STATE OF MICHIGAN

COURT OF APPEALS

BURNETTE FOODS, INC.,

Plaintiff-Appellant,

v

MICHIGAN AGRICULTURAL MARKETING AND BARGAINING BOARD,

Defendant-Appellee.

UNPUBLISHED
January 23, 1998

No. 189534
MAMBB
LC No. 95-491-17-CK

Before: Markey, P.J., and Michael J. Kelly and Whitbeck, JJ.

PER CURIAM.

Burnette Foods, Inc. ("Burnette") seeks review of a decision in 1994 by defendant Michigan Agricultural Marketing and Bargaining Board ("MAMBB") accrediting the Red Tart Cherry Growers Division of the Michigan Agricultural Cooperative Marketing Association ("MACMA") as the bargaining association for a bargaining unit of red tart cherry producers. Burnette asks that we nullify this accreditation. We decline the invitation.

I

Initially, we note that Burnette's request for relief in this Court was not timely filed. Burnette asserts that this Court has jurisdiction over this appeal pursuant to MCL 290.705(2); MSA 12.94(105)(2) which provides that, "[a]ny person aggrieved by a final order of the board [MAMBB] granting or denying in whole or in part the relief sought may obtain a review of an order in the court of appeals, by filing in the court a written petition requesting that the order of the board be modified or set aside." Burnette treats the order accrediting MACMA as a bargaining representative as the final order from which relief is sought. Although § 290.705(2) does not specify a time within which relief must be sought in this Court, an appeal of right in a civil action must be taken within twenty-one days of the order being appealed from unless another time is provided by law. MCR 7.204(A)(1). Unopposed documentary evidence indicates that MACMA was certified as a bargaining representative on March 29, 1994. Burnette's petition for review in this Court was not filed until October 10, 1995. Thus, Burnette's appeal to this Court was not timely as an appeal of right. Further, Burnette's petition was not even timely as a delayed application for leave to appeal because, at the time that it was filed, a late application for leave was required by MCR 7.205(F)(3) to be filed within eighteen months of the order

being appealed.[1] Nevertheless, we are not precluded from review because the filing requirements for an application for leave to appeal are not jurisdictional. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 39; 539 NW2d 526 (1995).

II

MCL 290.710(1); MSA 12.94(110)(1), part of the Agricultural Bargaining and Marketing Act, (the "Act") purports to provide that such an association accredited under the Act will be the exclusive sales agent for producers in the bargaining unit, including members and non-members of the association, in "negotiations with handlers." In essence, the Act defines a "handler" to include those who purchase agricultural commodities from producers for processing or sale and the agents of other handlers, although certain purchasers of agricultural commodities are excluded from this definition. MCL 290.702; MSA 12.94(102). Evidently, the Act is aimed at remedying an actual or perceived inequality of bargaining power between producers and purchasers of agricultural commodities.

However, in *Michigan Canners & Freezers Ass'n, Inc v Agricultural Marketing and Bargaining Bd*, 467 US 461, 464, 477-478; 104 S Ct 2518; 81 L Ed 2d 399 (1984), the United States Supreme Court held that the Act was preempted by the federal Agricultural Fair Practices Act, 7 USC 2301, et seq., to the extent that the state law authorized producers' associations, such as MACMA, to compel non-member producers to comply with the association's marketing contracts, to pay fees to the association and to preclude non-members from marketing goods themselves. Rather, under the Agricultural Fair Practices Act, "it is unlawful for either a processor or a producers' association to engage in practices that interfere with a producer's freedom to choose whether to bring his products to market himself or to sell them through a producers' cooperative association." *Michigan Canners, supra* at 467 US 464. Thus, regardless of whether MACMA was certified by MAMBB as a bargaining representative under the Act, producers of red tart cherries in the "bargaining unit" were free to decide whether they wished to join MACMA. Further, non-members of MACMA within the "bargaining unit" also remained free to directly negotiate purchase agreements with purchasers of red tart cherries.

As a general principle, one may not rightfully invoke the jurisdiction of a court to enforce private rights unless one has, in an individual or representative capacity, some real interest in the cause of action. See, e.g. *Sirovey v Campbell*, 223 Mich App 59, 67; 565 NW2d 857 (1997). The requirement of standing "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy." *City of Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997); see also *Donaldson v Alcona County Bd of County Road Commissioners*, 219 Mich App 718, 722; 558 NW2d 232 (1996). To have standing, a party must have a substantial interest that will be detrimentally affected in a manner different from the interest of the citizenry at large. *Michigan Bell Telephone Co v Public Service Comm*, 214 Mich App 1, 5; 542 NW2d 279 (1995).

The only conceivable particularized interest that Burnette has in this matter is that MAMBB's certification of MACMA might increase the bargaining power of producers of red tart cherries and, thereby, economically disadvantage Burnette. However, as set forth above, producers in the "bargaining unit" were free to join or refuse to join MACMA regardless of whether it was certified as a bargaining representative. Thus, producers who wished to join MACMA could obtain the actual or

perceived increase in bargaining power from collective bargaining whether or not MAMBB classified MACMA as a bargaining representative. Further, non-members of MACMA in the "bargaining unit" were free to sell red tart cherries to Burnette or other purchasers for amounts less than that agreed to by MACMA.

Accordingly, we conclude that Burnette lacks standing to challenge the certification of MACMA as a bargaining representative because its particularized economic interest was not detrimentally affected by the certification in a manner different from the interest of the citizenry at large. Further, at least arguably, Burnette's economic interest was not directly and adversely affected by the certification. In essence, Burnette attacks the certification as a means to avoid the effect of the contracts into which it entered and not because of any direct detrimental effect flowing from the certification itself. The fact that Burnette wishes now to avoid the effect of contracts into which it entered several years ago is not sufficient to confer standing upon it.

III

We also conclude that the doctrine of laches should be applied to bar consideration of Burnette's claim. The doctrine of laches is a tool of equity that may remedy the general inconvenience resulting from delay of the assertion of a legal right which is practicable to assert. *Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996). This doctrine applies in cases where there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that result in prejudice to a party. *Id.* As noted above, Burnette did not seek relief in this Court until after eighteen months had passed from the 1994 accreditation of MACMA. While we recognize that Burnette earlier filed a lawsuit in Charlevoix Circuit Court seeking relief, that suit was not brought until April 1995, more than a year after the accreditation of MACMA. Prior the initiation of this suit, Burnette entered into a contract with MACMA for the purchase of red tart cherries. Presumably, other purchasers of red tart cherries also entered into such contracts. It would be totally inequitable to upset these business relationships based upon Burnette's late challenge to the accreditation of MACMA. Accordingly, we hold that Burnette's challenge to the accreditation of MACMA is barred by the doctrine of laches.

IV

We also note that Burnette asks us to provide a "clarification of powers of a bargaining agent such as MACMA" under the Act "regarding bargaining for 'members' with outside marketing agreements with processing cooperatives." However, Burnette has not stated *how* we should clarify the statute. In any event, the Court's basic function is to decide cases, not to render broad advisory decisions on the meaning of statutes. See *People v Wilcox*, 183 Mich App 616, 620; 456 NW2d 421 (1990).

Relief denied. Defendant may tax costs.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ William C. Whitbeck

[1] MCR 7.205(F)(3) has subsequently been amended and now requires that a late application for leave to appeal be filed within twelve months "after entry of the order or judgment on the merits."