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**DISTRICT IV**

October 17, 2018

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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1341

William P. Rippl v. Actavis Mid Atlantic, LLC  
(L.C. # 2016CV1262)

Before Kloppenburg, Blanchard and Fitzpatrick, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Relator William P. Rippl<sup>1</sup> appeals from a circuit court order dismissing a lawsuit commenced against Actavis Mid Atlantic, LLC, and other pharmaceutical companies,<sup>2</sup> alleging that they violated Wisconsin's now-repealed False Claims for Medical Assistance Act (FCMAA), formerly WIS. STAT. § 20.931 (2013-14). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>3</sup> Because the FCMAA's repeal abrogated the underlying cause of action, the circuit court properly dismissed the lawsuit. We affirm.

Enacted in 2007, the FCMAA authorized penalties applicable to “any person” who, among other offenses, “[k]nowingly presents or causes to be presented” to the State “a false claim for medical assistance.” WIS. STAT. § 20.931(2) (2013-14). It also empowered private citizens, as qui tam plaintiffs or “relators,” to bring claims under the FCMAA on behalf of the State in exchange for a portion of the recovery. WIS. STAT. 20.931(5) and (11) (2013-14). The

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<sup>1</sup> The underlying action and subsequent appeal were commenced by relator-appellant Peggy A. Lautenschlager, acting as a private citizen on behalf of the State. Lautenschlager passed away on March 31, 2018, after the appeal was fully briefed. Thereafter, we construed a May 23, 2018 letter from Lautenschlager's counsel to be a suggestion of death triggering the ninety-day period to file a motion for substitution under WIS. STAT. § 803.10(1), and placed the appeal on hold. Within the ninety-day period, we received from Lautenschlager's counsel a motion seeking to substitute Special Administrator William P. Rippl in place of Peggy A. Lautenschlager. The respondents submitted a response opposing substitution on the ground that Lautenschlager's death extinguished her claim, but asserting that this court “should first take the opportunity to address the merits of the underlying issue on appeal and finally put Petitioner's baseless claim to rest.” The appellant has not yet briefed whether the underlying claim survives Lautenschlager's death. Given the respondents' position, we will assume for purposes of this appeal that substitution is appropriate and will permit Rippl to substitute in as the petitioner-appellant. The caption is amended to reflect this substitution. Because the bulk of the case was litigated with Lautenschlager serving as relator, we will generally refer to the petitioner-appellant as “relator,” rather than by name.

<sup>2</sup> Though a departure from our general practice, we will refer to the defendant drug companies by their party designation, as “respondents.”

<sup>3</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

legislature repealed the FCMAA in 2015, effective July 14, 2015. *See* 2015 Wis. Act 55, § 945N (“20.931 of the statutes is repealed.”). In May 2016, the relator brought suit against the respondents alleging that they defrauded the State and its Medicaid program by causing the submission of false pricing information regarding prescription drugs, in violation of the FCMAA.

The respondents moved to dismiss the complaint based on the FCMAA’s repeal, asserting that, pursuant to 2015 Wis. Act 55, § 9318(3f)(a) and (b), the repeal abrogated all claims except “actions filed before” the repeal’s effective date of July 14, 2015. The relator did not dispute that the lawsuit was filed after the repeal’s effective date but argued that the claim could proceed because the rights of action had accrued before the repeal. The circuit court determined that “the repeal of § 20.931 abrogated the cause of action underlying this case,” and dismissed it with prejudice.

On appeal, the parties agree that the FCMAA was repealed effective July 14, 2015, and that the relator filed the underlying suit on May 11, 2016, after the repeal’s effective date. The parties dispute the effect of the repealing language on the relator’s claim. The respondents argue that, by its plain language, Act 55 abrogates all claims filed after July 14, 2015. According to the relator, Act 55 “does not expressly abrogate accrued rights of action,” and therefore, the claim survives because the rights of action accrued prior to July 14, 2015. The relator relies on Wisconsin’s general savings statute, WIS. STAT. § 990.04, which provides that “rights of action accrued” under a repealed statute “shall be preserved and remain in force ... unless specially and expressly remitted, abrogated or done away with by the repealing statute.”

The construction of statutes and their application to a particular set of facts are questions of law that we review de novo. *State v. Isaac J.R.*, 220 Wis. 2d 251, 255, 582 N.W.2d 476 (Ct. App. 1998). We conclude that the plain language in Act 55 preserves only FCMAA actions filed before the repeal’s effective date, and abrogates all others, regardless of the date of accrual.

Act 55 spells out in exacting detail when and how its provisions became effective:

(3f) Qui TAM CLAIMS FOR FALSE CLAIMS FOR MEDICAL ASSISTANCE.

(a) The treatment of sections 20.931, 165.25 (11), and 893.981 of the statutes does not apply to actions filed before the effective date of this subsection.

(b) The treatment of sections 165.08, 801.02 (1), 803.09 (1) and (2), 804.01 (2) (intro.), and 805.04 (1) and (2m) of the statutes first applies to actions filed after the effective date of this subsection.

2015 Wis. Act 55, § 9318(3f)(a) and (b). The FCMAA was repealed except as to “actions filed before” July 14, 2015. The legislature specifically and expressly excluded filed actions from the repeal, and did not exclude unfiled actions, regardless of whether they had already accrued. To read Act 55 as intending to preserve unfiled actions would render § 9318(3f)(a) superfluous.

Our conclusion that the repeal extinguishes any action not filed by the effective date is reinforced by other provisions of 2015 Wis. Act 55. Significantly, § 9318(3f)(b) provides that material amendments eliminating statutory cross-references to WIS. STAT. § 20.931, including statutory exceptions essential to the functioning of the FCMAA, would “first appl[y] to actions filed after the effective date” of the repeal.<sup>4</sup> The text and structure of Act 55 manifest the

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<sup>4</sup> Similarly, in 2015 Wis. Act. 55, §§ 3504c and 4639(g), the legislature repealed ancillary provisions of the FCMAA, except as to actions filed before the repeal’s effective date. *See* 2015 Wis. Act 55, § 9318 (3f) (a).

legislature’s clear intent that an action’s filing date dictates the effect of the FCMAA’s repeal. For actions filed before the effective date, the FCMAA remained in place. For “actions filed after” that date, all statutory references to WIS. STAT. § 20.931 were deleted, eliminating the legal architecture that supported FCMAA claims. Act 55 therefore expressly abrogated all claims under § 20.931 except those “filed before” its “effective date.” See *Marotz v. Hallman*, 2007 WI 89, ¶18, 302 Wis. 2d 428, 734 N.W.2d 411 (“In interpreting a statute, courts give effect to every word so that no portion of the statute is superfluous.”).

Finally, we reject the relator’s contention that the claim survives under WIS. STAT. § 990.04 because Act 55 “does not expressly abrogate accrued rights of action.” “[S]ilence is not an express abrogation,” the relator asserts, and “an implicit abrogation of a cause of action is no abrogation at all.” However, Act 55 is explicit. The legislature gave detailed instructions as to when and how every provision of the repeal would take effect. Act 55 cannot be reconciled with the preservation of a claim filed after the repeal’s effective date. To the extent the relator relies on case law to invoke § 990.04, we agree with the respondents that the cited cases are inapt; § 990.04 has never been applied to defy such clearly expressed legislative intent.

Upon the foregoing reasons,

IT IS ORDERED that the motion to substitute is granted. The caption is amended to reflect the substitution of William P. Rippl for Peggy A. Lautenschlager as the petitioner-appellant.

IT IS FURTHER ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*