket No. 367863); slip op at 5-6.]

But given the fact that we are analyzing numerous opinions that have considered the language of MCL 600.6431(1) and reached different conclusions regarding the need to file the written notice of claim with the Court of Claims clerk's office if the action is filed in circuit court, the "plain and unambiguous language" of the statute appears to be called into question.

Additionally, in *Flamont*, ___ Mich App at ___; slip op at 6, this Court stated as follows:

> Our Supreme Court has explained that it does not announce a new rule of law when it overrules a decision of the Court of Appeals that misinterpreted a statute contrary to the statute's plain language, legislative intent, and existing precedent because in that situation, the Supreme Court has "reaffirmed the existing law that was misinterpreted by the Court of Appeals." *Mich Ed Employees Mut Ins Co*[*v Morris*], 460 Mich [180, 196-197; 596 NW2d 142 (1999)].

But I propose that *Mich Ed Employees* does not support the conclusion that *Christie* merely corrected a misinterpretation of MCL 600.6431 in *Tyrrell*.[4]

In *Mich Ed Employees*, 460 Mich at 184-185, 191-192, our Supreme Court made it clear that the trial court and the Court of Appeals erred when they relied on the decision in *Profit I*,[5] and ruled that social security should not be withheld from personal protection insurance work-loss benefits due and owing to the defendant's sister who was disabled in an auto accident. Notably, two years after *Profit I* was decided, it was overruled by *Profit II*, which held that social security disability benefits shall be subtracted from work loss benefits otherwise payable for an automobile injury. *Profit v Citizens Ins Co of America*, 444 Mich 281, 288; 506 NW2d 514 (1993) (*Profit II*). Our Supreme Court in *Mich Ed Employees*, 460 Mich at 184-185, 196-197, ruled that *Profit I*

[3] *Christie v Wayne State Univ*, 511 Mich 39; 993 NW2d 203 (2023).

[4] *Tyrrell v Univ of Mich*, 335 Mich App 254; 966 NW2d 219 (2020).

[5] *Profit v Citizens Ins Co of America*, 187 Mich App 55; 466 NW2d 354 (1991) (*Profit I*).

ignored: (1) the clear language of MCL 500.3109(1);[6] as well as (2) two previously published Michigan Supreme Court opinions, which held that social security benefits had to be subtracted from PIP work loss benefits. See *Thompson v Detroit Auto Inter-Ins Exch*, 418 Mich 610; 344 NW2d 764 (1984) (holding that social security disability benefits paid to dependents of an injured wage earner are required to be subtracted); *O'Donnell v State Farm Mut Auto Ins Co*, 404 Mich 524; 273 NW2d 829 (1979) (holding that social security survivors' benefits are required to be subtracted). Accordingly, the Court concluded that because *Profit II* did not constitute a new rule of law, but merely "reaffirmed the existing law that was misinterpreted by the Court of Appeals" in *Profit I*, *Profit II* was to be given full retroactive effect. *Mich Ed Employees*, 460 Mich at 197.

Therefore, *Mich Ed Employees* does not clearly stand for the proposition that *Flamont* suggests. In *Mich Ed Employees*, 460 Mich at 197, the Supreme Court ruled that *Profit II* did not constitute a new rule of law because it: (1) relied on the clear language of MCL 500.3109(1) *and two previously published Michigan Supreme Court opinions*, and (2) merely "reaffirmed the existing law that was misinterpreted by the Court of Appeals." Conversely, in this case, there were *no published opinions* by the Court of Appeals or the Michigan Supreme Court that interpreted MCL 600.6431 before *Tyrrell*. Accordingly, I believe that *Flamont* was incorrect and went too far by determining that *Christie* did not constitute a new law merely on the basis of the "plain and unambiguous language" of the statute. See *Flamont*, ___ Mich App at ___; slip op at 5-6.

Furthermore, I believe that *Landin's* assessment of *Tyrrell* and *Christie's* impact makes more sense than *Flamont's* assessment. In *Landin v Dep't of Health & Human Servs*, ___ Mich App ___; ___ NW3d ___ (2024) (Docket No. 367356); slip op at 5-6, this Court concluded as follows:

> [T]he holding in *Christie* that a party suing the state must comply with MCL 600.6431(1) even if the action is pursued in circuit court constituted a new rule or principle of law as to those cases filed when the holding in *Tyrrell* constituted binding precedent. It is clear that *Christie* overruled precedent established in *Tyrrell*, and although our Supreme Court in *Christie*, 511 Mich at 57, expressed that it was giving effect to the intent of the Legislature as inferred from the text of MCL 600.6431(1), the correction of the erroneous interpretation by the panel in *Tyrrell* effectively announced a new rule of law as to those cases to which *Tyrrell* applied. See *League of Women Voters* [*of Mich v Secretary of State*], 508 Mich [520, 566; 975 NW2d 840 (2022)]; *Pohutski* [*v Allen Park*], 465 Mich [675, 696-697; 641 NW2d 219 (2002)]. The precedent set by *Tyrrell* was clear and unambiguous, i.e., there is no need to comply with MCL 600.6431(1) in a circuit court action against the state, and the ruling in *Christie* was just as clear and unambiguous, i.e., compliance with MCL 600.6431(1) is required regardless of the judicial forum. The distinction between these two holdings was not vague, hazy,

[6] MCL 500.3109(1) provides as follows: "Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury under this chapter."

> or indefinite; rather, *Christie* reflected a 180-degree change in the law, in relation to the governing law defined in *Tyrrell*.[6]

> [6] Since *Christie* clarified the intent of the Legislature that passed MCL 600.6431 many years ago, it can be said to have determined that it was "always" the law that notice has to be provided in circuit court cases. However, we do not require nor permit parties to disregard binding authority even if it is incorrect–until and unless that authority is overruled. What constitutes the rule of law applicable to a party is, by definition, what the most recent binding precedent says it is. Simply put, parties must rely on the law as the binding precedent has defined it. What makes a rule "new" for purposes of retroactivity analysis does not concern the soundness of the rule enunciated in a decision on which the party relied; rather the test is whether the rule, even if misguided, was set forth in binding precedent. While legal theorists may debate whether an overruled decision was ever "the law" in some ultimate or platonic sense, the reality of litigation is that the applicable rule of law is defined by the binding precedent in effect at the relevant time.

Accordingly, this Court determined that upon weighing the three pertinent factors discussed in *League of Women Voters*, 508 Mich at 565-566, the factors "weigh[ed] against applying *Christie* retroactively to cases in which plaintiffs reasonably relied on *Tyrrell* in making the decision not to provide the notice in MCL 600.6431(1)."[7] I concur that the plaintiffs who relied on *Tyrell*—such as the plaintiffs in *Landin*, *Hudson I*, and *Walton*[8]—should not be barred from relief simply because they relied on *the only published caselaw* on this issue at that time.

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[7] Notably, as the majority stated, the decision in *Landin* was not unanimous. In his dissenting opinion, Judge Yates stated as follows:

> Balanced against that need for caution [when construing the waiver of sovereign immunity], however, is the ineluctable conclusion that many plaintiffs relied on *Tyrrell* as binding authority that excused them from filing a notice prescribed by MCL 600.6431(1) when asserting claims in circuit court. The plaintiff in *Flamont* did not fall into that category. Here, in contrast, plaintiff very well may have relied on *Tyrrell*, which was issued before plaintiff filed the suit that is now before us. For that reason, my colleagues correctly identify this case as an instance where reliance interests counsel against applying MCL 600.6431(1) to bar plaintiff's claim based on retroactive application of *Christie*. I share their concerns, but I believe the appropriate avenue for addressing those concerns flowing from the retroactive application of *Christie* is review by our Supreme Court." [*Landin*, ___ Mich App at ___ (YATES, J., concurring in part and dissenting in part); slip op at 2-3.]

[8] *Walton v Mich Dep't of Corrections*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2024 (Docket No. 367975).

Therefore, I would hold that *Flamont's* retroactivity analysis is incorrect, and *Landin's* retroactivity analysis is sound.

/s/ Kathleen A. Feeney