

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN DISPLAYS, INC.,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee,

and

OUTDOOR SYSTEMS, INC.,

Intervening Defendant-Appellee.

UNPUBLISHED

June 6, 2000

No. 219056

Kent Circuit Court

LC No. 98-011316-CZ

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff applied for a permit for a sign structure erected along US 131. Defendant denied the application for the reason that another sign structure, erected pursuant to a permit issued to Outdoor Systems, Inc., existed within five hundred feet of plaintiff's site. MCL 252.317(1); MSA 9.391(117)(1). Shortly after plaintiff's application was denied, Outdoor Systems relinquished its permit and requested a new permit for the same location.

Plaintiff filed suit in circuit court, seeking declaratory, mandamus, and injunctive relief. The circuit court issued a temporary restraining order precluding defendant from issuing a permit for a sign structure for any site within five hundred feet of plaintiff's location; however, the temporary restraining order expired, and did not ripen into a preliminary injunction.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(4) and (8). The circuit court granted the motion pursuant to MCR 2.116(C)(4), finding that it lacked subject matter jurisdiction for the reason that plaintiff had not exhausted its administrative remedies prior to filing suit.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition. We disagree and affirm. As a general rule, if an administrative remedy is available, that remedy must be exhausted before a circuit court can consider a case. *Michigan Supervisors Union v Dep't of Civil Service*, 209 Mich App 573, 576-577; 531 NW2d 790 (1995). The rule has a number of exceptions, and can be deemed inapplicable if equitable relief in the form of an injunction is sought, *Consumers Power Co v Public Service Comm*, 415 Mich 134, 155; 327 NW2d 875 (1982), if a constitutional issue is raised, *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 39; 494 NW2d 787 (1992), or if pursuing an administrative remedy would be futile. *Manor House Apartments v Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). In the instant case, these exceptions did not serve to preclude application of the exhaustion of administrative remedies doctrine. Plaintiff's request for injunctive relief became moot when the temporary restraining order expired and defendant issued the new permit to Outdoor Systems. Plaintiff's complaint raised constitutional and non-constitutional issues. Application of the exhaustion of administrative remedies doctrine is not precluded when non-constitutional issues are raised. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 524; 534 NW2d 206 (1995). Finally, plaintiff's assertion that pursuit of an administrative remedy would in all likelihood be futile is not substantiated.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra