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STATE OF MICHIGAN
IN THE SUPRME COURT

KAREN CARTER,

Plaintiff/Appellee

v

DTN MANAGEMENT CO., d/b/a DTNMGT,
a domestic profit corporation,

Defendant/Appellant.

Supreme Court No. 165425

Court of Appeals No. 360772

Trial Court No. 21-228-NO

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PLAINTIFF/APPELLEE'S APPENDICES

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APPENDIX 1

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STATE OF MICHIGAN

COURT OF APPEALS

KAREN CARTER,

Plaintiff-Appellant,

v

DTN MANAGEMENT COMPANY, doing business as DTN MGT,

Defendant-Appellee.

FOR PUBLICATION
January 26, 2023
9:25 a.m.

No. 360772
Ingham Circuit Court
LC No. 21-000228-NO

Before: PATEL, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

This appeal concerns the Michigan Supreme Court's administrative orders that, for purposes of determining court filing deadlines, excluded days during the COVID-19 state of emergency from the computation of time under MCR 1.108. The trial court granted summary disposition to defendant under MCR 2.116(C)(7) (statute of limitations). Because we conclude that the statute of limitations in this case was tolled by the administrative orders, we reverse and remand.

I. BACKGROUND

Plaintiff alleges that on January 10, 2018, she slipped and fell on an icy sidewalk behind her apartment complex that is owned and operated by defendant. Plaintiff filed suit on April 13, 2021. The period of limitations for personal-injury actions is three years, MCL 600.5805(1), and so, under normal circumstances, plaintiff's complaint would have been untimely. However, plaintiff maintains that her complaint was timely filed by virtue of the Michigan Supreme Court's administrative orders issued in connection with the COVID-19 pandemic.

On March 10, 2020, the Governor declared a state of emergency related to COVID-19. On March 23, 2020, the Supreme Court issued Administrative Order No. 2020-3 (AO 2020-3), which provided:

> In light of the continuing COVID-19 pandemic and to ensure continued access to courts, the Court orders that:

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> For all deadlines applicable to the commencement of all civil and probate case types, including but not limited to the deadline for the initial filing of a pleading under MCR 2.110 or a motion raising a defense or an objection to an initial pleading under MCR 2.116, and any statutory prerequisites to the filing of such a pleading or motion, any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1).
>
> This order is intended to extend all deadlines pertaining to case initiation and the filing of initial responsive pleadings in civil and probate matters during the state of emergency declared by the Governor related to COVID-19. Nothing in this order precludes a court from ordering an expedited response to a complaint or motion in order to hear and resolve an emergency matter requiring immediate attention. We continue to encourage courts to conduct hearings remotely using two-way interactive video technology or other remote participation tools whenever possible.
>
> This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant chooses. Courts must have a system in place to allow filings without face-to-face contact to ensure that routine matters, such as filing of estates in probate court and appointment of a personal representative in a decedent's estate, may occur without unnecessary delay and be disposed via electronic or other means. [AO 2020-3, 505 Mich lxxxvi (2020) (underlining in original).]

AO 2020-3 was amended on May 1, 2020. The only change was to add the following language: "This order in no way prohibits or restricts a litigant from commencing a proceeding whenever a litigant chooses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding." This made clear that while statutes of limitations would be tolled by the orders, a pre-suit waiting period would not.

On June 12, 2020, the Supreme Court issued Administrative Order No. 2020-18 (AO 2020-18), which rescinded AO 2020-3 effective June 20, 2020:

> In Administrative Order No. 2020-3, the Supreme Court issued an order excluding any days that fall during the State of Emergency declared by the Governor related to COVID-19 for purposes of determining the deadline applicable to the commencement of all civil and probate case types under MCR 1.108(1). Effective Saturday, June 20, 2020, that administrative order is rescinded, and the computation of time for those filings shall resume. For time periods that started before Administrative Order No. 2020-3 took effect, the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020. For filings with time periods that did not begin to run because of the exclusion period, the filers shall have the full periods for filing beginning on June 20, 2020. [AO 2020-18, 505 Mich lxxxviii (2020).]

Returning to this case, defendant moved for summary disposition on the basis that AO 2020-3 applied only to cases whose filing deadlines expired during the state of emergency.

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Defendant argues that because plaintiff's limitations period would otherwise have expired in January 2021—well after June 20, 2020—AO 2020-3 had no effect on her claim. Therefore, the argument ran, her complaint filed in April 2021 was barred by the three-year statute of limitations. Alternatively, defendant argued that if AO 2020-3 tolled the running of the statute of limitations as to all civil cases, then the Supreme Court lacked authority to issue such an order because that would amount to a modification of the statutes of limitations, which are considered substantive law.

In response, plaintiff argued that AO 2020-3 applied to "*all* deadlines applicable to the commencement of all civil and probate case types" and that "*any* day" that fell within the subject period would not be counted for purposes of computing time under MCR 1.108. AO 2020-3 (emphasis added). Plaintiff further argued that the Supreme Court had authority to issue AO 2020-3 because the computation of time under MCR 1.108 is a procedural matter.

After hearing oral argument on the motion, the trial court granted summary disposition in favor of defendant. The court agreed with defendant that AO 2020-3 applied only to limitations periods that would have expired during the state of emergency and therefore had no effect on plaintiff's cause of action.

I. DISCUSSION

A. INTERPRETATION OF AO 2020-3

Plaintiff argues that the trial court erred by ruling that AO 2020-3 did not apply to this case. We agree.[1]

AO 2020-3 stated in pertinent part:

> For all deadlines applicable to the commencement of all civil and probate case types, including but not limited to the deadline for the initial filing of a pleading under MCR 2.110 or a motion raising a defense or an objection to an initial pleading under MCR 2.116, and any statutory prerequisites to the filing of such a pleading or motion, any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1).

[1] We review de novo a trial court's decision on a motion for summary disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). When reviewing a motion for summary disposition under MCR 2.116(C)(7), the "contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "In the absence of disputed facts, whether a cause of action is barred by the applicable statute of limitations is a question of law, which this Court reviews de novo." *Magee v DaimlerChrysler Corp*, 472 Mich 108, 111; 693 NW2d 166 (2005). We also review de novo the interpretation of court rules and administrative orders. See *Wenkel v Farm Bureau Gen Ins Co of Mich*, ___ Mich App __, ___; ___ NW2d ___ (2022) (Docket No. 358526); slip op at 3.

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In sum, AO 2020-3 provided that the days during the emergency shall not be counted when computing the relevant time period for purposes of MCR 1.108(1), which governs the computation of deadline dates. That rule provides:

> In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:
>
> (1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order. [MCR 1.108(1).]

MCR 1.108(1) clearly applies to computations involving statutes of limitations, i.e., "a period of time prescribed or allowed by . . . statute[.]" Accordingly, under AO 2020-3 and MCR 1.108(1), any day falling during the state of emergency does not count toward determining the last day of a statutory limitations period. Contrary to the trial court's conclusion, the Supreme Court did not exclude only deadlines that fell during the state of emergency. Rather, it more broadly excluded *any day* within the state of emergency "*for purposes of determining the deadline* applicable to the commencement of *all* civil and probate case types under MCR 1.108(1)." AO 2020-18 (emphasis added).

This conclusion is further supported by AO 2020-18's explanation of how to start counting days following AO 2020-3's rescission:

> Effective Saturday, June 20, 2020, [AO 2020-3] is rescinded, and the computation of time for those filings shall resume. For time periods that started before [AO 2020-3] took effect, the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020. For time periods that did not begin to run because of the exclusion, the filers shall have the full periods for filing beginning on June 20, 2020.

AO 2020-18 establishes two categories of parties—one whose filings periods began to run before AO 2020-3 took effect on March 23, 2020, and one whose filing periods began to run on or after March 23, 2020. Plaintiff falls in the first category, and she therefore has "the same number of days to submit [her] filings on June 20, 2020, as [she] had when the exclusion went into effect on March 23, 2020." There is no language in AO 2020-18 limiting the first category to those whose filing deadline fell within the state of emergency. The second category identified by the Supreme Court also undermines defendant's interpretation of the administrative orders. That is, the second category concerns those whose time period did not begin to run because of AO 2020-3 and therefore could not have expired during the state of emergency. This demonstrates that all litigants whose limitations periods had not expired prior to the adoption of AO 2020-3 were entitled to the exclusion of days under AO 2020-3. Thus, the trial court erred by holding that AO 2020-3 did not apply to this case. And applying the administrative orders in this case, we conclude that plaintiff's complaint was timely filed. On March 10, 2020, plaintiff had 10 months left to file

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her complaint.[2] Accordingly, she had that same amount of time to file beginning on June 20, 2020, and the April 13, 2021 complaint was filed within that time period.[3]

B. SUPREME COURT'S AUTHORITY TO ISSUE AO 2020-3

As an alternative ground for affirmance, defendant argues that AO 2020-3 is ineffective because the Supreme Court has no authority to modify or toll the statute of limitations.

The Supreme Court has constitutional authority to "establish, modify, amend, and simplify the practice and procedure in all courts of this state." Const 1963, art 6, § 5. "This is generally accomplished by the issuance of administrative orders and the promulgation of court rules." *People v Taylor*, ___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 154994); slip op at 11 n 11. The Supreme is not authorized, however, to issue orders or enact court rules "that establish, abrogate, or modify the substantive law." *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999). "[M]atters of substantive law are left to the Legislature." *People v Cornell*, 466 Mich 335, 353; 646 NW2d 127 (2002).

---

[2] Although AO 2020-18 stated that "the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020," the staff comment to that order explains that March 10, 2020, is the applicable exclusion date:

> Note that although the order regarding computation of days entered on March 23, 2020, it excluded any day that fell during the State of Emergency declared by the Governor related to COVID-19, which order was issued on March 10, 2020. Thus, the practical effect of Administrative Order No. 2020-3 was to enable filers to exclude days beginning March 10, 2020. [AO 2020-18 (staff comment).]

[3] Our analysis is not in conflict with this Court's recent decision in *Armijo v Bronson Methodist Hosp*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 358729). *Armijo* was a medical-malpractice case in which the plaintiff argued that the administrative orders tolled the 182-day notice waiting period, MCL 600.2912b, which in that case entirely encapsulated the state of emergency period. This Court concluded that the AOs did not toll the notice of intent waiting period, which was dispositive of that appeal. See *id.* at ___; slip op at 6-7. In contrast, this case does not concern the notice waiting period for medical malpractice cases and therefore *Armijo* is not controlling. To the extent *Armijo* indicated that the AOs applied only to limitations periods that expired during the state of emergency, those statements are nonbinding dicta because they were not necessary to the resolution of that appeal. *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 557-558; 741 NW2d 549 (2007) ("It is a well-settled rule that statements concerning a principle of law not essential to determination of the case are obiter dictum and lack the force of an adjudication," and are "not binding on this Court."). Indeed, because it was not necessary to the decision in that case, the *Armijo* panel did not discuss the language in AO 2020-18 establishing that the statutory limitations periods for all cases was tolled from March 10, 2020 until June 20, 2020.

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Defendant argues that the Supreme Court did not have authority to toll the limitations periods provided by MCL 600.5805, which is an enactment of substantive law. See *Gladych v New Family Homes, Inc*, 468 Mich 594, 600; 664 NW2d 705 (2003) ("Statutes regarding periods of limitations are substantive in nature."). Plaintiff, on the other hand, maintains that the Supreme Court merely made a temporary procedural change to a court rule, i.e., MCR 1.108, rather than a substantive change to the statutes of limitations.

As an initial matter, it is questionable whether this Court has the power to declare unconstitutional administrative orders of the Supreme Court. "It is elementary that this Court has no power to reverse the Michigan Supreme Court." *New Democratic Coalition v Austin*, 41 Mich App 343, 348; 200 NW2d 749 (1972). However, we need not decide whether we have such power because we conclude that the Supreme Court's administrative orders were constitutional.

By its own terms, AO 2020-3 was modifying the computation of days under MCR 1.108 for purposes of determining filing deadlines, which is plainly a procedural matter. Further, even the normal application of MCR 1.108(1) may result in more time than permitted by the statute of limitations. That is, if the last day of the limitations period is a day on which the court is closed, the period runs until the next day that the court is open. See MCR 1.108(1). The law of counting time favors this approach, i.e., granting more rather than less than time to file than permitted by statute, to ensure that the parties receive the entire amount of time for filing that they are entitled to. See *Haksluoto v Mt Clemens Regional Med Ctr*, 500 Mich 304, 314-320; 901 NW2d 577 (2017). That is precisely what the Supreme Court was trying to accomplish with AO 2020-3, which was issued when there were court closings because of the COVID-19 pandemic.

Further, the Court was also clearly concerned with limiting in-person interactions and protecting court staff and the public from COVID-19. See AO 2020-3 ("Courts must have a system in place to allow filings without face-to-face contact . . . ."). It is therefore inaccurate to frame this issue as a dichotomous choice between substantive and procedural law. In addition to its authority over procedural rules, the Supreme Court has superintending control over all state courts. See Const 1963, art 6, § 4; *Lapeer County Clerk v Lapeer Circuit Judges*, 465 Mich 559, 569; 640 NW2d 567 (2002). Thus, the Supreme Court had authority to manage the operations of Michigan courts amidst a global pandemic. And by excluding days from the computation of time under MCR 1.108, AO 2020-3 undoubtedly lessened the amount of in-person interactions at courts during the early stages of the pandemic. For these reasons, we conclude that the Supreme Court had constitutional authority to issue AO 2020-3.

Reverse and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro

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APPENDIX 2

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AO No. 2020-3 — [Rescinded] Order Extending Deadlines for Commencement of Actions

[Entered March 23, 2020, as amended by order entered May 1, 2020; rescinded effective June 20, 2020, by order entered on June 12, 2020.]

In light of the continuing COVID-19 pandemic and to ensure continued access to courts, the Court orders that:

For all deadlines applicable to the commencement of all civil and probate casetypes, including but not limited to the deadline for the initial filing of a pleading under MCR 2.110 or a motion raising a defense or an objection to an initial pleading under MCR 2.116, and any statutory prerequisites to the filing of such a pleading or motion, any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1).

This order is intended to extend all deadlines pertaining to case initiation and the filing of initial responsive pleadings in civil and probate matters during the state of emergency declared by the Governor related to COVID-19. Nothing in this order precludes a court from ordering an expedited response to a complaint or motion in order to hear and resolve an emergency matter requiring immediate attention. We continue to encourage courts to conduct hearings remotely using two-way interactive video technology or other remote participation tools whenever possible.

This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant chooses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding. Courts must have a system in place to allow filings without face-to-face contact to ensure that routine matters, such as filing of estates in probate court and appointment of a personal representative in a decedent's estate, may occur without unnecessary delay and be disposed via electronic or other means.

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APPENDIX 3

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AO No. 2020-18 — Order Resuming Usual Computation of Days for Determination of Deadlines Applicable to the Commencement of Civil and Probate Actions

[Entered June 12, 2020.]

In Administrative Order No. 2020-3, the Supreme Court issued an order excluding any days that fall during the State of Emergency declared by the Governor related to COVID-19 for purposes of determining the deadline applicable to the commencement of all civil and probate case types under MCR 1.108(1). Effective Saturday, June 20, 2020, that administrative order is rescinded, and the computation of time for those filings shall resume. For time periods that started before Administrative Order No. 2020-3 took effect, the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020. For filings with time periods that did not begin to run because of the exclusion period, the filers shall have the full periods for filing beginning on June 20, 2020.

Staff Comment: Note that although the order regarding computation of days entered on March 23, 2020, it excluded any day that fell during the State of Emergency declared by the Governor related to COVID-19, which order was issued on March 10, 2020. Thus, the practical effect of Administrative Order No. 2020-3 was to enable filers to exclude days beginning March 10, 2020. This timing is consistent with the executive orders entered by the Governor regarding the tolling of statutes of limitation.

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APPENDIX 4

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STATE OF MICHIGAN

IN THE 30th JUDICIAL CIRCUIT COURT FOR THE COUNT OF INGHAM

KAREN CARTER,

Plaintiff,

v.

DTN MANAGEMENT CO., d/b/a DTNMGT, ~~and MUNS DIRECTIONAL BORING, INC~~.

Defendants.

_____/

Case No.: 21-228-NO

Hon. Wanda M. Stokes

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_____/

DEFENDANT DTN MANAGEMENT CO.'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

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NOW COMES Defendant, DTN MANAGEMENT CO.("Defendant"), by and through its attorneys, WILLINGHAM & COTÉ, P.C., and for its Motion for Summary Disposition, respectfully states as follows:

1. This is a premises liability personal injury action, wherein Plaintiff Karen Carter is seeking damages for injuries she allegedly sustained when she slipped on a patch of black ice on the sidewalk behind her apartment complex, Woodbrook Village Apartments, on January 10, 2018.

2. The Woodbrook Village Apartments, located at 1615 Woodbrook St., Apartment 109 in East Lansing, Michigan, are owned and operated by Defendant DTN Management Company, Inc.

3. Plaintiff filed the present action on April 13, 2021.[1]

4. There is a three-year statute of limitations for personal injury claims pursuant to MCL 600.5805.

5. MCL 600.5805 in relevant part provides that "[a] person shall not bring or maintain an action to recover damages for injuries to persons or property unless . . . the action is commenced within the periods of time prescribed by this section." MCL 600.5805(1). It further states that, "[e]xcept as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property." MCL 600.5805(2).

6. As plaintiff brought this claim more than three years after the claim accrued her claim is barred by the three-year statute of limitations.

[1] See **Exhibit 1**, Pl's Summons and Complaint.

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7. Plaintiff incorrectly claims that Michigan Supreme Court Administrative Order No. 2020-3 tolled the statute of limitations thus giving her additional time to file the complaint.

8. That Michigan Supreme Court Administrative Order No. 2020-3,[2] states "[f]or all deadlines applicable to the commencement of all civil and probate case types . . . any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1) . . . ." The order further states: "This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant chooses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding."

9. As set forth in the plain language of the administrative order, it is not intended to be a tolling provision but only governs time computation under MCR 1.108 with regard to beginning dates and ending dates for certain time periods. Here the state of emergency ended on April 30, 2020, *see Midwest Inst of Health PLLC v Governor of Mich,* 506 Mich 332, 337-338; 958 NW2d 1 (2020), but the statute of limitations expired on January 11, 2021 (January 10, 2021, was a Sunday), after the state of emergency ended. Accordingly, as the last day of the statute of limitations did not fall within the state of emergency, plaintiff was still required to commence this action by January 11, 2021. As plaintiff failed to timely commence this action, plaintiff's complaint is time-barred.

10. Additionally, even if there were a conflict between the Supreme Court order and MCL 600.5805, which there is not for the reasons set forth in paragraph 5, MCL 600.5805 would prevail as it is a substantive legislative enactment which is

[2] See **Exhibit 2**, Michigan Supreme Court Administrative Order No. 2020-3.

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exclusively a province of the Legislature not the Supreme Court. *Gladych v New Family Homes, Inc*, 468 Mich 594, 600; 664 NW2d 705 (2003). The Supreme Court's rule making authority extends only to matters of practice and procedure.

11. As Plaintiff failed to commence this action within the three-year statutory period, her claims are time-barred.

WHEREFORE, Defendant, DTN MANAGEMENT CO., respectfully requests that this Honorable Court grant its Motion for Summary Disposition pursuant to MCR 2.116(C)(7).

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.
Attorneys for Defendant, DTN Management

Dated: November 1, 2021

BY

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STATE OF MICHIGAN

IN THE 30th JUDICIAL CIRCUIT COURT FOR THE COUNT OF INGHAM

KAREN CARTER,

Plaintiff,

v.

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Defendants.

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Case No.: 21-228-NO

Hon. Wanda M. Stokes

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DEFENDANT DTN'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

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STATEMENT OF FACTS

This is a premises liability personal injury case wherein Plaintiff Karen Carter ("Plaintiff") is seeking damages for injuries she allegedly sustained after slipping on a patch of black ice on the sidewalk behind her apartment complex on January 10, 2018.

As a personal injury action, Plaintiff's claims are subject to a three-year statute of limitations under MCL 600.5850. Because her injury occurred on January 10, 2018, Plaintiff had three full years—until January 11, 2021 (January 10, 2021 was a Sunday)—to timely file this action. Yet, Plaintiff failed to file her Complaint until April 13, 2021,[3] nearly three months past the expiration of the applicable limitations.[4]

In Paragraph 11 of her Complaint, Plaintiff maintains that she timely filed this action pursuant to Michigan Supreme Court Administrative Order No. 2020-3 (AO 2020-3), issued in response to the COVID-19 pandemic. Plaintiff erroneously claims that this order tolled the statute of limitations thus allowing her to file her complaint on April 13, 2021.[5] The pertinent dates are set forth below:

* **January 10, 2018**: Date of Claimed Injury
* **March 10, 2020**: Initial Emergency Order Issued (2020-4)
* **June 20, 2020**: Covid Deadline Extension Ends
* **October 2, 2020**: Supreme Court holds that Governor lacked authority to declare a state of emergency after April 30, 2020
* **January 11, 2021:** 3 year statute of limitations deadline/expiration date
* **April 13, 2021:** Plaintiff's untimely complaint is filed

[3] See Exhibit 1.
[4] See Exhibit 1; see also MCL 600.5805.
[5] See Exhibit 1.

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As is evident from the above timeline, the statute of limitations did not expire during the state of emergency declared by the Governor and therefore, for the reasons more fully set forth below, Plaintiff's complaint is time barred and must be dismissed pursuant to MCL 600.5805.

STANDARD OF REVIEW

MCR 2.116(C)(7) allows a party to file a motion for summary disposition on the ground that a claim is barred because of the expiration of the applicable period of limitations. A movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. Moreover, the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Fisher Sand & Gravel Co. v. Neal A Newbie, Inc.*, 494 Mich 543, 553, 837 NW2d 244, 250, (2013)

Affidavits, pleadings, depositions, admissions and documentary evidence then filed or submitted by the parties must be considered when a motion for summary disposition is made on the basis that the action is barred by the statute of limitations; where there is a material factual dispute raised by such documents, summary disposition is improper. See *Hazelton v Lustig*, 164 Mich App 164, 416 NW2d 373 (1987); see also *Levinson v Sklar*, 181 Mich App 693, 449 NW2d 682 (1989), appeal after remand 199 Mich App 110, 500 NW2d 762 (1993), app den 444 Mich 878, 511 NW2d 679 (1993).

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ARGUMENT

I. PLAINTIFF'S CLAIMS ARE BARRED BY THE THREE-YEAR STATUTE OF LIMITATIONS RELATING TO PERSONAL INJURY CLAIMS PURSUANT TO MCL 600.5805.

MCL 600.5805 governs the statute of limitations for personal injury actions such as the present matter. In pertinent part, MCL 600.5805 provides:

> (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.
> (2) Except as otherwise provided in this section, the period of limitations is 3 years after the time of the death or injury for all actions to recover damages for the death of a person or for injury to a person or property.

Simply put, plaintiffs must file personal injury claims within three years of the subject injury in order to fall within the statute of limitations.

Here, since Plaintiff's claims would have accrued on January 10, 2018, she had until January 11, 2021 to file this action timely (January 10, 2021, was a Sunday). Again, Plaintiff did not file her Complaint until April 13, 2021—nearly three months after the expiration of the statute of limitations. Therefore, pursuant to MCL 600.5805, Plaintiff's action is untimely and her claims are barred.

II. BY ITS PLAIN LANGUAGE, SUPREME COURT ADMINISTRATIVE ORDER 2020-3 IS NOT A TOLLING PROVISION.

According to the plain language of the administrative order, it was only intended to govern the computation of time as set forth in MCR 1.108 and was not intended as a tolling mechanism. The order states in pertinent part:

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> For all deadlines applicable to the commencement of all civil . . . types, . . . any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1).
>
> * * *
>
> This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant chooses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding.

MCR 1.108 states in pertinent part:

> In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:
>
> (1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order.

It is clear that the administrative order was only intended to relate to the computation of time as set forth in MCR 1.108 and was not intended as a tolling provision.

Accordingly, as the statute of limitations expired on January 11, 2021, after the state of emergency ended, the administrative order has no effect and Plaintiff was required to commence this action by January 11, 2021. As set forth in the administrative order there was nothing that prohibited Plaintiff from commencing this action on January 11, 2021, within the statute of limitations period.

Since Plaintiff failed to timely commence this action, Defendant is entitled to summary disposition.

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III. EVEN IF THERE WAS A CONFLICT BETWEEN MCL 600.5850 AND THE ADMINISTRATIVE ORDER, MCL 600.5850 WOULD CONTROL BECAUSE IT IS AN ENACTMENT OF SUBSTANTIVE LAW.

At the outset it should be noted that every effort should be made to harmonize the administrative order with the legislative enactment to avoid a constitutional issue. *See McDougall v Schanz,* 461 Mich 15, 24; 597 NW2d 148 (1999). For the reasons set forth above in Part II, there is no conflict, because the administrative order is not a tolling provision and is not applicable in this case because the last day of the statute of limitations did not fall within the state of emergency thus making it unnecessary to address the constitutional issue.

However, even if there was a conflict, MCL 600.5805 would control as it is a substantive legislative enactment. The Supreme Court's rule making authority only extends to matters of practice and procedure. *McDougall v Schanz,* 461 Mich at 27. The Supreme Court "is not authorized to enact court rules that establish, abrogate, or modify the substantive law." *McDougall,* 461 Mich at 27.

In *McDougall,* the Supreme Court held that MCL 600.2169 was an enactment of substantive law and therefore it did not impermissibly infringe on the Supreme Court's rule making authority over "practice and procedure." *McDougall,* 461 Mich at 37.

The Michigan Supreme Court in *Gladych v New Family Homes, Inc,* 468 Mich 594, 600; 664 NW2d 705 (2003), unequivocally held that "statutes regarding periods of limitations are substantive in nature."

In discussing when a court rule would yield to a statute the Supreme Court stated as follows:

> If the statute concerns a matter that is purely procedural and pertains only to the administration of the courts, the court rule would control. If,

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> however, the statute concerns a "principle of public policy, having as its basis something other than court administration . . . the [court] rule should yield.'"

Gladych, 468 Mich at 600 (quoting *McDougall,* 461 Mich at 31). The Supreme Court then explained why statutes of limitation are substantive and not procedural:

> By enacting a statute of limitations, the Legislature determines the reasonable period of time given to a plaintiff to pursue a claim. The policy reasons behind statutes of limitations include: the prompt recovery of damages, penalizing plaintiffs who are not industrious in pursuing claims, security against stale demands, relieving defendants' fear of litigation, prevention of fraudulent claims, and a remedy for general inconveniences resulting from delay . . . .

Gladych, 468 Mich at 600 (quoting *Nielsen v Barnett,* 440 Mich 1, 8-9; 485 NW2d 666 (1992). Therefore, the Supreme Court concluded that MCL 600.5856, governing tolling of statutes of limitation, superseded GCR 1963, 101, which was alleged to conflict. *Id* at 601.

Pursuant to *McDougall* and *Gladych,* as MCL 600.5805, is an enactment of substantive law, it is controlling and Plaintiff had until January 11, 2021, to commence this action.

Since the action was not commenced until April 13, 2021, Plaintiff's complaint is barred.

CONCLUSION

For the above-stated reasons, Defendant, DTN MANAGEMENT CO., respectfully requests that this Honorable Court grant its Motion for Summary Disposition, pursuant to MCR 2.116(C)(7).

Respectfully submitted,

WILLINGHAM & COTÉ, P.C.
Attorneys for Defendant, DTN

Dated: November 1, 2021

BY: _____

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333 Albert Avenue, Suite 500
East Lansing, MI 48823
(517) 351-6200

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APPENDIX 5

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STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

KAREN CARTER,

Plaintiff,

v

DTN MANAGEMENT COMPANY, d/b/a **DTN MGT,**

Defendant.

OPINION & ORDER

Case No. 21-228-NO

HON. WANDA M. STOKES

At a session of said Court
held in the city of Mason, county of Ingham,
this 8 day of ~~November~~ March, 2022

PRESENT: HON. WANDA M. STOKES

Before the Court is Defendant DTN Management's (DTN) motion for summary disposition pursuant to MCR 2.116(C)(7) and (10).[1] The Court, having heard oral argument, having been apprised of the facts and otherwise being fully informed regarding the issues, now **GRANTS** Defendant's motion pursuant to MCR 2.116(C)(7) for the reasons stated below.

FACTS

This case arises out of Plaintiff's slip and fall on black ice on the sidewalk behind her apartment complex on January 10, 2018. Plaintiff alleges that DTN violated its statutory duty under MCL 554.139 and common law duty by failing to keep the sidewalk free of black ice. Because the Court holds summary disposition is proper pursuant to MCR 2.116(C)(7) it is unnecessary to address Defendant's motion under MCR 2.116(C)(10) as the issue is now moot.

---

[1] While brought as separate motions, the Court consolidates them for convenience.

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Pursuant to MCL 600.5805 the statute of limitations for an action for the recovery of damages for personal injury is three years. Accordingly, Plaintiff's statute of limitations would run January 11, 2021. Plaintiff did not file her complaint until April 3, 2021 arguing that the Michigan Supreme Court Administrative Orders issued in response to the COVID-19 state-of-emergency, tolled Plaintiff's statute of limitations for the length of the state-of-emergency. In total, the Supreme Court's administrative orders were in effect from March 10, 2020 to June 20, 2020—a total of 101 days. Accordingly, if the orders did toll Plaintiff's statute of limitations, it would have expired April 20, 2021 making Plaintiff's complaint timely.

1. Relevant Administrative Orders

On March 23, 2020, the Michigan Supreme Court issued Administrative Order 2020-3 in response to the COVID-19 pandemic. The order states in relevant part:

> For *all deadlines* applicable to the commencement of all civil . . . case types, included but not limited to the deadline for the filing of a pleading under MCR 2.110 . . . and any statutory prerequisites to the filing of such a pleading or motion, *any day that falls during the state of emergency* declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1). (Emphasis added).

MCR 1.108(1) sets forth the method for computing when a designated time period *begins* and when it *expires*, such as for statutes of limitations. *See Prins v Michigan State Police*, 291 Mich App 586, 588 n. 2; 805 NW2d 619 (2011).

On May 1, 2020, the Supreme Court Amended Administrative Order 2020-3 in relevant part, "This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant choses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding." (Emphasis in original.).

On June 12, 2020, the Supreme Court issued Administrative Order 2020-18 which states in relevant part:

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> In Administrative Order No. 2020-3, the Supreme Court issued an order *excluding any days that fall during the State of Emergency* declared by the Governor related to COVID-19 *for purposes of determining the deadline applicable* to the commencement of all civil and probate case types under MCR 1.108(1). Effective Saturday, June 20, 2020, that administrative order is rescinded, and the computation of time for those filings shall resume. For time periods that started before Administrative Order No. 2020-3 took effect, the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020. For filings with time periods that did not begin to run because of the exclusion period, the filers shall have the full periods for filing beginning on June 20, 2020. (Emphasis added.)

Defendant argues that Plaintiff has failed to file her complaint within the period set by the statute of limitations because the Supreme Court orders only adjusted deadlines that fell during the state of emergency. Alternatively, Defendant argues that if the Supreme Court orders conflict with the legislatively enacted statutes, the statutes control and therefore Plaintiff is still barred from pursuing her claim. Plaintiff essentially argues that *all* statutes of limitations for *all* cases arising before the state-of-emergency are, in essence, tolled during the entire declared State of Emergency, or 101 days. This Court does not agree.

STANDARD OF REVIEW

A court may grant a motion for summary disposition pursuant to MCR 2.116(C)(7) when the action is barred by the statute of limitations. *Rheaume v Bandenberg*, 232 Mich App 417; 591 NW2d 331 (1998). All well-pleaded allegations must be accepted as true and construed in favor of the nonmoving party unless they are contradicted by affidavits, depositions, admission, or other documentary evidence submitted by the parties. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion does not require supportive material by the moving party or by the opposing party. *Turner v Mercy Hosp & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995). However, if documentation is submitted, the court must consider it. MCR

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2.116(G)(5). If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is barred. *Holmes v Michigan Capital Med Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

LAW & ANALYSIS

For the reasons set forth below, the Court holds the Supreme Court administrative orders only adjusted deadlines that expired during the state-of-emergency as calculated under MCR 1.108(1). Therefore, Plaintiff's claim in this case is timely filed on or before January 11, 2021. By filing on April 13, 2021, Plaintiff's claim is untimely requiring dismissal under MCR 2.116(C)(7).

First, the plain language of the orders indicates only deadlines set to expire during the state of emergency were modified. Supreme Court Administrative Order 2020-3 specifies for "all *deadlines* applicable to the commencement" of civil cases any day that falls during the state of emergency is not included "for purposes of *MCR 1.108(1)*." In other words, days that fall during the state of emergency are not counted for the purposes of determining on which day a deadline expires as set forth in MCR 1.108(1). Administrative Order 2020-18 reaffirms this reading, stating that 2020-3's purpose was to exclude any days that fell *during* the state of emergency "for the purposes of determining the *deadline*." The order then extends deadlines which *expired during* the state of emergency by the period they had prior to the emergency's beginning.

Second, the purpose of the Administrative Orders was to ensure that individuals whose limitation period would expire during the state-of-emergency were not prejudiced. The orders were not meant to be a wholesale change in the statute of limitations for the benefit of individuals who were not prejudiced or prevented from filing their complaint by the state-of-emergency. Here, Plaintiff was injured on January 10, 2018, and had three years to pursue her claim. The record does not indicate that the state-of-emergency, which took place over two years after her injury and

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ended several months before the deadline for filing, had any effect in preventing her from pursuing her claim. Rather, Plaintiff seeks to use the Supreme Court's orders as a windfall for her failure to diligently pursue her claim.

This reading is also consistent with the general principle that administrative orders should be read to harmonize with legislative enactments to avoid constitutional issues. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999). The Supreme Court has authority to enact rules that relate to matters of practice and procedure-not substantive law. *Id.* at 27. Statutes of limitations are considered rules of substantive law. *Gladych v New Family Homes, Inc*, 468 Mich 594, 600; 664 NW2d 705 (2003). Accordingly, a narrow reading of the Supreme Court's orders as governing time computation for deadlines under the Michigan Court Rule 1.108, rather than a substantive enactment broadly extending all statutes of limitations, best comports with the established law and avoids broader constitutional issues.

Plaintiff argues that the administrative orders do not alter the statute of limitations but only alter the computation of time under MCR 1.108(1). But Plaintiff argues all statutes of limitations for all cases were extended an additional 101 days. The Court finds this argument to be a distinction without a difference. Extending all statutes of limitations during the state-of-emergency, regardless of when the deadline fell, has the practical effect of improperly tolling the statute of limitations.

CONCLUSION

The Supreme Court administrative orders were issued during the declared State of Emergency to avoid prejudice to Plaintiff's that were in danger of being barred from bringing a claim because the deadline expired during the state of emergency when filing lawsuits was made more difficult. The orders were not meant to be a general grant of time extending the limitations

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period to all Plaintiffs regardless of whether they were affected by the state of emergency. Accordingly, the Court GRANTS Defendant DTN's Motion for Summary Disposition Pursuant to MCR 2.116(C)(7) and dismisses the case. Defendant DNT's Motion for Summary Disposition Pursuant to MCR 2.116(C)(10) is denied as moot.

In accordance with MCR 2.602(A)(3) this order resolves the last pending claim and closes the case.

3/8/2022
Date

Wanda M. Stokes
Hon. Wanda M. Stokes
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I provided a copy of the above ORDER to each attorney of record, or to the parties, by hand delivery, or by placing a true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail, or electronic communication via email, on March 8, 2022.

Christina Beahan
~~Law Clerk/Court Officer~~
Christina Beahan Judicial Assistant to Hon. Wanda M. Stokes

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APPENDIX 6

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2016 WL 5121976
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Henry Ford **MACOMB**, Plaintiff–Appellee,
v.
FARMERS INSURANCE EXCHANGE, Defendant–Appellant.

Docket No. 327572.
|
Sept. 20, 2016.

Wayne Circuit Court; LC No. 14–009971–NF.
Before: BECKERING, P.J., and CAVANAGH and GADOLA, JJ.

Opinion

PER CURIAM.

*1 In this action for benefits under the no-fault act, [1] MCL 500.3101 *et. seq.*, defendant Farmers Insurance Exchange appeals the trial court's decision to deny its motion for summary disposition. Defendant contends that, as utilized in MCL 500.3145(1), which governs time limitations with respect to actions for recovery of personal protection insurance benefits, "1 year" for purposes of filing an action should be calculated differently than "1 year" for purposes of limiting the recovery of benefits. Because the method of calculating "1 year" should be the same, whether viewed prospectively or retrospectively, and particularly when the "1 year" deadlines at issue are set forth in the very same statute and subsection, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff, Henry Ford **Macomb**, treated a driver after he was involved in an automobile accident that occurred on August 2, 2013. Both the driver and the vehicle he was driving were uninsured. Plaintiff treated the driver from August 2, 2013, to August 5, 2013, accruing more than $44,000 in medical fees. Given that there was no ascertainable no-fault insurer, plaintiff submitted its claim for benefits to the Michigan Assigned Claims Plan (MACP). Before the MACP assigned the claim to a no-fault insurer, plaintiff filed the instant suit against the MACP on August 4, 2014; of significance in this case, August 2, 2014 fell on a Saturday. When the MACP later assigned the claim to defendant, plaintiff amended the complaint to name defendant as the responsible party for the no-fault benefits. Defendant does not dispute the fact that plaintiff's claim was timely filed within one year, in accordance with the limitation set forth in MCL 500.3145(1).

Defendant paid $1,477.16 for the medical services rendered on August 4, 2013 and August 5, 2013, but argued that the claims preceding August 4, 2013 should be summarily disposed of because they violated the one-year-back provision found in MCL 500.3145(1). In other words, defendant argued that plaintiff was not permitted to recover benefits for August 2, 2013 and August 3, 2013 because it had filed the complaint more than one year after those service dates.

Plaintiff argued that MCR 1.108(1)[1] governed the computation of time for the one-year-back rule, and because August 2, 2014, was a Saturday, the one-year-back rule extended to the next business day, which was Monday, August 4, 2014. Accordingly, plaintiff urged the trial court to find that plaintiff had timely filed the complaint to collect all of the no-fault benefits. Defendant countered by arguing that, because the one-year-back rule was a limitation on damages and not a statute of limitation, MCR 1.108(1) could not operate to toll the rule. Upon hearing the arguments of both parties, the trial court agreed with plaintiff and denied defendant's motion. Subsequently, defendant stipulated to a consent judgment while expressly reserving its right to appeal the decision of the trial court regarding defendant's motion for summary disposition.

II. ANALYSIS

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*2 On appeal, defendant argues that the trial court wrongly denied defendant's motion for summary disposition because the one-year-back rule cannot be extended by MCR 1.108(1). We disagree.

We review "decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law." *Alcona Co. v. Wolverine Environmental Prod., Inc.*, 233 Mich.App. 238, 245, 590 N.W.2d 586 (1998). "This case presents issues regarding statutory interpretation of the Michigan no-fault insurance act. Statutory interpretation is an issue of law that is reviewed de novo." *Cruz v. State Farm Mut. Auto. Ins. Co.*, 466 Mich. 588, 594, 648 N.W.2d 591 (2002). We also review de novo the proper interpretation and application of a court rule. *Haliw v. Sterling Hts.*, 471 Mich. 700, 704, 691 N.W.2d 753 (2005).

MCL 500.3145(1) provides in relevant part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.

The first part of this statute contains a statute of limitations requiring that claims for no-fault benefits be filed within one year of the accident that caused the injuries. As an exception to that rule, a case may be filed after one year where "written notice of injury ... has been given to the insurer within 1 year after the accident or [ ] the insurer has previously made a payment of personal protection insurance benefits for the injury." *Id.* See also *Jesperson v. Auto Club Ins. Ass'n.*, 499 Mich. 29, 38–39, 878 N.W.2d 799 (2016). Even where the statute of limitation is extended to longer than one year, the second portion of the statute limits the benefits that are payable, stating, "the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." This limitation on damages is known as the "one-year-back rule." *Joseph v. Auto Club Ins. Ass'n.*, 491 Mich. 200, 208, 815 N.W.2d 412 (2012).

The one-year-back rule in MCL 500.3145(1), is a "damages-limiting provision" that "forecloses a claimant from recovering 'benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.' " *Id.* at 214, 815 N.W.2d 412. "[A]lthough a no-fault action to recover PIP benefits may be *filed* more than one year after the accident and more than one year after a particular loss has been incurred," MCL 500.3145(1) "nevertheless limits *recovery* in that action to those losses incurred within the one year preceding the filing of the action." *Devillers v. Auto Club Ins. Ass'n.*, 473 Mich. 562, 574, 702 N.W.2d 539 (2005).

MCL 500.3145(1) requires a court to compute time but does not provide directions on how that time is to be computed. MCR 1.108 "applies to computing a period prescribed by statute...." *People v. Sinclair*, 247 Mich.App. 685, 689, 638 N.W.2d 120 (2001). See also *People v. Williams*, 475 Mich. 245, 256 n. 4, 716 N.W.2d 208 (2006) (stating that MCR 1.108 "unambiguously governs the computation of a period prescribed in a statute"); *Dunlap v. Sheffield*, 442 Mich. 195, 199, 500 N.W.2d 739 (1993) (stating that Michigan's Supreme Court "promulgated MCR 1.108 to clarify and avoid any disputes regarding what is the last day" of any given time period). Further, "courts are required to apply [MCR 1.108] where applicable." *Sinclair*, 247 Mich.App. at 689, 638 N.W.2d 120.

*3 MCR 1.108 provides in relevant part:

> In computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules apply:
>
> (1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a