

COA Opinion: State need not show actual prejudice when plaintiff fails to satisfy statutory requirement to file notice of intention to file personal injury claim

2. February 2011 By Julie Lam

Plaintiff was injured in a car accident involving a student on the campus of the University of Michigan on December 12, 2007. The student was driving a university-owned car, while on university business. Approximately 5 months after the accident, on May 7, 2008, plaintiff's counsel sent a letter to the university informing them of their intention to represent the plaintiff in a lawsuit. Then, on October 31, 2008, plaintiff filed a Notice of Intent with the Court of Claims, signed by plaintiff and plaintiff's counsel. The trial court granted summary disposition in favor of defendant because plaintiff had failed to comply with the filing requirement of MCL 600.6431(3). In *McCahan v Brennan*, No. 292379, the Court of Appeals affirmed in a 2-1 published opinion.

MCL 600.6431(3) requires as a condition precedent to sue the state in a personal injury action that "claimant shall file with the clerk of the Court of Claims a notice of intention to file a claim itself within 6 months following the happening of the event giving rise to the cause of action." Here, plaintiff did not file the notice with the Court of Claims until several months after the expiration of the six-month deadline. The Court of Appeals rejected plaintiff's argument that she substantially complied with the statute, concluding that substantial compliance does not satisfy MCL 600.6431(3). Following the Michigan Supreme Court's decision in *Rowland v Washtenaw Co Rd Comm*, 447 Mich 197; 731 NW2d 41 (2007), which deals with a different notice requirement than the one at issue, the Court of Appeals also rejected plaintiff's argument that the state must show actual prejudice when a plaintiff fails to comply with a statutory filing requirement.

The Court of Appeals noted that two justices of the Michigan Supreme Court disagreed on whether the rationale in *Rowland* should be applied to MCL 600.6431 in separate opinions to an order denying leave to appeal in *Beasley v State of Michigan*, 483 Mich 1025; 765 NW2d 608 (2009). Chief Justice Kelly, in her concurring statement, concluded that *Rowland* was distinguishable and should not be applied to MCL 600.6431(3). Justice Corrigan, however, in her dissenting statement, concluded that *Rowland* does apply to MCL 600.6431, noting that *Rowland* "rejected earlier caselaw that had assumed notice provisions are unconstitutional if they do not contain a prejudice requirement," that the notice provisions in both cases are "substantially identical", and that MCL 600.6431 clearly provides that no claim may be maintained unless the notice is filed. The Court of Appeals concluded that Justice Corrigan's view represents the better interpretation.

Judge Fitzgerald authored a [dissenting opinion](#), adopting the reasoning that *Rowland* does not apply to MCL 600.6431(3). Judge Fitzgerald also concluded that a remand for a determination as to whether the state was prejudiced by plaintiff's failure to file a

claim with the Court of Claims within six months is unnecessary here, as the facts show that the university had actual knowledge of plaintiff's intention to file a lawsuit within six months after the accident. Judge Fitzgerald would remand for trial.