

A Longer Road to Finality: Michigan Supreme Court Restores NOI Tolling in Wrongful-Death Medical Malpractice Claims

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In *Ernest v Brown*, ___ Mich __; ___ NW3d ___ (2026) (Docket No. 168462), a decision affecting the timeliness of wrongful-death medical malpractice actions in Michigan, the Michigan Supreme Court has expressly overruled its more than 20-year-old decision in *Waltz v Wyse*, 469 Mich 642 (2004). The *Ernest* Court held that the wrongful-death saving provision contained in MCL 600.5852 establishes a period of limitations that may be tolled by a medical malpractice notice of intent (“NOI”) under MCL 600.5856(c). This ruling represents a significant change in wrongful-death medical malpractice litigation, altering the calculation of filing deadlines and narrowing statute-of-limitations defenses.

Legal Background

The Legislature has enacted statutes governing the timeliness of medical malpractice claims involving alleged wrongful deaths. Pursuant to MCL 600.5805(8), a medical malpractice claim is subject to a two-year statutory limitations period. MCL 600.2912b(1), however, requires that a NOI be given to defendant at least 182 days prior to the filing of a complaint. Upon compliant notice, MCL 600.5856(c) tolls the applicable limitation period for no longer than the number of days remaining in the applicable notice period after notice is given. In such cases, the two-year statutory limitations period is tolled for the number of days equal to the number of days remaining in the limitations period at the time the NOI is given.

In medical malpractice cases involving wrongful-death, the Legislature has provided a different timeline for the personal representatives filing claims on behalf of a decedent. See MCL 600.5852. This statute provides that a personal representative has an additional two years to bring an action from the date the letters of authority are issued, as long as the action is commenced no later than three years after the applicable limitations period has run. See MCL 600.5852(1) and (4).

SECRET WARDLE NOTES

For medical malpractice defendants, *Ernest* requires a more careful limitations analysis at the outset of any wrongful-death claim. A complaint filed outside the two-year period following issuance of the first letters of authority can no longer be presumed untimely because an NOI given during that period may toll the filing deadline under MCL 600.5856. *Ernest* therefore eliminates a limitations defense that had been available under *Waltz* for more than two decades.

In 2004, the *Waltz* Court considered the question of whether MCL 600.5856 tolled the additional period set forth for filing a wrongful-death action under MCL 600.5852. In that case, the plaintiff's decedent died on April 18, 1994, making the expiration of the two-year limitations period April 18, 1996. The plaintiff gave an NOI to defendants in January 1999, received her letters of authority on May 27, 1999, and filed a complaint on June 23, 1999. The defendants moved to dismiss the complaint as untimely since it was filed more than three years after April 18, 1996. *See* MCL 600.5805(8); MCL 600.5852(4). In response, the plaintiff argued that the three-year limitations period for a wrongful-death action was tolled under MCL 600.5856(c) when the NOI was given in January of 1999. The *Waltz* Court disagreed with the plaintiff and found that MCL 600.5852 was merely a saving statute, rather than a statute of limitations. Therefore, the additional period permitted for filing wrongful-death actions could not be tolled under MCL 600.5856.

Factual Background

The *Ernest v Brown* case arose from the death of Maurice Ernest who, on July 16, 2020, presented to an emergency department complaining of chest pain and discomfort. He was transferred to the cardiac unit for observation, where an initial diagnosis of acute coronary syndrome and hypokalemia was documented. Mr. Ernest died the following day from a bilateral pulmonary embolism. Thereafter, Mr. Ernest's estate alleged that the physicians and healthcare entities ("Defendants") failed to properly diagnose and treat him.

The dispositive issue before the court was whether the lawsuit had been timely filed. The alleged malpractice occurred on July 16, 2020, making the two-year medical malpractice limitations period under MCL 600.5805(8) expire on July 16, 2022. However, the personal representative of Mr. Ernest's estate ("Plaintiff") received letters of authority on June 7, 2021. Under MCL 600.5852(1), Plaintiff therefore had two years (i.e., June 7, 2023) to commence the action, subject to the statute's three-year outside limit. *See* MCL 600.5852(4).

On February 10, 2023, before the two-year saving period expired, Plaintiff gave Defendants the statutorily required NOI under MCL 600.2912b. She then filed suit on August 14, 2023. Although the filing of the complaint was after June 7, 2023, Plaintiff argued that service of the NOI tolled the saving period under MCL 600.5856(c), rendering the complaint timely. Under *Waltz*, however, that argument was foreclosed. Accordingly, the trial court granted summary disposition under MCR 2.116(C)(7) and dismissed the complaint with prejudice. The Court of Appeals affirmed because it was bound by *Waltz*.

The Supreme Court's Analysis

In lieu of granting leave, the Supreme Court ordered oral argument on Plaintiff's application to address, in part, whether *Waltz v Wyse*, 469 Mich 642 (2004) correctly held that MCL 600.5856(c) does not toll the additional period permitted for filing wrongful-death actions provided in MCL 600.5852. Ultimately, the Supreme Court overturned *Waltz*, holding that the wrongful-death saving provision contained in MCL 600.5852 establishes a period of limitations that may be tolled by a NOI under MCL 600.5856(c).

The Supreme Court held that the fundamental flaw in the *Waltz* decision was treating MCL 600.5852 exclusively as a saving provision rather than recognizing that a saving provision may simultaneously establish a new limitations period. The Court explained that MCL 600.5852 functions as a saving provision, but it saves an

otherwise untimely claim by establishing a new period during which the action may be filed. This reasoning was based on prior Michigan decisions that described MCL 600.5852 as extending, suspending, or recalculating the limitations period.

The Supreme Court found further support for its holding in the relevant legislative history. In 1993, the Legislature made changes that included the NOI requirement, the corresponding 182-day notice period, and an acknowledgment that the statute of limitations was tolled during this period. *See* MCL 600.2912b(1). When these changes were made, there were no changes to the relevant portions of MCL 600.5852, which had been enacted before the legislative changes in 1993.

Additionally, the Supreme Court emphasized the relationship between the mandatory NOI requirement and the corresponding tolling statute. Pursuant to MCL 600.2912b, a medical malpractice plaintiff must provide an NOI at least 182 days before filing suit and, in turn, MCL 600.5856(c) tolls the statute of limitations during the notice period. The Court found “no principled reason, and certainly no demonstrated legislative intent, to conclude that personal representatives who must comply with the notice requirements of MCL 600.2912b cannot receive the accompanying tolling benefits of MCL 600.5856.”

After concluding that *stare decisis* weighed in favor of overruling *Waltz*, the Court held that because Plaintiff provided her NOI before expiration of the wrongful-death saving provision in MCL 600.5852, the applicable period was tolled, and her August 14, 2023 complaint was timely. The Supreme Court therefore reversed the Court of Appeals and remanded the case to the trial court for further proceedings.

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