

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN M. BRODER and JOSEPH LENTINI,

UNPUBLISHED

January 25, 2000

Plaintiffs-Appellants,

v

No. 213518

Court of Claims

MICHIGAN DEPARTMENT OF CORRECTIONS
and MICHIGAN PAROLE BOARD,

LC No. 98-016920-CM

Defendants-Appellees.

Before: Smolenski, P.J., and Griffin and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition.¹ We affirm.

Appellate courts review the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendants moved for summary disposition on several grounds, including governmental immunity pursuant to MCR 2.116(C)(7). In reviewing a motion under MCR 2.116(C)(7), "[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden, supra* at 119. A motion under MCR 2.116(C)(7) should not be granted unless no factual development could provide a basis for recovery. *Harrison v Dir of Dep't of Corrections*, 194 Mich App 446, 449; 487 NW2d 799 (1992).

Plaintiffs filed a lengthy complaint in the Court of Claims seeking two million dollars in compensatory damages, injunctive relief and declaratory relief from defendants, in which they alleged numerous constitutional violations, as well as discrimination and harassment, negligence, and professional negligence, malpractice and malfeasance. Assuming that plaintiffs' allegations are true, we conclude that defendants, as governmental entities, are entitled to statutory immunity from plaintiffs' claims seeking monetary damages under MCL 691.1407; MSA 3.996(107), which provides in pertinent part:

(1) Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function.

Governmental immunity embraces all activities relative to the operation of prisons. *Russell v Dep't of Corrections*, 234 Mich App 135, 137; 592 NW2d 125 (1999). See also *Harrison, supra* at 449-451 (trial court properly granted the defendants' motion for summary disposition under MCR 2.116(C)(7) on the ground of governmental immunity in the plaintiffs' suit for damages against the Department of Corrections, Bureau of Pardons and Paroles, and Bureau of Field Services). Accordingly, we hold that plaintiffs' damage claims against defendants were barred by governmental immunity and summary disposition was proper pursuant to MCR 2.116(C)(7).

We further conclude that plaintiffs' remaining claims should be dismissed, because the Court of Claims has no jurisdiction to issue injunctive or declaratory relief absent a claim against the state for money damages. The Court of Claims has exclusive jurisdiction over all "claims and demands, liquidated and unliquidated, ex contractu and ex delicto against the state" and its agencies. MCL 600.6419(1)(a); MSA 27A.6419(1)(a). A complaint seeking only money damages from the state must be filed in Court of Claims. *Silverman v University of Michigan Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994). While a complaint seeking only equitable or declaratory relief from the state must be filed in a circuit court, a complaint seeking money damages from the state, in addition to equitable or injunctive relief against the state, must be filed in the Court of Claims because that court is the sole forum capable of deciding the entire case. *Id.*

Here, because plaintiffs' claims for monetary damages are barred, we conclude that plaintiffs' remaining counts for injunctive and declaratory relief must fail for lack of jurisdiction. This Court dealt with a similar jurisdictional issue in *77th Dist Judge v State*, 175 Mich App 681, 698-700; 438 NW2d 333 (1989), which we adopt here:

Because we have concluded as a matter of law that damages are an inappropriate remedy for plaintiff's concededly valid allegation of a deprivation of equal protection, we are, at this juncture, forced to address the issue of whether the Court of Claims had subject-matter jurisdiction to entertain the claim and to grant any relief other than money damages.

Pursuant to MCL 600.6419(1); MSA 27A.6419(1), the Court of Claims has exclusive jurisdiction to "hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms, or agencies." The Court of Claims also has jurisdiction concurrent with the circuit court over any demand for equitable or declaratory relief ancillary to a claim filed pursuant to MCL 600.6419; MSA 27A.6419. MCL 600.6419a; MSA 27A.6419(1). Otherwise, the Court of Claims lacks jurisdiction to entertain equitable claims. *Rieth-Riley Construction Co, Inc v Dep't of Transportation*, 136 Mich App 425, 434; 357 NW2d 62 (1984); *Cridler v*

Michigan, 110 Mich.App. 702, 713-715; 313 NW2d 367 (1981). Thus, the Court of Claims had no jurisdiction to grant injunctive relief in this case.

Jurisdiction to grant declaratory relief is a more difficult matter. In *Taylor v Auditor General*, 360 Mich 146; 103 NW2d 769 (1960), it was held that the Court of Claims had no jurisdiction to grant declaratory judgments. However, in *Greenfield Construction Co, Inc v Dep't of State Highways*, 402 Mich 172; 261 N.W.2d 718 (1978) (plurality opinion), three justices expressly subscribed to the view that the Court of Claims had declaratory jurisdiction and two others intimated that they would follow that view if the issue were presented in an appropriate case. See also *Grunow v Sanders*, 84 Mich App 578; 269 NW2d 683 (1978). The holding in *Taylor*, premised on the absence of an equity side to the Court of Claims, was discredited in view of the subsequent abolition of procedural distinctions between the law and equity sides of a court docket. However, even under the expressions in *Greenfield* affording the power to grant declaratory judgment, it is assumed that the Court of Claims would otherwise have jurisdiction over the substantive claim underlying the demand for relief. To that end, Justice LEVIN, perhaps the leading advocate of this view, stated:

“The Court of Claims, under its enabling act, has exclusive jurisdiction of an action asserting a claim or demand, ex contractu or ex delicto, against the state or one of its departments. While an action for a declaratory judgment involving the state need not assert a claim or demand against it--and if it does not it may, subject to other provisions of law, be brought in the circuit court--an action for a declaratory judgment asserting such a claim or demand is subject to the exclusive jurisdiction of the Court of Claims.” [*Greenfield, supra* at 230.]

Thus, declaratory judgment is appropriate in the Court of Claims only if the underlying dispute or controversy is of a nature lending itself to an eventual remedy in money damages against the state or one of its branches.

Accordingly, we hold that the Court of Claims has no jurisdiction over plaintiffs' remaining equitable and declaratory claims.²

Affirmed.

/s/ Michael R. Smolenski

/s/ Richard Allen Griffin

/s/ Janet T. Neff

¹ Defendants filed motions for summary disposition pursuant to MCR 2.116(C)(5), (6), (7), (8) and (10). In its order, the trial court granted defendants' motion for summary disposition filed "pursuant to MCR 2.116" without specifying a sub-section.

² Our dismissal of plaintiffs' non-monetary claims for lack of jurisdiction is not an adjudication of the merits of those claims and should not be construed as such.