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Summary of Comments on MSC 165425 KAREN CARTER V DTN MANAGEMENT COMPANY Opinion - Leave Granted - Remand to Tr Ct 09/23/2024

This page contains no comments

the statutory limitations period by 102 days. He also disagreed that the administrative orders were valid exercises of the Supreme Court's superintending authority under Const 1963, art 6, § 4, stating that this holding improperly expanded the scope of that authority beyond anything contemplated in the caselaw on which the majority relied, in particular its extension to the exercise of legislative rather than judicial functions. For these reasons, he would have reversed the judgment of the Court of Appeals. Because the lower courts did not decide whether equitable tolling was permitted or appropriate in this case, he would have remanded the case to the trial court to address that issue.

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STATE OF MICHIGAN
SUPREME COURT

Page: 30

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KAREN CARTER,

Plaintiff-Appellee,

v

No. 165425

DTN MANAGEMENT COMPANY, doing
business as DTN MGT,

Defendant-Appellant.

VIVIANO, J. (*dissenting*).

The majority holds that our administrative orders issued at the beginning of the COVID-19 pandemic that had the effect of broadly tolling the running of statutory limitations periods by 102 days were valid exercises of both (1) our power to regulate practice and procedure and (2) our power to assume superintending control over all state courts. In so holding, the majority broadly expands our authority beyond that granted to us in the Constitution and tramples over separation-of-powers principles. I would conclude that issuing administrative orders extending deadlines for the initial filing of pleadings was beyond our constitutional authority. However, because the lower courts have not yet addressed plaintiff's alternative argument that equitable tolling is warranted in this case because she relied on our administrative orders, I would remand to the trial court for it to address that issue.

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administrative orders, issued in conjunction with Governor Whitmer’s executive orders, was to extend all filing deadlines by 102 days—the number of days from March 10 to June 19, 2020.

Regarding the present case, plaintiff’s claim accrued on January 10, 2018, and had a three-year statutory limitations period under MCL 600.5805(2). She filed her complaint on April 13, 2021, 94 days outside the three-year period. Thus, her complaint was only timely if our administrative orders extending the limitations period were valid.

II. ANALYSIS

A. SEPARATION OF POWERS AND THE AUTHORITY OF THIS COURT

Our state government is divided into three coequal branches: the legislative branch, the executive branch, and the judicial branch. Const 1963, art 3, § 2. Our Constitution provides that “[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” *Id.* This prohibition serves as the bedrock of our separation-of-powers jurisprudence. We have recognized that “an indispensable ingredient of the concept of coequal branches of government is that ‘each branch must recognize and respect the limits on its own authority and the boundaries of the authority delegated to the other branches.’” *Employees & Judge of the Second Judicial Dist Court v Hillsdale Co*, 423 Mich 705, 717; 378 NW2d 744 (1985), quoting *United States v Will*, 449 US 200, 228; 101 S Ct 471; 66 L Ed 2d 392 (1980). Thus, “ ‘the judiciary may not encroach upon the functions of the legislature.’ ”

prerequisite related to the deadline for filing of such a pleading, are tolled from March 10, 2020 to June 19, 2020.

But the practical effect of the orders “was to toll statutory limitations periods.” *Browning v Buko*, 510 Mich 917, 917 (2022) (VIVIANO, J., dissenting).⁵

MCR 1.108(1) establishes how to calculate the last day of a time period. It contains two narrow, limited rules: (1) the day of whatever triggers the running of the time period is not included, and (2) the last day of the period is included, unless that day falls on a day the court is closed (whether that is because the last day falls on a weekend, holiday, or day the court is closed by court order), in which case the period runs to the end of the next day that the court is open. For the most part, MCR 1.108 simply mirrors MCL 8.6, the only difference being that MCL 8.6 does not address court closures due to a court order.⁶

On the other hand, the practical effect of AO 2020-3 and AO 2020-18 was to broadly extend the statutory limitations period by 102 days. See *Compagner v Burch*, ___ Mich App ___, ___; ___ NW3d ___; slip op at 19 (2023) (Docket No. 359699) (contrasting “the minor, procedural effects of MCR 1.108(1) [that] are minimal in nature, insignificant in

⁵ On this point, I agree with the Court of Appeals that the trial court erred by interpreting AO 2020-3 as only extending filing deadlines that fell within the 102 days that it was in effect. See *Carter v DTN Mgt Co*, 345 Mich App 378, 383-386; 5 NW3d 372 (2023). AO 2020-18 made this clear:

For time periods that started before Administrative Order No. 2020-3 took effect, the filers shall have the same number of days to submit their filings on June 20, 2020, as they had when the exclusion went into effect on March 23, 2020. For filings with time periods that did not begin to run because of the exclusion period, the filers shall have the full periods for filing beginning on June 20, 2020. [Administrative Order No. 2020-18, 505 Mich at clviii.]

⁶ To the extent that MCR 1.108(1) could be said to substantively conflict with MCL 8.6 by extending time periods when the last day of the period would fall on a day a court is closed, MCR 1.108(1) is consistent with our ability to equitably toll the running of statutory limitations periods when courts are completely closed. See Part II(D) of this opinion.

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administrative orders and Governor Whitmer's executive orders were intertwined, referencing each other and working together in an attempt to deviate from statutes of limitations that had been validly enacted by the Legislature. It is improper for one branch to encroach on the functions of another, *Bartkowiak*, 341 Mich at 344, but the effects of an encroachment and the potential deprivation of liberty are exacerbated when two branches work together to encroach on the functions of the third branch. While I do not believe my colleagues and I issued our administrative orders in bad faith, unlike with the legislative process, the public had no ability to observe our discussions and deliberations regarding our administrative orders, nor did they have an ability to provide input on those orders. Even the appearance of this Court's working with the Governor to usurp the Legislature's authority risks eroding public confidence in the judicial system and the functioning of our government as a whole.

For these reasons, I would hold that issuing AO 2020-3 and AO 2020-18 exceeded our authority under Const 1963, art 6, § 5 and violated the separation of powers.

C. THIS COURT CANNOT CREATE EXCEPTIONS TO STATUTES OF LIMITATIONS THROUGH SUPERINTENDING CONTROL

The majority also holds that the administrative orders were valid exercises of our superintending authority under Const 1963, art 6, § 4. The majority's decision to expand our superintending authority is somewhat perplexing, as no party raised this issue below or in this Court. Rather, the Court of Appeals dedicated a few stray lines to the idea that excluding 102 days from the computation of time under MCR 1.108 falls within our superintending authority. The majority here follows the Court of Appeals' lead, broadly