

IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
O’Connell, P.J., and K. F. Kelly and Riordan, JJ

LYNN PEARCE, Personal Representative of the
Estate of BRENDON PEARCE, Deceased,

Supreme Court Docket No. 158069

Plaintiff-Appellant,

Court of Appeals Docket No. 338990

v

THE EATON COUNTY ROAD COMMISSION,

Eaton County Circuit Court
Case No. 16-29-NI

Defendant-Appellee,

SUPPLEMENTAL AUTHORITY

and

LAWRENCE BENTON, Personal Representative of
the ESTATE OF MELISSA SUE MUSSER,
Deceased; and PATRICIA JANE MUSSER,

Defendants.

Joseph T. Collison, J.D. (P34210)
COLLISON & COLLISON
Attorneys for Plaintiff-Appellant Lynn Pearce
5811 Colony Drive, North
P.O. Box 6010
Saginaw, MI 48608-6010
(989) 799-3033
jtc@saginaw-law.com

Jon D. Vander Ploeg (P24727)
D. Adam Tountas (P68579)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defendant-Appellee Eaton County
Road Commission
100 Monroe Center NW
Grand Rapids, MI 49503-2802
(616) 774-8000
jvanderploeg@shrr.com

Thomas S. Barger (P54968)
GARAN LUCOW MILLER PC
Attorneys for Defendants Estate of Melissa Sue
Musser and Patricia Jane Musser
201 South Main Street – 5th Floor
Ann Arbor, MI 48104-2105
(734) 930-5600
tbarger@garanlucow.com

This case is pending before the Court on Application for Leave to Appeal by the plaintiff, who has brought suit against the Eaton County Road Commission. The Court of Appeals held that the plaintiff's claim needed to be dismissed under the authority of *Streng v Bd of Mackinac Co Rd Comm'rs*, 315 Mich App 449; 890 NW2d 680 (2016). Plaintiff argues that *Streng*, which required plaintiff to have given notice of the claim to the Road Commission within the statutorily required 60 days, not 120 days, was an announcement of a new rule of law that may not be given retroactive application to his claim. The Road Commission contends, and the Court of Appeals agreed, that *Streng* has retroactive application and bars the plaintiff's claim. This Court ordered that the Application here be held in abeyance pending its resolution of *W A Foote Memorial Hosp v Michigan Assigned Claims Plan*, Docket No. 156622 (**Exhibit A**).

The Court has now decided *W A Foote* in its Order dated October 25, 2019. Hence, the question of *Streng*'s application, whether retroactive or prospective only, is to be decided in accordance with *W A Foote*. The analysis supplied by this Court in *W A Foote* leads to the conclusion that the Court of Appeals reached the right decision in this case. *Streng* did not "clearly establish a new principle of law," and it therefore does not satisfy *Pohutski*'s threshold question. *Streng* has retroactive application, and the Court of Appeals properly held that plaintiff's Complaint is dismissed on that basis.

DATED: November 4, 2019

/s/ Jon D. Vander Ploeg
 Jon D. Vander Ploeg (P24727)
 D. Adam Tountas (P68579)
 SMITH HAUGHEY RICE & ROEGGE
 Attorneys for Defendant-Appellee Eaton County
 Road Commission
 100 Monroe Center NW
 Grand Rapids, MI 49503-2802
 (616) 774-8000

EXHIBIT A

Order

October 25, 2019

156622

W A FOOTE MEMORIAL HOSPITAL,
d/b/a ALLEGIANCE HEALTH,
Plaintiff-Appellant,

v

MICHIGAN ASSIGNED CLAIMS PLAN
and MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY,
Defendants-Appellees,

and

JOHN DOE INSURANCE COMPANY,
Defendant.

Michigan Supreme Court
Lansing, Michigan

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

SC: 156622
COA: 333360
Kent CC: 15-008218-NF

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On October 2, 2019, the Court heard oral argument on the application for leave to appeal the August 31, 2017 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we AFFIRM the holding of the Court of Appeals that this Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191 (2017), applies retroactively. Nonetheless, we VACATE that part of the judgment of the Court of Appeals stating that this Court's decision in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503 (2012), "effectively repudiated" the application of the "threshold question" and "three-factor test" set forth in *Pohutski v City of Allen Park*, 465 Mich 675 (2002), in the context of judicial decisions of statutory interpretation. In concluding that the Court was not setting forth a new law, the Court in *Spectrum Health* engaged in an analysis that is consistent with the analysis required by *Pohutski's* threshold question. *Spectrum Health* did not purport to repudiate *Pohutski's* framework, and the Court of Appeals erred by concluding to the contrary. Applying *Pohutski* to the instant case, because this Court's decision in *Covenant* did not clearly establish a new principle of law, *Covenant* does not satisfy *Pohutski's* threshold question, and the *Covenant* decision therefore applies retroactively.



a1015

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 25, 2019

Clerk