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STATE OF MICHIGAN

COURT OF APPEALS

DARBY-OLENE BERRYHILL,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
November 23, 2026
1:29 PM

No. 375774
Ingham Circuit Court
LC No. 25-000188-CD

Before: MURRAY, P.J., and PATEL and FEENEY, JJ.

PER CURIAM.

In this employment action alleging disability discrimination in violation of the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*., plaintiff appeals by right the trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (8). On appeal, plaintiff contends that the one-year notice provision in MCL 600.6431(1) of the Court of Claims Act (COCA), MCL 600.6401 *et seq*., governs her PWDCRA claim and thus her notice was timely filed. We disagree and conclude that plaintiff's PWDCRA claim is a claim for "personal injuries" and therefore the six-month notice provision in MCL 600.6431(4) governs the claim for the reasons stated by this Court in *Short v Michigan State Police*, __ Mich App __; __ NW2d __ (August 3, 2026) (Docket No. 375823). Because plaintiff filed her notice of intent beyond the six-month notice period, the trial court did not err by dismissing her PWDCRA claim.

Plaintiff also argues that the trial court erred by concluding that her claim to enforce her purported rights to self-care leave under the family and medical leave act (FMLA), 29 USC 2601 *et seq*., was barred by sovereign immunity because defendant waived its immunity by publishing policies that affirmed its obligations under the FMLA. We disagree but conclude that remand to provide plaintiff with an opportunity to seek leave to amend her complaint under MCR 2.118 is appropriate. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

On May 8, 2023, plaintiff was hired by defendant. On July 17, 2023, plaintiff requested accommodations for her lupus diagnosis. Defendant determined that plaintiff was eligible for

disability accommodations but allegedly failed to properly accommodate plaintiff. Plaintiff alleges that defendant's failure to properly accommodate her disability resulted in physical harm and an exacerbation of her lupus that caused her to take medical leave from March 21, 2024 to April 1, 2024. Plaintiff claims that she suffered discrimination and harassment on the basis of her disability, and retaliation for requesting disability accommodations.

On April 5, 2024, plaintiff informed defendant's human resource department that she would be taking a leave of absence starting May 18, 2024, because she had surgery scheduled for May 22, 2024. Plaintiff requested information about FMLA leave, which she would become eligible for on May 8, 2024, after one-year of employment. On May 2, 2024, plaintiff submitted a "self-review worksheet" to her supervisor that referenced her disability, her upcoming surgery, the alleged failure to accommodate, and the anticipated FMLA leave. Plaintiff was terminated from her employment on May 7, 2024.

On January 3, 2025, eight months after her termination, plaintiff filed a notice of intention to file a claim against defendant in the Court of Claims alleging violations of the PWDCRA and the FMLA. Plaintiff contended that defendant failed to accommodate her disability, discriminated against and harassed her on the basis of her disability, and retaliated against her for engaging in protected activity under the PWDCRA and FMLA. Plaintiff alleged that she "suffered economic damages including lost wages, back pay, future pay, future raises and all other benefits provided and . . . loss of health benefits, vacation pay, holiday pay, and all other fringe benefits and also suffered non-economic damages including mental anguish, nervousness, as well as humiliation and embarrassment and mortification." Plaintiff further asserted that she was seeking attorney's fees, costs, liquidated damages, and equitable relief including reinstatement and front pay.

Plaintiff commenced this action on January 13, 2025, asserting claims for disability discrimination, failure to accommodate, and retaliation in violation of the PWDCRA, and a claim for violation of the FMLA. In addition to an exacerbation of her lupus, plaintiff alleged that she "suffered humiliation, embarrassment, mortification, stress, anguish and loss of social enjoyment and pleasures" and "damages including lost wages, benefits, and loss of employment opportunities." Plaintiff sought economic and noneconomic damages, attorney's fees, and costs for each of her claims. Plaintiff also sought "liquidated damages and equitable relief including reinstatement and front pay" for her FMLA claim.

In lieu of an answer, defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(8) arguing that plaintiff's PWDCRA claims were personal-injury claims and therefore the six-month notice-of-intent requirement under MCL 600.6431(4) applied rather than the default one-year notice requirement of MCL 600.6431(1). Defendant further asserted that plaintiff's FMLA claim was barred by sovereign immunity under the 11th Amendment. In response, plaintiff argued, under *Christie v Wayne State Univ*, 511 Mich 39, 64-65; 993 NW2d 203 (2023), the one-year notice provision of § 6431(1) governed her PWDCRA claim. Plaintiff further argued that defendant waived sovereign immunity for FMLA claims by publishing policies that affirmed its obligations under the FMLA and an employee's right to file a cause of action. Plaintiff also asserted that, under the *Ex parte Young*[1] exception to sovereign immunity, her claim for equitable

[1] *Ex parte Young*, 209 US 123; 28 S Ct 441; 52 L Ed 714 (1908).

relief, including reinstatement, was viable. Accordingly, plaintiff requested an opportunity to amend her complaint to add a claim for equitable relief against an unnamed state official in their official capacity.

At the hearing on the motion, the trial court stated that it found persuasive a similar case filed under the PWDCRA wherein the Court of Claims applied the six-month notice requirement.[2] The trial court concluded that plaintiff's PWDCRA claim was a personal-injury claim under the plain meaning of the COCA. The trial court further concluded that plaintiff's FMLA claim was barred by sovereign immunity and defendant did not waive immunity through its policies. Finally, the trial court determined that amendment would be futile because the state was immune from claims under the self-care provision of the FMLA. The trial court entered an order granting defendant's motion to dismiss for the reasons stated on the record. This appeal followed.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "We also review de novo questions of government immunity and statutory interpretation." *Short*, __ Mich App at __; slip op at 2-3 (citations omitted). And we apply a de novo standard when evaluating jurisdiction, which is a question of law. *Javer v P & P Hospitality, LLC*, __ Mich App __, __; __ NW3d __ (December 6, 2024) (Docket No. 363572); slip op at 3.

Summary disposition is warranted under MCR 2.117(C)(7) when a claim is barred because of immunity granted under the law. *Short*, __ Mich App at __; slip op at 3. When reviewing a motion under MCR 2.116(C)(7), we consider all documentary evidence in a light most favorable to the nonmoving party. *Id*. at __; slip op at 3. "If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." *Id*. at __; slip op at 3 (cleaned up). "But when a relevant factual dispute does exist, summary disposition is not appropriate." *Id*. at __; slip op at 3.

"A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil*, 504 Mich at 159. A court must accept all factual allegations as true and review the matter on the pleadings alone. *Id*. at 160. The grant of a motion under MCR 2.116(C)(8) is only appropriate "when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id*.

"The question whether an entity has immunity is one of law, which we review de novo." *Kewadin Casinos Gaming Auth v Patterson Earnhart Real Bird & Wilson*, __ Mich App __, __; __ NW3d __ (2026) (Docket No. 371255); slip op at 3 (cleaned up).

This Court reviews a trial court's decision denying leave to amend pleadings for an abuse of discretion. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 207; 920

[2] The trial court referenced *Harris v Mich Dept of Corrections*, unpublished opinion of the Court of Claims, issued November 20, 2024 (Case No. 24-000059-MZ).

NW2d 148 (2018). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Id*. at 208.

III. NOTICE

Plaintiff argues that her PWDCRA claim is not a claim for "personal injuries" and therefore the one-year notice provision of the COCA governs the claim and her notice was timely filed. We disagree.

Defendant is an instrumentality of the state.[3] See *Christie*, 511 Mich at 48. The state and its instrumentalities "are generally immune from suit unless the Legislature abrogates the state's sovereign immunity by enacting legislation consenting to suit." *Short*, __ Mich App at __; slip op at 3 (cleaned up). "By enacting the COCA, the Legislature adopted a comprehensive legislative scheme authorizing suit against the State of Michigan and its various agencies and expressly conditioned its waiver of the state's sovereign immunity on compliance with the procedures set forth in the notice requirement now contained in MCL 600.6431(1)." *Id*. at __; slip op at 3 (cleaned up). The Legislature has also waived immunity against the state and its agencies in the text of the PWDCRA.[4] See MCL 37.1201(b) (including "a governmental entity or agency of the state" in the definition of a "employer" prohibited from taking certain discriminatory actions in one of the ways stated in MCL 37.1202); see also MCL 37.1606(2) (conferring jurisdiction on the circuit court to entertain actions brought under the PWDCRA).

The COCA's notice provision states in relevant part:

> (1) Except as otherwise provided in this section, 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.
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> (4) For a claim against this state for property damage or personal injuries, the claimant shall file the claim or notice under subsection (1) with the clerk of the court of claims within 6 months after the event that gives rise to the claim. [MCL 600.6431.]

"The COCA's notice requirement applies to all claims against the state, including those filed in the circuit court, except as otherwise exempted in MCL 600.6431 itself." *Short*, __ Mich

[3] See Const 1963, art 8, § 4; MCL 390.101.

[4] MCL 600.101 *et seq*.

App at; slip op at 4 (cleaned up).[5] Compliance with the COCA notice provision is a condition precedent to overcome the state's sovereign immunity. *Christie*, 511 Mich at 61-62. "[I]f a plaintiff fails to comply with MCL 600.6431, his or her claims against a governmental agency are barred by governmental immunity." *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 179; 931 NW2d 539 (2019). This Court recently held that "[a] PWDCRA claim is a claim for 'personal injuries' " and therefore "the COCA's six-month notice provision, MCL 600.6431(4), governs claims of employment discrimination on the basis of a disability in violation of the PWDCRA." *Short*, __ Mich App at __; slip op at 10.

In this case, plaintiff was terminated on May 7, 2024, and filed her notice eight months later on January 3, 2025. Because plaintiff filed her notice beyond the six-month notice period, the trial did not err by dismissing plaintiff's PWDCRA claims. See *Short*, __ Mich App at __; slip op at 10.

IV. FMLA

Plaintiff argues that the trial court erred by concluding that her claim to enforce her purported rights to self-care leave under the FMLA was barred by sovereign immunity because defendant waived its immunity by publishing policies that affirmed its obligations under the FMLA. We disagree but conclude that remand to provide plaintiff with an opportunity to seek leave to amend her complaint under MCR 2.118 is appropriate.

The FMLA allows employees to take up to 12 weeks of unpaid leave during any 12-month period for: (A) "the birth of a son or daughter . . . in order to care for such son or daughter," (B) "the placement of a son or daughter with the employee for adoption or foster care," (C) the care of a "spouse, or a son, daughter, or parent" with a "serious health condition," and (D) the employee's own "serious health condition that makes the employee unable to perform the functions" of their employment. 29 USC 2612(a)(1). Subparagraphs (A), (B), and (C) are commonly referred to as the "family-care" provision. *Coleman v Court of Appeals of Md*, 566 US 30, 34; 132 S Ct 1327; 182 L Ed 2d 296 (2012). Subparagraph (D) is at issue here and is commonly referred to as the "self-care" provision. *Id*. "The FMLA makes it 'unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under' the FMLA." *Woodman v Miesel Sysco Food Serv Co*, 254 Mich App 159, 166-167; 657 NW2d 122 (2002), quoting 29 USC 2615(a)(1). The FMLA also bars retaliation against individuals who seek to exercise their leave rights. 29 USC 2615(a)(2). The FMLA creates a private right of action to seek both equitable relief and money damages "against any employer (including a public agency) in any Federal or state court of competent jurisdiction." 29 USC 2617(a)(2).

In this case, plaintiff alleged claims under both 29 USC 2615(a)(1) and (2) asserting that defendant interfered with her right to take FMLA leave for her upcoming surgery and retaliated against her by terminating her employment. As discussed, defendant is an instrumentality of the state. See *Christie*, 511 Mich at 48. States are immune from suits for damages unless the state

[5] "The only exception to the notice requirements expressed in MCL 600.6431 is the exception for [wrongful imprisonment compensation act] claims found in MCL 600.6431(5)." *Christie*, 511 Mich at 53.

consents to the lawsuit or Congress has expressly abrogated Eleventh Amendment immunity by statute. *Coleman*, 566 US at 35. In *Nevada Dep't of Human Resources v Hibbs*, 538 US 721, 735; 123 S Ct 1972; 155 L Ed 2d 953 (2003), the Supreme Court held that Congress validly abrogated the states' immunity from money damage suits for violations the family-care provision of the FMLA. But the *Coleman* Court held that the self-care provision of the FMLA is not a valid abrogation of the states' immunity from suit and therefore the states and their instrumentalities are entitled to sovereign immunity for claims for money damages for violations of the self-care provision unless a state has waived its immunity or created a parallel state-law cause of action. *Coleman*, 566 US at 33, 37, 43.

In response to defendant's motion for summary disposition, plaintiff expressly "agree[d] that any claim for money damages under the self-care provisions of the FMLA would be barred by the Eleventh Amendment." But plaintiff argued that defendant waived sovereign immunity by publishing policies that affirmed its obligation under the FMLA and expressly consenting to suit by stating on its website that employees "who believe their rights under FMLA have been violated . . . can file a private lawsuit pursuant to section 107 of the FMLA."[6] Plaintiff repeats this argument on appeal.

Our state's Supreme Court has recognized that "the state is immune from suit unless, and only to the extent that, it consents to be sued[.]" *Progress Mich v Attorney General*, 506 Mich 74, 87; 954 NW2d 475 (2020). "The Legislature can, and has, abrogated the state's sovereign immunity by enacting legislation consenting to suit." *Id*. But "any relinquishment of sovereign immunity must be strictly interpreted." *Christie*, 511 Mich at 57 (cleaned up). The Supreme Court has explained that the test for determining whether a state has waived its sovereign immunity is stringent:

> A State's consent to suit must be unequivocally expressed in the text of the relevant statute. Only by requiring this clear declaration by the State can we be certain that the State in fact consents to suit. Waiver may not be implied.
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> For these reasons, a waiver of sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign. So, for example, a State's consent to suit in its own courts is not a waiver of its immunity from suit in federal court. Similarly, a waiver of sovereign immunity to other types of relief does not waive immunity to damages: The waiver of sovereign immunity must extend unambiguously to such monetary claims. [*Sossamon v Texas*, 563 US 277, 284-285; 131 S Ct 1651; 179 L Ed 2d 700 (2011) (cleaned up).]

Our state has not expressly waived its immunity under the Eleventh Amendment for monetary damages for violations of the FMLA's self-care provision. And defendant's publication of its obligations under the FMLA and stating that an employee has a right to file a lawsuit under the FMLA does not constitute a clear and unambiguous waiver of sovereign immunity to private lawsuits for monetary damages for violations of the self-care provision of the FMLA. As

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[6] See Human Resources Spartans @ Work, *FMLA Frequently Asked Questions* <https://hr.msu.edu/time-off-leave/fmla/faqs.html> (accessed November 4, 2026).

discussed, an employee may file a private cause of action for *some* claims under the FMLA. For example, an employee may file a lawsuit against a state for monetary damages for violations of the family-care provision of the FMLA. See *Hibbs*, 538 US at 735. And an employee alleging that he or she was terminated for seeking self-care leave may sue a state official in their official capacity for equitable, prospective relief, such as reinstatement, under the *Ex parte Young* doctrine. See *Diaz v Mich Dep't of Corrections*, 703 F 3d 956, 966 (CA 6, 2013).[7] But informing employees that private actions under the FMLA are permitted does not equate with unambiguous consent to be sued for *all* claims under the FMLA, including claims for damages for violations of the self-care provision. An implied waiver is insufficient. *Sossamon*, 563 US at 284. Accordingly, the trial court did not err by dismissing plaintiff's claim for money damages against defendant for its alleged violations of the FMLA's self-care provision because the claim is barred by sovereign immunity.

In addition to monetary damages, plaintiff seeks equitable relief, including reinstatement. The FMLA states that an employer who violates the FMLA may be liable to an eligible employee "for such equitable relief as may be appropriate, including employment, reinstatement, and promotion." 29 USC 2617(a)(1)(B). And the FMLA provides a right of action against public agencies for equitable relief. See 29 USC 2617(a)(2) ("[a]n action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or state court of competent jurisdiction by any one or more employees").

Plaintiff argues that a claim for equitable, prospective relief, such as reinstatement, is viable under the *Ex parte Young* doctrine and thus maintains that she should be allowed to amend her complaint to add a state official in their official capacity as a defendant.[8] MCR 2.116(I)(5) provides that "[i]f the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Because summary disposition was warranted under MCR 2.116(C)(7) on the basis of defendant's sovereign immunity, plaintiff was not entitled as a matter of right to the opportunity to amend her pleadings. However, the trial court may grant plaintiff leave to amend in accordance with MCR 2.118(A)(2), which states, "Leave [to amend] shall be freely given when justice so requires." See also *Michigan Head &*

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[7] "Federal caselaw is not binding, but we may consider it persuasive." *Micheli v Michigan Auto Ins Placement Facility*, 340 Mich App 360, 375 n 5; 986 NW2d 451 (2022).

[8] Plaintiff's complaint sought "liquidated damages and equitable relief including reinstatement and front pay" for her FMLA claim. Plaintiff has not raised an argument on appeal that she is entitled to claim liquidated damages and back pay under the *Ex parte Young* doctrine. But we note that any claims for liquidated damages or front pay are barred. See *Smith v Dep't of Pub Health*, 428 Mich 540, 585; 410 NW2d 749 (1987) (opinion by BRICKLEY, J.) (stating that the Eleventh Amendment bars "official-capacity suits for monetary relief because such actions [are], in effect, suits against the state itself, despite the presence of individual officials as nominal defendants). See also *Freeman v Mich Dep't of State*, 808 F 2d 1174, 1179 (CA 6, 1987) (stating that claims for "back pay, front pay and fringe benefits" are "barred by the Eleventh Amendment . . . since any payment of these claims would come from the state treasury.").

Spine Inst, PC v Michigan Assigned Claims Plan, 331 Mich App 262, 277; 951 NW2d 731, 741 (2019) (it is an abuse of discretion to deny leave to amend where amendment would not be futile and is in the interest of justice). "An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim." *Id*. at 277 (cleaned up).

The trial court concluded that amendment would be futile in this case because the state is immune from claims under the self-care provision of the FMLA and naming an individual would not avoid immunity. But the trial court failed to address whether plaintiff could seek equitable, prospective relief, such as reinstatement, against a state official in their official capacity under the *Ex parte Young* doctrine. In *Smith v Dep't of Pub Health*, 428 Mich 540, 583, 585; 410 NW2d 749 (1987) (opinion by BRICKLEY, J.), our Supreme Court described the central holding in *Ex parte Young* as follows:

> *Ex parte Young* . . . helped to lay the groundwork for the Supreme Court's development of the concept of official-versus personal-capacity suits. In *Young*, the Court carved out an exception to the Eleventh Amendment's prohibition against suing a state in federal court . . . .
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> The Supreme Court . . . found that the Eleventh Amendment did not preclude official-capacity suits for injunctive relief because such suits "stripped" an official of his "official or representative character," thus exposing only the *individual* occupying the office to liability.

"In order to fall within the *Ex parte Young* exception, a claim must seek prospective relief to end a continuing violation of federal law." *Diaz*, 703 F 3d at 964. "Retroactive relief is barred by the Eleventh Amendment" but " 'claims for reinstatement are prospective in nature and appropriate subjects for *Ex parte Young* actions.' " *Id*., quoting *Carten v Kent State Univ*, 282 F 3d 391, 396 (CA 6, 2002). The Sixth Circuit has recognized that "claims for reinstatement state a violation that continues during the period the plaintiff is excluded from the benefits to which he is entitled" and rejected an "argument that reinstatement does not constitute prospective relief designed to end a continuing violation of federal law." *Carten*, 282 F 3d at 396. In *Diaz*, 703 F 3d at 966, the Sixth Circuit relied on *Carten* and concluded that an employee alleging that he was terminated for seeking self-care leave could bring a claim against state officials in their official capacity for equitable, prospective relief in the form of reinstatement under the *Ex parte Young* doctrine. Accordingly, amendment would not be futile in this case.

Although plaintiff did not provide a proposed amended complaint to the trial court, she specifically described her proposed amendment and provided a clear statement of her claim in her motion response. Cf. *Anton, Sowerby & Associates, Inc v Mr C's Lake Orion, LLC*, 309 Mich App 535, 551-552; 872 NW2d 699 (2015) (noting that "there is no way to determine whether an amendment is justified" if a proposed amended complaint is not presented to the trial court, especially when a plaintiff has not provided a specific description of the proposed amendment or "a clear statement of plaintiff's claim."). Additionally, the trial court denied plaintiff's request to amend on the basis of futility, not because she failed to present a proposed amended complaint. Under the circumstances, we conclude that remand is warranted to provide plaintiff with an

opportunity to seek leave to amend her complaint under MCR 2.118. Plaintiff shall include her proposed amended complaint with her request for leave.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Sima G. Patel
/s/ Kathleen A. Feeney