

STATE OF MICHIGAN
COURT OF APPEALS

PAYNE & DOLAN, INC.,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED

June 30, 2000

No. 220572

Court of Claims

LC No. 98017047 CM

Before: Doctoroff, P.J., and O’Connell and Wilder, JJ.

PER CURIAM.

Plaintiff appeals by leave granted¹ from an order entered by the Court of Claims dismissing its contract claim for lack of jurisdiction. We affirm.

Plaintiff was the low bidder on a highway resurfacing project along US-23 undertaken by the Michigan Department of Transportation (MDOT). The project was characterized as “preventative maintenance” and the parties presumed that the underlying concrete base of the roadway was structurally sound. After the project commenced, plaintiff discovered that the concrete base was deteriorating and it claimed that the deterioration prevented it from achieving the required density in the new surface layer. Because of this inability to meet the contractual specifications with regard to the surface density of the paving material, MDOT notified plaintiff that there would be a downward adjustment in the contract price, referred to as a “disincentive.” It is undisputed that plaintiff was initially paid the full price under the contract and was not billed for the disincentive by MDOT until later.

Plaintiff sought administrative review of MDOT’s assessment, arguing that the changed conditions of the roadway should have excused it from complying with the contract specifications.

¹ Plaintiff actually filed the instant appeal by right pursuant to MCR 7.204(A)(1); however, because the Court of Claims’ order from which plaintiff appeals was an appeal from an agency decision, plaintiff did not have an appeal by right and was required to seek leave to appeal to this Court. See MCR 7.203(A)(1)(a); MCL 600.6446(1); MSA 27A.6446(1). Therefore, we consider plaintiff’s claim of appeal as an application for leave granted.

Following several levels of departmental review, MDOT issued an administrative decision concluding that plaintiff was not excused from complying with the contract specifications and the disincentive should not be waived.

Nearly one year later, plaintiff filed the instant action in the Court of Claims asserting that MDOT breached the contract by not adjusting the specifications regarding the density of the paving material and refusing to waive the disincentive. Although plaintiff's complaint stated that it sought relief in excess of \$10,000 for damages arising out of MDOT's breach of contract, the complaint did not identify how plaintiff had been damaged or why it was entitled to money damages. MDOT moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), but did not raise the issue of jurisdiction. During oral arguments on the motion, plaintiff's counsel explicitly stated that it was seeking judicial review of MDOT's decision to impose the disincentive, but was not seeking money damages. This statement prompted the Court of Claims to sua sponte question its jurisdiction over the matter and it directed the parties to brief the issue.

In a written opinion and order, the Court of Claims found that it did not have jurisdiction over an appeal from a state agency decision, and that the circuit court had jurisdiction over such matters pursuant to MCL 600.631; MSA 27A.631 and MCL 600.6419(4); MSA 27A.600.6419(4). The Court of Claims further determined that it lacked jurisdiction to hear the case because plaintiff did not seek money damages. The Court of Claims declined to transfer the action to circuit court because it was time barred, and instead dismissed plaintiff's complaint.

Plaintiff argues that that the Court of Claims erred in dismissing its contract action for lack of jurisdiction on the basis that plaintiff did not seek money damages. We disagree.

Whether the Court of Claims has subject matter jurisdiction over a particular case is a question of law subject to review de novo. *Specht v Citizens Ins Co of America*, 234 Mich App 292, 294; 593 NW2d 670 (1999); *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996). A party may challenge the subject-matter jurisdiction of a court at any time, *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997), and a court is continually obliged to sua sponte question its own jurisdiction over a person, the subject matter of an action, or the limits on the relief it may afford. *Straus v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999), citing *Fox v Univ of Michigan Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

MCL 600.6419(1)(a); MSA 27A.6419(1)(a) confers upon the Court of Claims exclusive jurisdiction "[t]o hear and determine all claims and demands, liquidated or unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms, or agencies." Further, MCL 600.6419(4); MSA 27A.6419(4) expressly provides that the Court of Claims Act "shall not deprive the circuit court of this state of jurisdiction over . . . proceedings for declaratory or equitable relief"

This statute has been interpreted as limiting the jurisdiction of the Court of Claims to actions for money damages.² *AuSable Manistee Action Council, Inc v State of Michigan*, 182 Mich App 596, 598; 452 NW2d 832 (1989); *Stolaruk Corp v Dep't of Transportation*, 114 Mich App 357; 319 NW2d 581 (1982), citing *Paquin v Northern Michigan Univ*, 79 Mich App 605, 607; 262 NW2d 672 (1977). It is well settled that “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.*” *77th Dist Judge v State of Michigan*, 175 Mich App 681, 700; 438 NW2d 333 (1989), emphasis added; see also *Watson v Bureau of State Lottery*, 224 Mich App 639, 643; 569 NW2d 878 (1997). “A complaint *seeking only equitable or declaratory relief* must be filed in the circuit court.” *Watson, supra* at 643 (emphasis in original); *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994); *77th Dist Judge, supra* at 699. Moreover, although MCL 600.6419(1)(a); MSA 27A.6419(1)(a) refers to claims arising out of either contract or tort, the law is clear that the fact that an action involves a contract or tort is not dispositive of the jurisdictional issue. Rather, the critical inquiry in determining jurisdiction of the Court of Claims is the nature of the relief sought. See *Silverman, supra* at 217; *77th Dist Judge, supra* at 700.

In this case, it is undisputed that plaintiff has not paid the disincentive assessed against it and no formal action by MDOT has been taken other than sending plaintiff a final notice of the amount due. Moreover, plaintiff’s complaint clearly seeks a declaratory judgment regarding the enforceability of the disincentive clause and only makes a conclusory allegation that it was damaged, without specifying the manner in which it was financially aggrieved. In fact, plaintiff admitted during oral arguments before the trial court that it was not seeking monetary relief. See *Minarik v State Hwy Comm’r*, 336 Mich 209, 213; 57 NW2d 501 (1953) (court may consider the complaint, together with testimony at a summary disposition hearing, to determine relief sought). Thus, because there is admittedly no claim for money damages against MDOT, and plaintiff is only seeking declaratory relief, the Court of Claims did not err in concluding that the matter was not within its jurisdiction.³ MCL 600.6419; MSA 27A.6419; *Silverman, supra*; *77th Dist Judge, supra*.

² We recognize that the Court of Claims Act was amended in 1984 to add MCL 600.6419a; MSA 27A.6419(a) to provide that the Court of Claims also has concurrent jurisdiction with the circuit court over any action for equitable or declaratory relief ancillary to a claim for money damages filed pursuant to MCL 600.6419; MSA 27A.6419; however, where no such ancillary claim exists, as in the instant case, the Court of Claims lacks jurisdiction over equitable claims. *AuSable Manistee Action Council, Inc v State of Michigan*, 182 Mich App 596, 599; 452 NW2d 832 (1989); *77th Dist Judge v Michigan*, 175 Mich App 681, 699; 438 NW2d 333 (1989).

³ We note that the cases cited by plaintiff in support of its position are distinguishable because they either do not address the issue presented in this case, see *Oak Construction Co v Dep’t of State Highways*, 33 Mich App 561; 190 NW2d 296 (1971), or they involve claims against the state for money damages, see *Greenfield Construction Co v Dep’t of State Highways*, 58 Mich App 49; 227 NW2d 223 (1975), *aff’d* 402 Mich 172; 261 NW2d 718 (1978).

In a related argument, plaintiff contends that the Court of Claims erred in concluding that MDOT's central office review was a declaratory ruling subject only to judicial review in the circuit court. We disagree.

Judicial review of an administrative decision is available under the following statutory schemes: (1) the review process, if any, prescribed in the statute applicable to the particular agency, (2) the review provided in the Administrative Procedures Act (APA), MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, or (3) an appeal to circuit court pursuant to the Revised Judicature Act, MCL 600.631; MSA 27A.631. *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 145; 577 NW2d 200 (1998).

The parties agree that there is no particular statute governing appeals from MDOT decisions. The parties also agree that the MDOT construction specifications do not constitute "rules" as defined in the APA, and the MDOT central office review does not constitute an administrative hearing in a contested case that would invoke the procedures of the APA. This leaves only the third avenue of relief, an appeal under the Revised Judicature Act, MCL 600.631; MSA 27A.631.

The Court of Claims found that this matter was governed by MCL 600.631; MSA 27A.631, which provides:

An appeal shall lie from any order, decision, or opinion of any state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham County, which court shall have and exercise jurisdiction with respect thereto as in nonjury cases. Such appeals shall be made in accordance with the rule of the supreme court.

Section 631 expressly confers jurisdiction of an appeal from an administrative decision on the circuit court if judicial review has not otherwise been provided for by law. Further, as noted previously, MCL 600.6419(4); MSA 27A.6419(4) expressly provides that the Court of Claims Act shall not deprive the circuit court of jurisdiction over proceedings for declaratory or equitable relief. See *Bays v Dep't of State Police*, 89 Mich App 356, 362; 280 NW2d 526 (1979), after remand 119 Mich App 719; 326 NW2d 620 (1982). Accordingly, the Court of Claims correctly concluded that an appeal from MDOT's central office must be to circuit court pursuant to MCL 600.631; MSA 27A.631, and that it did not have jurisdiction to hear the matter.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder