Court of Appeals, State of Michigan

ORDER

TERESE ALLEN V VILLAGE OF GOODRICH

Docket No. 377564

LC No. 14-103184-NZ

Colleen A. O'Brien
Presiding Judge

Mark T. Boonstra

Mariam S. Bazzi
Judges

The motion for immediate consideration is GRANTED. Pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, the Court PEREMPTORILY REVERSES the trial court's September 15, 2025 order granting plaintiffs' motion to strike defendant Genesee County Drain Commissioner Division of Surface Water Management's motions for summary disposition and REMANDS for consideration of defendant's motions on the merits. The trial court erred by rejecting the motions on the basis that they were untimely under the court's scheduling order. Under MCR 2.116(D)(3), a motion for summary disposition on "the ground of governmental immunity may be raised at any time, regardless of whether the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401." See also *Stephens v Dep't of Corrections*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 368097); slip op at 4 ("[B]oth caselaw and the court rules allow the state to invoke immunity-based defenses at any time during litigation."). Rather than apply the current version of MCR 2.116(D)(3), the trial court relied on *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347; 711 NW2d 801 (2005), to support that the deadline in the scheduling order controlled. But *Kemerko* involved a former version of MCR 2.116, and *Kermerko* did not involve governmental immunity. Under the current version of MCR 2.116(D)(3), the trial court lacked discretion to reject the summary disposition motions based on governmental immunity as untimely. On remand, the trial court shall decide defendant's motions on the merits. Plaintiffs may raise their law-of-the-case argument on remand.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED as moot.

This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Colleen A. O'Brien
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 29, 2025
Date

Jerome W. Zimmer Jr.
Chief Clerk