

STATE OF MICHIGAN
COURT OF APPEALS

NORMA NACY,

Plaintiff-Appellee,

v

MERCURY PLASTICS COMPANY/CHRYSLER
CORPORATION,

Defendant-Appellant.

UNPUBLISHED

April 28, 1998

No. 192525

Macomb Circuit Court

LC No. 95-000690 CZ

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Defendant appeals as of right from the trial court's grant of summary disposition in favor of plaintiff and the resulting entry of a judgment on a worker's compensation magistrate's decision pursuant to MCL 418.863; MSA 17.237(863). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erroneously refused to entertain defendant's due process challenge to the validity of the magistrate's decision and order. Although appeals through administrative channels are preferred and encouraged, procedural due process defenses to a judgment, decision, order, or award of a worker's compensation magistrate not raised in an underlying worker's compensation proceeding are not waived if timely raised in the circuit court because a circuit court is vested with the power to examine the validity of the decisions entered and empowered to determine whether the decisions are void or voidable for lack of jurisdiction over the parties or of notice to the parties. *Abbott v Howard*, 182 Mich App 243, 247-249, 251; 451 NW2d 597 (1990); see also *Guerrero v Brighton Athletic Ass'n*, 81 Mich App 58, 61-62 n 2; 264 NW2d 119 (1978). Accordingly, the circuit court is empowered to vacate a judgment, decision, order, or award of an administrative agency that was secured in violation of a party's right to procedural due process. *Abbott, supra* at 248-249.

Nevertheless, the error was harmless, defendant having failed to demonstrate a colorable claim of a due process violation. Defendant's assertion to the contrary, oral notice to any representative of

* Circuit judge, sitting on the Court of Appeals by assignment.

defendant, in this case defendant's claims representative, constituted sufficient notice to survive a due process challenge. See *Norris v Chrysler Corp*, 391 Mich 469; 216 NW2d 783 (1974). Additionally, absent a sworn offer of proof supplied by the claims representative to whom notice, on this record, was sent and received, defendant failed to call into question the accuracy of an inference otherwise reasonably drawn from plaintiff's documentation that defendant's claims representative received written notice, but never forwarded the notice to defendant's legal department.

We affirm.

/s/ Richard A. Bandstra
/s/ Barbara B. MacKenzie
/s/ Nick O. Holowka