STATE OF MICHIGAN

COURT OF CLAIMS

MARY ACKERMAN, SUSAN BOWYER, MARY DORFF, KATRINA DUBY, NICHOLAS DUBY, KAREN FERNS, ROBERT FERNS, KENNETH GIBSON, MIKAL GIBSON, GARY HUBER, MARILYN HUBER, MELISSA KILLINGBECK, CASEY KILLINGBECK, JOSEPH MAGER, ADAM RADA, JUSTIN RADA, DIANE REA, ROGER REA, LYNDA SAWYER, JEFFREY SAWYER, BARBARA TANNEY, JOANNE WALEGA, SANDRA WIXON, CLARENCE WOODBURY, and RENEE WOODBURY,

Plaintiffs,

v

Case No. 25-000034-MZ

Hon. Brock A. Swartzle

The MICHIGAN DEPARTMENT OF NATURAL RESOURCES ("DNR") and the MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY ("EGLE"),

Defendants.
_____/

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND DISMISSING CASE

Plaintiffs are riparian property owners who seasonally install a dock on Hubbard Lake in Alcona County. In 2022, the Michigan Department of Environment, Great Lakes, and Energy (EGLE) first informed plaintiffs that the dock required a permit under Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30101, *et seq*. Plaintiffs filed this lawsuit against the Michigan Department of Natural Resources (DNR)

and EGLE on March 6, 2025, seeking a declaratory judgment regarding the applicability of Part 301's permitting requirements to plaintiffs' dock.

This Court ordered plaintiffs to show-cause why the complaint should not be dismissed for failure to comply with the verification requirements of the MCL 600.6431(2)(d) of the Court of Claims Act (COCA), MCL 600.6401 *et seq*. In response, plaintiffs filed a notice of intent on March 13, 2025, that contained the verified and notarized signature of plaintiff Katrina Duby. Plaintiffs then filed an amended complaint on April 22, 2025, that contained the verified and notarized signature of plaintiff Katrina Duby. In lieu of an answer, defendants moved for summary disposition of the amended complaint under MCR 2.116(C)(7).

I. BACKGROUND

Under Part 301 of the NREPA, a person must obtain a permit to place a structure on the bottomland of an inland lake or to construct, reconfigure, or expand a marina. MCL 324.30102(1)(b) and (c). There is an exception to the permit requirements for "[a] seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use the water or interfere with water flow."

On March 22, 2022, after an inspection of the property, EGLE notified plaintiffs by e-mail that their dock, which moored 15 or 16 boats perpendicularly on both sides of the dock, met the statutory definition of a marina and that continued seasonal installation of the dock required a marina construction permit under Part 301 of the NREPA. The e-mail advised that "[f]ailure to comply with permitting requirements or conducting any unauthorized activities including

construction a seasonal marina on this property may result in compliance and enforcement actions by the State of Michigan."

Plaintiffs installed the dock without a permit. On September 28, 2022, EGLE sent a notice of violation to plaintiffs, informing them that the dock was a marina under the NREPA and had to be permitted or removed. The notice advised that "all unauthorized activities occurring within regulated areas on this property stop." It also stated that"[i]n consideration of the requirements of Part 301 of the NREPA, the [Water Resources Division] has determined that a permit would not have been permitted for this project. Therefore, within 30 days of the date of this letter, or a mutually agreed upon schedule, the property must be brought into compliance" with Part 301. The notice stated that compliance with Part 301 required removal of all unauthorized docks and boat hoists from Hubbard Lake, as well as the obtaining of a permit and following of the conditions of the permit prior to commencement of any work if plaintiffs desired to construct a marina on the property in the future.

Plaintiffs installed the deck without a permit during the 2023 season. EGLE sent a similar notice of violation on July 14, 2023. On October 10, 2023, plaintiffs' counsel sent a letter to EGLE's Water Resources Division in response to the September 28, 2022, and July 14, 2023, notices of violation. The letter explained plaintiffs' position that a permit was not needed to install the dock, and also contained an offer to meet with defendants. According to plaintiffs, defendants did not respond to their offer to meet.

Plaintiffs installed the dock without a permit during the 2024 season. EGLE sent another notice of violation on March 27, 2024. On May 7, 2024, the Alcona County Prosecutor brought

misdemeanor charges against plaintiffs for violating MCL 324.31012 as provided for in MCL 324.30112(3) of the NREPA. Plaintiffs filed this declaratory-judgment action on March 6, 2025.

II. ANALYSIS

Defendants argue that plaintiffs' lawsuit must be dismissed because plaintiffs failed to comply with the notice requirements of MCL 600.6431(1) of the Court of Claims Act (COCA), MCL 600.6401 *et seq*. Under MCL 600.6431(1), "a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies." Failure to strictly comply with this notice provisions warrants dismissal of the claim, even if no prejudice resulted. *Rusha v Dep't of Corrections*, 307 Mich App 300, 307; 859 NW2d 735 (2013).

Defendants contend that the claim accrued no later than September 28, 2022, when EGLE issued the first notice of violation. Plaintiffs contend that the claim accrued when the prosecutor filed misdemeanor charges for violation of Part 301 on May 7, 2024.

For purposes of MCL 600.6431, " a claim accrues at the time the wrong upon which the claim is based was done, and [the Supreme Court] has clarified that the wrong . . is the date on which the defendant's breach harmed the plaintiff, as opposed to the date on which defendant breached his duty." *Mays v Governor of Michigan*, 506 Mich 157, 181-182; 954 NW2d 139 (2020) (opinion by BERNSTEIN, J.); *City of Mt Pleasant v Acting Dir of Dep't of Tech, Mgt, & Budget*, ___ Mich App ___; ___ NW3d ___ (2024); slip op at 12. "Claims for declaratory relief necessarily derive from claims for substantive relief because declaratory relief lies only in cases of 'actual controversy,' and not merely for abstract declarations of rights divorced from a factual context."

Taxpayers Allied for Constitutional Taxation v Wayne Co, 450 Mich 119, 128; 537 W2d 596 (1995). "Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated." *Id*. (cleaned up).

Plaintiffs' claim is for a declaratory judgment declaring that their seasonal dock is not a "marina" under the NREPA and, therefore, that a permit is not needed under Part 301 to construct the dock.[1] EGLE notified plaintiffs in March 2022 that their dock needed a permit under Part 301. Further, EGLE informed plaintiffs by way of a notice of violation on September 28, 2022, that the dock was an unauthorized activity on the property, that the dock had to be removed, and that a permit would have to be obtained before commencement of any work if plaintiffs desired to construct a marina in the future on the property. At the latest, judicial resolution of the controversy became necessary when the September 28, 2022, notice of violation informed plaintiff of defendants' legal position. See *City of Mt Pleasant*, slip op at 14. Because plaintiffs did not file a claim until March 6, 2025, more than one year after accrual of their claim, dismissal of the case is required. *Elias Cos, LLC v Univ of Mich Regents*, 511 Mich 66, 75; 993 NW2d 392 (2023); *Stephens v Dep't of Corrections* ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 368097); slip op at 4.

III. CONCLUSION

Plaintiffs did not file a notice of intent to file a claim or a claim within one year of the accrual of their claim as required by MCL 600.6431(1). Accordingly, the Court GRANTS defendants' motion for summary disposition and DISMISSES this case.

[1] There is no claim specific to the local prosecutor's decision to bring misdemeanor charges in May 2024.

IT IS SO ORDERED. This is a final order that resolves the last claim and closes the case.

Date: 10/30, 2025

Hon. Brock A. Swartzle
Chief Judge, Court of Claims