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STATE OF MICHIGAN
COURT OF APPEALS

DALE VANWASSHENOVA,

Plaintiff-Appellant,

v

MONROE COUNTY DRAIN COMMISSION,
MONROE COUNTY ROAD COMMISSION, and
TOWNSHIP OF RAISINVILLE,

Defendants-Appellees.

UNPUBLISHED

April 18, 2024

No. 365140

Monroe Circuit Court

LC No. 2022-144844-CZ

Before: REDFORD, P.J., and CAMERON and LETICA, JJ.

PER CURIAM.

In this action seeking a writ of mandamus, plaintiff appeals as of right the trial court’s order denying plaintiff’s motion for summary disposition and granting summary disposition in favor of defendants under MCR 2.116(I)(2). We affirm.

I. FACTS AND PROCEEDINGS

Plaintiff owns farmland adjacent to Nichols Road, a county road in Raisinville Township in Monroe County. Two drains cross plaintiff’s property, one known as Plum Creek and the other as the Loss Marine Grundman Drain. In the early 1900s, defendant Monroe County Drain Commission (MCDC) constructed two bridges that extended across Plum Creek and the Loss Marine Grundman Drain where they intersected with Nichols Road. Plaintiff characterized the drains as dividing his property into three parcels, with the northernmost parcel to the north of the Loss Marine Grundman Drain, the middle parcel between the two drains, and the southernmost parcel to the south of Plum Creek.¹

¹ In the lower court record, the description of the number of parcels comprising plaintiff’s property was inconsistent. The parties agreed to two parcels for tax purposes, but plaintiff informally described his property as consisting of three parcels, separated by the drains. There was also a

MCL 280.322, which is part of the Drain Code of 1956, MCL 280.1 *et seq.*, governs the construction of a “necessary bridge or culvert” where a drain crosses a highway. The statute requires the road commission to maintain bridges and culverts for drains that cross county roads. In the 1990s, defendant Monroe County Road Commission (MCRC) inspected the bridges and culverts for Plum Creek and the Loss Marine Grundman Drain and found that their condition was declining. MCRC posted reduced weight limits, but the bridges continued to deteriorate. In 2004, MCRC closed the Plum Creek bridge at Nichols Road after its engineer determined that it was in poor condition and unsafe for traffic. In 2006, MCRC closed the Loss Marine Grundman Drain bridge over Nichols Road.

In 2022, plaintiff filed this action for a writ of mandamus against defendants, the MCDC, the MCRC, and the Township of Raisinville (the “Township”). Plaintiff alleged that defendants informed him that he could not use the closed bridges, and he was unable to access all parts of his farmland. After the MCRC and MCDC denied plaintiff’s request to repair or replace the bridges, he sought a writ of mandamus against defendants to compel them to take such action or to compensate him for the cost of replacement or repair.

Plaintiff moved for summary disposition under MCR 2.116(C)(10), claiming that there was no genuine issue of material fact that defendants had a duty to replace or repair the bridges. In response, each defendant moved for summary disposition in its favor under MCR 2.116(I)(2). They collectively contended that plaintiff’s mandamus claims were subject to the two-year limitations period for claims arising under the highway exception to governmental immunity, MCL 691.1411(2). They further asserted that plaintiff’s claims accrued when the bridges were closed in 2004 and 2006, and therefore, were untimely filed in 2022. Defendants also contended that plaintiff failed to meet the requirements for mandamus relief because the entities did not have a clear legal duty to repair or replace the bridges.

The trial court concluded that plaintiff’s claims were subject to the two-year limitations period in MCL 691.1411(2) and found that the claims accrued no later than 2006. Therefore, they were untimely. Accordingly, the trial court dismissed plaintiff’s complaint against all defendants. Plaintiff now appeals.

II. ANALYSIS

A trial court’s decision on a motion for summary disposition is reviewed *de novo*. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Plaintiff moved for summary disposition under MCR 2.116(C)(10). Summary disposition under this subrule is appropriate “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.” *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). If it appears that summary disposition is proper in favor of the opposing party, instead of the moving party, summary disposition may be granted under MCR 2.116(I)(2).

disparity whether the maintenance at issue pertained to bridges or culverts. For consistency purposes, we will reference bridges.

Empire Iron Mining Partnership v Tilden Twp, 337 Mich App 579, 586; 977 NW2d 128 (2021). In this case, the trial court denied plaintiff's motion for summary disposition and instead granted summary disposition in favor of defendants under MCR 2.116(I)(2), citing the statute of limitations. When disputed facts are lacking, whether a cause of action is barred by the applicable statute of limitations is a question of law, which the appellate court reviews de novo. *Magee v DaimlerChrysler Corp*, 472 Mich 108, 111; 693 NW2d 166 (2005).

“A writ of mandamus will issue only when ‘(1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result.’” *Zelasko v Charter Twp of Bloomfield*, ___ Mich App ___, ___ n 5; ___ NW2d ___ (2023) (Docket No. 359002) (citation omitted); slip op at 9-10. “Mandamus is a legal remedy, but mandamus proceedings are essentially equitable in principle.” *Davis v Secretary of State*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 362841) (citation omitted); slip op at 9. “It is an extraordinary remedy, and the plaintiff bears the burden of demonstrating entitlement to the requested relief.” *Id.*

Plaintiff's claims for mandamus against the MCRC are predicated on MCL 280.322, which he asserts imposes a duty on the MCRC to maintain the Plum Creek and the Loss Marine Grundman Drain bridges at Nichols Road. But, the trial court found that to the extent that this statute imposed a duty on the MCRC to maintain the bridges across the Loss Marine Grundman Drain and Plum Creek, any action for breach of that duty was subject to the limitations period in MCL 691.1411(2). That statute is part of the government tort liability act (GTLA), MCL 691.1401 *et seq.*, and controls actions for bodily injury or damage to property arising from the failure to repair and maintain highways. In pertinent part, MCL 691.1402(1) provides:

Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21.

In turn, MCL 224.21(2) provides that “[a] county shall keep in reasonable repair, so that they are reasonably safe and convenient for public travel, all county roads, bridges, and culverts that are within the county's jurisdiction, are under its care and control, and are open to public travel.”

MCL 691.1411, which specifies the limitation periods for actions against a governmental agency, including an action under MCL 691.1402, provides:

(1) Every claim against any governmental agency shall be subject to the general law respecting limitations of actions except as otherwise provided in this section.

(2) The period of limitations for claims arising under section 2 of this act shall be 2 years.

(3) The period of limitations for all claims against the state, except those arising under section 2 of this act, shall be governed by chapter 64 of Act No. 236 of the Public Acts of 1961.

Plaintiff contends that the two-year limitations period in MCL 691.1411(2) does not apply to his claims because his action is for mandamus, not a tort claim under the GTLA. However, plaintiff does not identify another statute of limitations that he believes is applicable to his claims. Plaintiff's argument concerning the MCRC's ongoing duty to maintain bridges seems to imply that there is no fixed accrual date or limitations period for a claim of mandamus that arises from a governmental defendant's failure to comply with an ongoing duty.

To determine what, if any, statute of limitations applies to a claim of mandamus, *Lothian v Detroit*, 414 Mich 160; 324 NW2d 9 (1982), is instructive. The *Lothian* plaintiff retired from employment as a police officer in 1962. He waived his right to a pension while he accepted and served as a civilian police commissioner with the city. The plaintiff retired from that position in 1967. *Id.* at 163-164. In 1973, plaintiff learned of a legal decision that prohibited the waiver of pension benefits. In 1974, he brought an action for mandamus to compel payment of his earlier waived pension benefits, asserting they were owed to him. *Id.* at 164-165. The trial court granted the plaintiff mandamus relief, and this Court affirmed. *Id.* at 165.

On appeal, our Supreme Court reversed the grant of mandamus relief to the plaintiff, concluding that the plaintiff's complaint asserting unlawful withholding of pension benefits was an action for breach of contract rights. *Id.* at 171 n 11. Therefore, it was subject to the six-year statute of limitations governing contract actions. The fact that the plaintiff's action was "denominated as a claim for mandamus" did not alter the applicable limitations period. *Id.* (citation omitted). Accordingly, the applicable limitations period for a mandamus claim is dependent on the nature of the case and the underlying theory of relief.

In the present case, the underlying theory of plaintiff's claim for mandamus is that MCRC breached a duty to maintain the bridges, infringing on plaintiff's ability to access all parts of his farm and put it to productive use. The nature of plaintiff's action is one for property damage arising from a failure to maintain a bridge on a highway. The substantive basis for plaintiff's claims is that he has been injured by MCRC's breach of a duty to maintain the bridges on a county road that cross the Loss Marine Grundman Drain and Plum Creek. Therefore, we agree with the trial court's application of the two-year limitations period in MCL 691.1411(2). Because plaintiff's complaint was filed on February 16, 2022, his claims are untimely unless they accrued on or after February 16, 2020.²

² Plaintiff submits that the MCDC and the Township may share in MCRC's duty to maintain the bridges or contribute to the cost of maintenance. Therefore, we treat plaintiff's claims against these defendants as derivative of his claims against MCRC, and thus also subject to the same

“Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues.” MCL 600.5827. Unless otherwise provided by statute, a claim “accrues at the time the wrong upon which the claim is based was done regardless of the time when damages results.” *Id.* The trial court concluded that plaintiff’s claims accrued no later than 2006, when the MCRC, by resolution, closed the bridge over the Loss Marine Grundman Drain.

In *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 288; 769 NW2d 234 (2009), this Court addressed the accrual of a claim involving property damage. The plaintiff’s trespass and nuisance claims arose from the defendants’ conduct of modifying their properties to cause excessive water runoff and flood the plaintiff’s property. *Id.* at 267-268, 273-274. Flooding incidents occurred in the 1990s, in September 2000, and again in May 2004. *Id.* at 272. The plaintiff brought its claims in November 2004. This Court addressed the “continuing wrongs doctrine,” which held that “when the nuisance is of a continuing nature, the period of limitations does not begin to run on the occurrence of the first wrongful act; rather, the period of limitations will not begin to run until the continuing wrong is abated.” *Id.* at 280. After reviewing the history of the continuing-wrongs doctrine, this Court concluded that binding precedent had “completely and retroactively abrogated the common-law continuing wrongs doctrine in the jurisprudence of this state, including in nuisance and trespass cases.” *Id.* at 288. The Court then addressed the plaintiff’s argument that its claims accrued in May 2004, the time of the last injury. *Id.* at 289. This Court reviewed the testimony regarding each of the defendants’ wrongful actions and found that they occurred in 1998, in 1995 or 1996, and in 1997, respectively. This Court determined that this testimony “established that the last act of any of the three neighboring defendants at issue occurred in 1998.” *Id.* at 291. After 1998, the plaintiff “next experienced flooding in June 2001.” This Court concluded:

Therefore, it was during this June 2001 flooding that the Froling Trust suffered its first harm from the neighbors’ last negligent act. In other words, after the last of the neighbors allegedly acted negligently in 1998, the harm first occurred, or accrued, in June 2001. Accordingly, the subsequent flooding in May 2004 could only have been the continued result of the neighbors’ completed conduct. Subsequent claims of additional harm caused by one act do not restart the claim previously accrued. For the purposes of accrual, there need only be one wrong and one injury to begin the running of the period of limitations. In sum, the accrual of the claim occurs when both the act and the injury first occur, that is when the “wrong is done.” [*Id.*]

statute of limitations. Alternatively, plaintiff’s claims against these defendants would be subject to the catch-all limitations period in MCL 600.5813, which provides that “[a]ll other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes.” Plaintiff would then have to demonstrate that any claim did not accrue until after February 16, 2016.

Accordingly, this Court held that the plaintiff's claim accrued with the flooding in June 2001, and therefore, the three-year limitations period expired in June 2004, before the plaintiff filed its claims in November 2004. *Id.* at 291-292.

In the present case, MCRC posted notice of the bridge closures in 2004 and 2006. This notice unequivocally advised all persons that the bridges were unavailable for use and that maintenance would no longer be provided. Thus, we agree with the trial court that any cognizable claim accrued no later than 2006. Accordingly, the trial court correctly concluded that plaintiff's claims, which were brought in 2022, were untimely under either the two-year statute of limitations in MCL 691.1411(2) or the six-year statute of limitations in MCL 600.5813. Plaintiff's argument that MCRC remained in continuous breach of its duty invokes the continuing-wrongs doctrine, which has been abrogated.

Plaintiff's remaining arguments are vague and inconsistent with his arguments and representations in the trial court. Plaintiff asserts that he was not aggrieved by the 2004 and 2006 closures because they were enacted under the authority of MCL 257.726(1), which grants local authorities and county road commissions authority to prohibit or restrict the operation of trucks and commercial vehicles on designated highways or streets. However, plaintiff has not alleged that he was granted an exception from the closures or that he exercised a purported exception to the closures. Although plaintiff states that the bridge closures could not apply to him because MCL 257.726(4) provides that ordinances and resolutions excluding trucks and commercial vehicles from designated highways do not apply to agricultural vehicles and machinery, this statutory amendment was added by 2018 PA 533, effective March 28, 2019, more than 12 years after the second bridge closure.

Plaintiff also emphasizes that he is not seeking to reopen the bridges for the benefit of the general public, but only to enforce his own rights, and also that he did not have standing to challenge the 2004 and 2006 closures because he was not affected until later. However, plaintiff does not otherwise identify what wrongful act or omission adversely affected him, or when he was adversely affected. More importantly, plaintiff failed to cite authority to support his claim of distinct rights or delayed standing, causing these claims to be abandoned. *Hooker v Moore*, 326 Mich App 552, 557 n 2; 928 NW2d 287 (2018). Accordingly, the trial court did not err by granting summary disposition in favor of defendants on the ground that plaintiff's claims were barred by the applicable statute of limitations.³

Affirmed.

/s/ James Robert Redford

/s/ Thomas C. Cameron

/s/ Anica Letica

³ In light of our decision, it is unnecessary to address defendants' arguments advancing alternative grounds for affirmance.