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STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINE OLDENBURG-MCGEE, Individually and on Behalf of All Others Similarly Situated,

Plaintiff-Appellee,

v

REGENTS OF THE UNIVERSITY OF MICHIGAN, THE UNIVERSITY OF MICHIGAN MICHIGAN MEDICINE, THE UNIVERSITY OF MICHIGAN MEDICAL SCHOOL, DAVID MILLER, M.D., M.P.H., JOVITA THOMAS-WILLIAMS, HAKIM BERRY,

Defendants-Appellants.

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No. 376946
Washtenaw Circuit Court
LC No. 25-000555-CB

Before: MURRAY, P.J., and PATEL and FEENEY, JJ.

PATEL, J.

In this class action alleging gender discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*., defendants the Regents of the University of Michigan, the University of Michigan Medical School, the University of Michigan, Michigan Medicine (collectively, the university defendants), David Miller, M.D., MPH, Jovita Thomas-Williams, and Hakim Berry appeal by right the trial court order denying their motion for summary disposition under MCR 2.116(C)(7) and (8). On appeal, defendants assert that the ELCRA claim is barred because plaintiff failed to comply with the six-month notice provision in MCL 600.6431(4) of the Court of Claims Act (COCA), MCL 600.6401 *et seq*. We agree, in part. Each time plaintiff and the putative class members were paid less than similarly-situated males, it gave rise to a potential ELCRA claim. Accordingly, the trial court did not err by denying summary disposition under MCR 2.116(C)(7) to the university defendants for the ELCRA claims that arose on or after October 3, 2024, but erred by denying summary disposition to the university defendants for the ELCRA claims that arose more than six months before plaintiff filed her notice of intent to file a

claim.[1] We reverse in part, affirm in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Plaintiff works as a physician assistant (PA) at defendant Michigan Medicine. Plaintiff contends that female PAs working at Michigan Medicine were paid, on average, $9,000 less in annual salary than similarly-situated male PAs working at Michigan Medicine. In her capacity as an elected leader of a bargaining unit known as the United Physician Assistants of Michigan Medicine (UPAMM), plaintiff advocated for closing the PA's gender-based wage gap at Michigan Medicine. In 2021, the UPAMM negotiated a collective-bargaining agreement that set the salaries for all PAs working at Michigan Medicine. Plaintiff maintains that the negotiated contract "did not close the wage gap, but rather entrenched it further."

On April 3, 2025, plaintiff filed in the Court of Claims a notice of intention to file an ELCRA gender-discrimination class action against defendants for an ongoing gender-based wage gap for all female PAs working at Michigan Medicine. Plaintiff asserted that "personal and non-personal injuries have occurred within the last six (6) months or one (1) year, respectively." On April 15, 2025, plaintiff commenced this class action on behalf of all female PAs working at Michigan Medicine in the three years preceding the filing of the complaint. Plaintiff alleged that defendants violated the ELCRA on the basis of gender and asserted that she and the class members suffered economic loss in salary and benefits as well as noneconomic loss "including financial stress, emotional distress, loss of reputation, loss of economic opportunity, and reputational harm." Plaintiff maintained that defendants were aware of the gender-based wage gap but failed and refused to correct it "for years." Plaintiff sought monetary damages, and declaratory and equitable relief.

Defendants transferred the matter to the Court of Claims under MCL 600.6404(3) and, in lieu of answering the complaint, moved for summary disposition under MCR 2.116(C)(7) and (8). Before plaintiff filed her response to defendants' dispositive motion, the parties stipulated to plaintiff filing a first amended complaint to remove her requests for declaratory and equitable relief and transferring the matter back to the circuit court. Plaintiff filed her first amended complaint, and the matter was transferred back to the circuit court.

In their motion for summary disposition, defendants argued that plaintiff's complaint alleged that the gender-based wage gap had existed since at least 2021 when the UPAMM and the university negotiated a contract. Because plaintiff alleged that the claims accrued in 2021 and our Supreme Court has held that the "continuing violations" doctrine is not applicable to ELCRA claims, defendants argued that plaintiff's April 3, 2025 notice of intent was filed beyond the six-month notice period in MCL 600.6431(4) and thus the claims were barred in their entirety. In response, plaintiff argued that she and the putative class members continued to be paid less favorably compared to similarly-situated male PAs. Plaintiff maintained that each wage-gap

[1] On appeal, plaintiff concedes that she and the putative class members cannot claim damages from the university defendants for any gender-based wage-gap payments that occurred "before the appropriate time before the [notice of intent] under the Court of Claims Act . . . ."

payment was a violation of the ELCRA and therefore her notice of intent was timely filed. However, plaintiff conceded that she could not pursue any claims for payments that occurred more than three years before her complaint was filed.

At the motion hearing, the trial court agreed with plaintiff "that there is a new claim for damage every time a person is underpaid, if that underpayment results from their being a member of a protected class under the Elliott-Larsen Civil Rights Act." The trial court stated that it was "a perversion of the Court of Claims Act" to preclude a person who had been discriminated against for a number of years from pursuing a claim because they did not file it within six months of when the discrimination began. The trial court denied the motion for "entirely the reasons articulated by . . . plaintiff in the response." Following the hearing, the trial court entered an order denying defendants' motion for the reasons stated on the record. This appeal followed.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "We also review de novo questions of government immunity and statutory interpretation." *Short v Michigan State Police*, __ Mich App __; __ NW3d __ (2026) (Docket No. 375823); slip op at 2-3 (citations omitted). And we apply a de novo standard when evaluating jurisdiction, which is a question of law. *Javer v P & P Hospitality, LLC*, __ Mich App __, __; __ NW3d __ (December 6, 2024) (Docket No. 363572); slip op at 3.

Summary disposition is warranted under MCR 2.117(C)(7) when a claim is barred because of immunity granted under the law. *Short*, __ Mich App at __; slip op at 3. When reviewing a motion under MCR 2.116(C)(7), we consider all documentary evidence in a light most favorable to the nonmoving party. *Id*. at __; slip op at 3. "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." *Id*. at __; slip op at 3 (cleaned up). "But when a relevant factual dispute does exist, summary disposition is not appropriate." *Id*. at __; slip op at 3.

III. JURISDICTION

Preliminarily, we address plaintiff's challenge to our jurisdiction in this matter. See *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 560; 840 NW2d 375 (2013) (explaining that all courts must address challenges to subject-matter jurisdiction). Plaintiff argues that this Court lacks jurisdiction to decide defendants' appeal because the order appealed is not a final order under MCR 7.202(6)(a)(v). Plaintiff raised the same argument in her earlier motion to dismiss for lack of jurisdiction, which this Court denied. See *Oldenburg-McGee v Univ of Mich Regents*, unpublished order of the Court of Appeals, entered January 13, 2026 (Docket No. 376946). And plaintiff's brief does not raise any new arguments in support of her assertion that this Court lacks jurisdiction.

This Court has jurisdiction of a party's appeal by right filed from a trial court's final judgment or final order, MCR 7.203(A)(1), which includes "an order denying governmental immunity to a governmental party, including a governmental agency, official, or employee under MCR 2.116(C)(7)," MCR 7.202(6)(a)(v). This Court has recognized that, "regardless of the

specific basis of the trial court's ruling on a motion for summary disposition, whenever the effect is to deny a defendant's claim of immunity, the trial court's decision is, in fact, 'an order denying governmental immunity,' and is reviewable under MCR 7.203(A) and MCR 7.202(6)(a)(v)." *Seldon v Suburban Mobility Auth for Regional Transp*, 297 Mich App 427, 436; 824 NW2d 318 (2012), quoting *Walsh v Taylor*, 263 Mich App 618, 625; 689 NW2d 506 (2004).

The university defendants are instrumentalities of the state. See *Christie v Wayne State Univ*, 511 Mich 39, 48; 993 NW2d 203 (2023). "Under Michigan law, the state and its agencies are generally immune from suit unless the Legislature abrogates the state's sovereign immunity by enacting legislation consenting to suit." *Short*, __ Mich App at __; slip op at 3 (cleaned up). "By enacting the COCA, the Legislature adopted a comprehensive legislative scheme authorizing suit against the State of Michigan and its various agencies and expressly conditioned its waiver of the state's sovereign immunity on compliance with the procedures set forth in the notice requirement now contained in MCL 600.6431(1)." *Id*. at __; slip op at 3 (cleaned up). Similarly, the Legislature has waived immunity against the state and its agencies in the text of the material statute, the ELCRA. See MCL 37.2103(h) (including individuals, the state, its political subdivisions, and its agencies as persons prohibited from engaging in unlawful discrimination); MCL 37.2201(a) (defining "employer" as "a person that has 1 or more employees, and includes an agent of that person"); see also MCL 37.2801(2) (conferring jurisdiction on the circuit court to entertain actions brought under the ELCRA).

The COCA's notice provision states in relevant part:

> (1) 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.
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> * * *
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> (4) For a claim against this state for property damage or personal injuries, the claimant shall file the claim or notice under subsection (1) with the clerk of the court of claims within 6 months after the event that gives rise to the claim. [MCL 600.6431.]

"The COCA's notice requirement applies to all claims against the state, including those filed in the circuit court, except as otherwise exempted in MCL 600.6431 itself." *Short*, __ Mich App at; slip op at 4 (cleaned up).[2] Although the "law is clear that governmental immunity does not apply to ELCRA claims," *Does 11-18 v Dep't of Corrections*, 323 Mich App 479, 490; 917 NW2d 730 (2018), compliance with the COCA notice provision is a condition precedent to overcome the

[2] "The only exception to the notice requirements expressed in MCL 600.6431 is the exception for [wrongful imprisonment compensation act] claims found in MCL 600.6431(5)." *Christie*, 511 Mich at 53.

state's sovereign immunity, *Christie*, 511 Mich at 61-62. "[I]f a plaintiff fails to comply with MCL 600.6431, his or her claims against a governmental agency are barred by governmental immunity." *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 179; 931 NW2d 539 (2019).

In this case, the trial court rejected the university defendants' argument that plaintiff's notice of intent was filed beyond the six-month notice period in MCL 600.6431(4) and thus the ELCRA claim was barred by governmental immunity. Because the trial court's order denying summary disposition to the university defendants on this issue effectively denied governmental immunity to the university defendants, the university defendants had the right to appeal. See MCR 7.202(6)(a)(v); MCR 7.203(A); *Seldon*, 297 Mich App at 436. Accordingly, this Court has jurisdiction to determine this issue on appeal.

However, the COCA's notice provisions do not apply to the ELCRA claims asserted against the individual defendants in their individual capacities. See *Pike v Northern Mich Univ*, 327 Mich App 683, 694, 698; 935 NW2d 86 (2019) (holding that that the requirements of MCL 600.6431 do not apply to claims against an individual state employee because such an individual is not "the state.").[3] Accordingly, we do not have jurisdiction to review the trial court's denial of summary disposition to defendants Miller, Thomas-Williams, and Berry in their individual capacities.

IV. NOTICE

The university defendants assert that the ELCRA claim is barred because plaintiff failed to comply with the six-month notice provision in MCL 600.6431(4) of the COCA. We agree, in part.

As discussed, a claim for "personal injuries" against the state is barred unless the claimant files "the claim or notice under [MCL 600.6431(1)] with the clerk of the court of claims within 6 months after the event that gives rise to the claim." MCL 600.6431(4). In the trial court, plaintiff conceded that notice of an ELCRA claim is required under the COCA and that the six-month notice period applied to her ELCRA claim against the university defendants. Plaintiff does not contest this issue on appeal. But the parties dispute when "the event that [gave] rise to the claim" occurred.

"The principal goal of statutory interpretation is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Env Improvement Ass'n, Inc v Dep't of Env Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). "Where the statutory language is unambiguous, the plain meaning reflects the Legislature's intent and the statute must be applied as written." *Honigman Miller Schwartz & Cohn LLP v Detroit,* 505 Mich 284, 294; 952 NW2d 358 (2020) (cleaned up). When the Legislature has not defined a statutory term, it "must be accorded its plain and ordinary meaning." *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008), citing MCL 8.3a. "A lay dictionary may be

[3] Defendants acknowledge that *Pike* held that the COCA's notice requirements do not apply to a claim against a state employee sued in his or her individual capacity but assert that *Pike* was wrongly decided. However, defendants do not provide any argument to support their position. We are not convinced that *Pike* was wrongly decided, and we are bound by the decision. See MCR 7.215(C)(2).

consulted to define a common word or phrase that lacks a unique legal meaning." *Id*. However, a legal term of art "must be construed in accordance with its peculiar and appropriate legal meaning." *Id*. "A legal term of art is a technical word or phrase that has acquired a particular and appropriate meaning in the law." *People v Law*, 459 Mich 419, 425 n 8; 591 NW2d 20 (1999), citing MCL 8.3a.

The statutory phrase at issue here is "the event that gives rise to the claim." MCL 600.5827 provides that a "claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." In *Bauserman*, our Supreme Court analyzed the former version of MCL 600.6431(3), which is now located in MCL 600.6431(4) but contains similar language:

> The question presented concerns how to determine the "event giving rise to the cause of action" for the purpose of triggering the six-month notice period in MCL 600.6431(3). A "cause of action" is defined as "[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; claim." *Black's Law Dictionary* (10th ed.).[6] "Rise" is defined, in relevant part, as "origin, source or beginning," and "give rise to" is defined as "to originate; produce; cause[.]" *Random House Dictionary of the English Language* (1969); see also *People v McKinley*, 496 Mich 410, 419; 852 NW2d 770 (2014) (defining "gives rise to" as "to produce or cause"); *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining "rise" as "beginning, origin"). Put together, an event has "giv[en] rise to the cause of action" when that event "origin[ates]" a "basis for suing" and "entitle[s] one person to obtain a remedy in court." In other words, an "event giv[es] rise to a cause of action" when it triggers a person's ability to obtain a remedy in court. [*Bauserman*, 503 Mich at 182.]

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[6] "Claim" is relevantly defined as "[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional" and "a demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for." *Black's Law Dictionary* (10th ed.).

We find the *Bauserman* Court's analysis persuasive and adopt it here. Following the *Bauserman* Court's guidance, we conclude that an event "gives rise to the claim" when it "triggers a person's ability to obtain a remedy in court." *Bauserman*, 503 Mich at 182.

The university defendants contend that the 2021 collective-bargaining agreement triggered plaintiff's ability to obtain a remedy in court and because her notice of intent was not filed within six months of the collective-bargaining agreement, her claims are barred in their entirety. Plaintiff, on the other hand, asserts that each gender-based-wage-gap payment was a violation of the ELCRA and therefore her notice of intent was timely filed. However, plaintiff concedes on appeal that the

claims against the university defendants are limited to any gender-based-wage-gap payments that occurred in the six months before plaintiff filed her notice in the Court of Claims.

The ELCRA prohibits an employer from "discriminat[ing] against an individual with respect to . . . compensation . . . because of . . . sex . . . ." MCL 37.2202 (1)(a). "A claim for wages ripens when the service is performed and payday comes." *Brown v Dep't of Military Affairs*, 386 Mich 194, 202; 191 NW2d 347 (1971) (remanding matter to the Court of Claims to determine the amount of back pay due to the plaintiff in light of the COCA's notice period and the three-year statute of limitations). Michigan courts do not recognize the continuing violations doctrine for claims brought under the ELCRA. *Garg v Macomb Co Community Mental Health Services*, 472 Mich 263, 282-286; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005). Therefore, a plaintiff must commence an ELCRA action "within three years of each adverse employment act by a defendant." *Id*. at 284-286, citing MCL 600.5805 (holding that an employee can only recover under the ELCRA for employment acts that occurred within the three-year limitations period). Our Supreme Court explained that *Garg* foreclosed a plaintiff's ability to revive stale claims but did not grant a defendant immunity for future wrongful conduct:

> After *Garg*, a plaintiff in Michigan may not revive stale claims even if the claims are part of a series of "continuing violations." But *Garg*, of course, did not operate to immunize future wrongful conduct. In other words, a plaintiff's failure to timely sue on the first violation in a series does not grant a defendant immunity to keep committing wrongful acts of the same nature. A plaintiff is free to bring a new action each time a defendant commits a new violation. *Garg* simply held that a plaintiff may not recover for injuries that fall outside the statutory period of limitations—regardless of how related those injuries are to timely claims—when the Legislature has not permitted such recovery by statute. But, importantly, *Garg* allowed the claim that accrued within the limitations period to go forward. [*Fraser Twp v Haney*, 509 Mich 18, 28-29; 983 NW2d 309 (2022).

In this case, the trial court did not err by concluding that each alleged wage-gap payment triggered plaintiff's ability to obtain a remedy in court. But plaintiff was required to file a notice of intent within six months of the alleged wage-gap payments as a condition precedent to seeking a remedy in court against the university defendants. See MCL 600.6431(4); *Christie*, 511 Mich at 61-62. Because plaintiff failed to comply with MCL 600.6431(4) for the alleged wage-gap payments that were made more than six months before she filed her April 3, 2025 notice, any potential ELCRA claims against the university defendants that arose before October 3, 2024, are barred. See *Bauserman*, 503 Mich at 179. Accordingly, the trial did not err by denying summary disposition to the university defendants for the ELCRA claims that arose on or after October 3, 2024, but erred by denying summary disposition to the university defendants for the ELCRA claims that arose before October 3, 2024.

Reversed in part, affirmed in part, and remanded for entry of an order denying summary disposition to the university defendants under MCR 2.116(C)(7) for the ELCRA claims that arose

on or after October 3, 2024, and granting summary disposition under MCR 2.116(C)(7) to the university defendants for the ELCRA claims that arose before October 3, 2024. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Christopher M. Murray
/s/ Kathleen A. Feeney