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STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER ROBERT LEBLANC,

Plaintiff-Appellant,

v

WASHTENAW COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED
October 28, 2021

No. 347323
Washtenaw Circuit Court
LC No. 18-000882-NF

ON REMAND

Before: BECKERING, P.J., and BOONSTRA and O'BRIEN, JJ.

PER CURIAM.

This matter returns to us on remand from the Supreme Court for reconsideration in light of *Pearce v Eaton Co Rd Comm*, ___ Mich ___; ___ NW2d ___ (2021) (Docket No. 158069), and its companion case *Brugger v Midland Co Bd of Rd Comm'rs* (Docket No. 158304). *LeBlanc v Washtenaw Co Rd Comm,* ___ Mich ___ (2021) (Docket No. 161418). For the reasons stated in this opinion, we reverse the trial court's order granting summary disposition in favor of defendant, Washtenaw County Road Commission, and remand for further proceedings.

The relevant factual background was stated in our prior opinion:

> This case arises from injuries sustained by plaintiff in a single-vehicle car crash on February 26, 2018. Plaintiff alleged that he struck a pothole while driving in Washtenaw County, which caused him to lose control, veer off the road, and strike a tree. Plaintiff served a presuit notice on defendant on June 11, 2018 pursuant to MCL 691.1404(1), and subsequently filed a complaint against defendant. Defendant responded by filing a motion for summary disposition pursuant to MCR 2.116(C)(7), claiming that the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, provided immunity from tort liability because plaintiff did not satisfy the presuit notice requirements. Specifically, defendant alleged that plaintiff relied upon the notice requirements of MCL 691.1404(1),

> which, following this Court's opinion in *Streng v Bd of Mackinac Co Rd Comm'rs*, 315 Mich App 449; 890 NW2d 680 (2016), were inapplicable. Defendant argued that, under *Streng*, the actual presuit notice requirements were found in MCL 224.21. The trial court agreed and granted defendant's motion for summary disposition[,] relying on *Streng* for the proposition that MCL 224.21 applies to suits against county road commissions and required plaintiff to serve his presuit notice on defendant within 60 days of his injury. [*LeBlanc v Washtenaw Co Rd Comm,* unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 347323); unpub op at 1.]

In our prior opinion, we acknowledged that the Supreme Court in *Brown* held that the 60-day notice requirement in MCL 224.21(3) was unconstitutional. *LeBlanc*, unpub op at 3, n 1, 4. But we also noted that the Supreme Court subsequently "repudiated the entirety" of *Brown* in *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197 (2007). *Id.* Further, in *Streng*, this Court concluded that the 60-day notice provision in MCL 224.21(3) of the County Road Law, MCL 224.1 *et seq*., applied to negligence actions against county road commissioners, rather than the 120-day notice provision in MCL 691.1404(1) of the governmental tort liability act (GTLA), MCL 691.1401 *et seq*. *Id.* We applied *Streng* and held that because the 60-day-notice provision applied, and because Leblanc did not serve his notice within 60 days of the incident, the trial court did not err by granting the Road Commission's motion for summary disposition. *Id*. at 4.[1]

LeBlanc applied to the Supreme Court for leave to appeal. Initially, the Supreme Court held the application in abeyance pending its decisions in *Pearce* and *Brugger*.[2] Thereafter, in *Pearce*, the Supreme Court examined this Court's decision in *Streng* and concluded that it was wrongly decided because it failed to follow the Supreme Court's decision in *Brown*. *Pearce*, ___ Mich at ___; slip op at 1. The *Pearce* Court noted that in *Brown*, it "decided that the GTLA's notice provisions control, and we have not overruled that holding." *Id*. The Court summarized:

> The *Streng* panel should have followed this Court's decision in *Brown* and applied the GTLA's presuit requirements, not the requirements provided in the County Road Law; it could not decide this question for itself. *Brown*'s holding on that point survived this Court's decision in *Rowland*, and it was therefore binding on the *Streng* panel. Whether *Brown* correctly decided this question is for this

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[1] We further noted that in *Brugger v Midland Co Bd of Rd Comm'rs*, 324 Mich App 307, 316; 920 NW2d 388 (2018), this Court took issue with *Streng's* interpretation of whether *Rowland* overturned *Brown* in its entirety, and instead decided that *Streng* "effectively established a new rule of law departing from the longstanding application of MCL 691.1404(1) by Michigan courts." This Court was asked to convene a conflict panel in *Brugger* under MCR 7.215(J)(2) and (3)—something plaintiff did not request in this case—but the Court declined to do so. *Id*. at 315. Thus, we concluded that *Streng* remained the law in Michigan, and we were bound by it unless and until the Supreme Court overrules the *Streng* decision. It has since done so.

[2] *LeBlanc v Washtenaw Co Rd Comm*, 963 NW2d 367 (2020).

> Court to decided. But because it was not raised by the parties here, we save it for another day. [*Pearce*, ___ Mich at ___; slip op at 13.]

Accordingly, the *Pearce* Court very clearly directed that, until the Supreme Court says otherwise, the GTLA's 120-day notice provision applies to negligence actions against county road commissions. Here, because LeBlanc served his notice 105 days after his accident forming the basis of his claim, his notice was timely under the GTLA's presuit notice provision. MCL 691.1404(1). Accordingly, we reverse the trial court's order granting summary disposition in favor of the Road Commission.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Colleen A. O'Brien