



ALERT: Michigan Supreme Court reshapes filing timeline for medical malpractice claims

Waltz v Wyse overruled; “notice tolling” applies to Wrongful Death Act’s “savings provision.”

By: Drew Broaddus, Appellate Lawyer - July 31, 2026

OVERVIEW

- The Michigan Supreme Court has issued a significant decision that reshapes the timeline for filing wrongful death medical malpractice claims.
- In *Ernest v Brown*, the Court overruled its 22-year-old decision in *Waltz v Wyse*, holding that the statutory tolling triggered by a medical malpractice notice of intent also applies to the Wrongful Death Act’s savings provision. The ruling expands the time available to file certain wrongful death malpractice actions and marks a major shift in Michigan law.
- This alert summarizes the Court’s reasoning, explains how the decision changes the filing deadlines, and highlights key considerations for healthcare providers and defense counsel moving forward.

In *Ernest v Brown*, ___ Mich __; ___ NW3d ___ (2026) (Docket No. 168462), the Michigan Supreme Court overruled *Waltz v Wyse*, 469 Mich 642 (2004) and held that “notice tolling” under MCL 600.2912b can extend the time for filing suit under the Wrongful Death Act’s “savings provision,” MCL 600.5852. The ruling gives wrongful death claimants more time to file medical malpractice actions in certain situations. Indeed, depending on the timing of the letters of authority and the notice of intent (“NOI”), a suit could be filed more than five years after the alleged malpractice. See *Ernest*, ___ Mich at __; slip op at 9-10.

Generally, a plaintiff must bring a claim of medical malpractice within two years of the accrual of the claim. MCL 600.5805(8). A medical malpractice claim “accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.” MCL 600.5838a(1). A medical malpractice action is barred if it is not commenced within the statutorily required timeframe time limits. MCL 600.5838a(2). In addition, MCL 600.2912b(1) requires a medical malpractice plaintiff to provide an NOI prior to filing suit: “...a person shall not commence an action alleging medical malpractice against a health professional or health facility unless the person has given the health professional or health facility written notice under this section not less than 182 days before the action is commenced.” Compliance with the notice of intent requirement tolls the statute of limitations or repose: “At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given.” MCL 600.5856(c).

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But in wrongful death cases, MCL 600.5852(1) gives an estate additional time to file suit: “If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action that survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run.” However, the date of filing can be no longer than three years after the statute of limitations expired. MCL 600.5852(4).

In *Waltz*, the Michigan Supreme Court held that the NOI tolling period does not extend the two-year wrongful death saving provision because the “saving provision” is not a statute of limitations or a statute of repose. The Court explained: “Section 5852 is a saving provision designed to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions.” *Waltz*, 469 Mich at 655 (cleaned up). “It is not a ‘statute of limitations’ or a ‘statute of repose.’” *Id.* “Thus, the notice tolling provision” —which explicitly applies only to “the statute of limitations or repose”— “does not operate to toll the additional period permitted under § 5852 for filing wrongful death actions.” *Id.* (cleaned up).

In *Ernest*, plaintiff alleged that the defendants committed medical malpractice on July 16, 2020. The complaint was filed on August 14, 2023, outside the two-year limitations period. But the plaintiff asserted that her complaint was timely because the wrongful-death savings provision allowed a personal representative to file suit within two years of the date the letters of authority were issued (June 7, 2021), and because she was entitled to 182 days of notice tolling under MCL 600.2912b (plaintiff mailed the NOI on February 10, 2023). The defendants moved for summary disposition based on *Waltz*; the trial court followed *Waltz* and dismissed the suit. The Court of Appeals affirmed, finding that it “lack[ed] the authority to consider plaintiff’s argument[s]” that “*Waltz*’s holding is contrary to the Legislature’s intent.” *Ernest v Brown*, unpublished opinion per curiam of the Court of Appeals, issued March 20, 2025 (Docket No. 368566), pp 3-4. The plaintiff then applied for leave to appeal to the Michigan Supreme Court. The Supreme Court ordered oral argument, and requesting additional briefing, to address: “(1) whether *Waltz* ... correctly held that MCL 600.5856(c) does not toll the additional period permitted for filing wrongful-death actions provided in MCL 600.5852; and (2) if *Waltz* was incorrectly decided, whether it should nonetheless be retained under principles of stare decisis....” *Ernest v Brown*, 25 NW3d 673 (Mich, 2025). The Supreme Court eventually answered “no” to both questions.

According to the *Ernest* majority, *Waltz* erred by concluding that MCL 600.5856 does not toll the additional period permitted for filing wrongful-death actions in MCL 600.5852. Rather, MCL 600.5852 incorporates a period of limitations, such that MCL 600.5856 operates to toll MCL 600.5852. This meant that *Ernest*’s complaint was timely filed.

The *Ernest* majority explained: MCL 600.2912b(1) generally provides that a plaintiff alleging medical malpractice must provide an NOI to the defendants at least 182 days prior to filing a complaint. Under MCL 600.5856(c), the running of the two-year statutory limitations period for malpractice actions in MCL 600.5805(8) is tolled during the 182-day notice period required by MCL 600.2912b(1) if the statutory limitations period would otherwise expire during the notice period; in such cases, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given. Importantly, MCL 600.5856 tolls only “statutes of limitations or repose.”

MCL 600.5852 provides that when a decedent dies before the statutory limitations period has run, or within 30 days after it has run, the personal representative has an additional two years to commence a lawsuit from the date the letters of authority are issued, so long as the action is commenced no later than three years after the limitations period has run. The *Ernest* majority noted that prior to *Waltz*, MCL 600.5852 had for many years been characterized as a saving provision that extends the period of limitations for a personal representative to file an action. *Ernest*, __ Mich at __; slip op at 7-8. There was “general agreement” on this point (i.e., that § 5852 was functionally a statute of limitations) until *Miller v Mercy Mem Hosp*, 466 Mich 196, 202 (2002) deemed § 5852 “a saving statute, not a statute of limitations.” Two years later, *Waltz* flowed from the “convoluted backdrop” created by Miller’s “confusing” and poorly explained holding. *Ernest*, __ Mich at __; slip op at 8-9. The *Ernest* majority found this result to be inconsistent with legislative intent. *Ernest*, __ Mich at __; slip op at 14-16.

But “[f]inding that a decision was wrongly decided is only the first step in determining whether that decision should be overturned.” *Id.* at __; slip op at 16. So, the *Ernest* majority provided a lengthy discussion of stare decisis (the legal concept that precedent should be followed even if disagreed with), but ultimately had little trouble finding that “stare decisis does not compel the retention of *Waltz*’s flawed rule.” *Id.* at __; slip op at 24. This was largely because the majority viewed *Waltz* as an “abrupt” departure from how “the bench and bar” understood § 5852 at the time. *Ernest*, __ Mich at __; slip op at 22-23 n 9.

Justices Kimberly Thomas and Brian Zahra dissented. Justice Thomas expressed doubts about whether *Waltz* was correctly decided, but would have let that precedent stand out of respect for stare decisis. Justice Zahra concurred in Justice Thomas’ stare decisis analysis, but also opined that *Waltz* was correct as a matter of statutory construction.

Since *Waltz* was a 22-year old precedent, overruling it will likely have ripple effects. See, for example, *Ottgen v Katranji*, 511 Mich 223, 243 n 9 (2023). It is not yet clear how far those ripples will reach, as the *Ernest* majority limited its holding to the narrow question of whether MCL 600.2912b applies to MCL 600.5852.



Drew Broadbus

Drew specializes in defending complex civil litigation cases, including those involving general negligence, premises liability, motor vehicle accidents, and insurance coverage disputes.

[Contact Drew](#)