

STATE OF MICHIGAN
COURT OF APPEALS

RAPHAEL X,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, MICHAEL
BUGGY, MILLICENT HOLMES, THOMAS M.
BIRKETT, Z. TYSZKIEWICZ, and
BILL HUDSON

Defendants-Appellees.

UNPUBLISHED

January 2, 2001

No. 218794

Ingham Circuit Court

LC No. 98-087758-CZ

Before: O'Connell, P.J., and Zahra and B.B. MacKenzie*, JJ.

PER CURIAM.

Plaintiff, a state prisoner, alleged in a 42 USC 1983 action that several Department of Corrections employees violated his procedural due process rights by entering false information in his file and improperly using that information to determine his security classification, to deny him disciplinary credits, and to deny him a job assignment. The circuit court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(4), (7), (8), and (10). Plaintiff appeals as of right. We affirm.

I

First, plaintiff contends that the circuit court erred by granting summary disposition before discovery was complete. Plaintiff's claims on appeal can be consolidated into four arguments. Generally, summary disposition is premature when granted before discovery on a disputed issue is complete. *Mackey v Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994). Summary disposition is appropriate, however, when there is no fair chance that further discovery will result in factual support for the party opposing the motion. *Mackey, supra* at 333; *Bazzetta v Dep't of Corrections*, 231 Mich App 83, 89; 585 NW2d 758 (1998). In this case, the parties agreed about the essential facts, and the contested issues were legal questions. As such, we conclude that summary disposition was not prematurely granted.

II

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

Next, plaintiff maintains that the circuit court erroneously concluded that (1) it lacked subject-matter jurisdiction over plaintiff's official-capacity claims, and (2) plaintiff failed to allege facts to defeat governmental immunity. We disagree.

We review de novo the question of whether the circuit court was properly vested with subject-matter jurisdiction. *Dep't of Natural Resources v Holloway Construction Co*, 191 Mich App 704, 705; 478 NW2d 677 (1991); MCR 2.116(C)(4). This Court must determine whether the pleadings demonstrate that the defendant was entitled to a judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Steele v Dep't of Corrections*, 215 Mich App 710, 712; 546 NW2d 725 (1996); MCR 2.116(C)(4). This Court also reviews de novo the applicability of qualified governmental immunity. *Thomas v McGinnis*, 239 Mich App 636, 644; 609 NW2d 222 (2000); MCR 2.116(C)(7). *Steele, supra* at 712-713. To survive a motion for summary disposition based on governmental immunity, the plaintiff must allege facts justifying the application of an exception to governmental immunity. *Gibson v Grand Rapids*, 162 Mich App 100, 103; 412 NW2d 658 (1987). The circuit court must consider the pleadings, admissions, and other documentary evidence submitted by the parties in determining whether to grant summary disposition under this rule. *Id.*

We conclude the trial court lacked subject matter jurisdiction over claims against defendants in their official capacities as state officers. MCL 600.6419(1)(a); MSA 27A.6419(1)(a) provides that the Court of Claims has exclusive jurisdiction over 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. Although the Court of Claims generally is not vested with jurisdiction over suits against individuals, it does have jurisdiction over suits against state officers acting in their official capacities. *Lowery v Dep't of Corrections*, 146 Mich App 342, 348-349; 380 NW2d 99 (1985). When a complaint seeks both monetary damages and equitable or declaratory relief against state officials acting in their official capacities, the Court of Claims has exclusive jurisdiction because it is the only trial court capable of resolving the entire case. *Silverman v University of Michigan, Bd of Regents*, 445 Mich 209, 212; 516 NW2d 54 (1994). In this case, plaintiff sought both monetary and equitable relief from defendants acting in their official capacities. Therefore, the Court of Claims had exclusive jurisdiction over these official-capacity claims.

We also conclude that plaintiff failed to allege facts to defeat governmental immunity. A government official is entitled to qualified immunity against a 42 USC 1983 claim when he is performing discretionary functions and when his conduct is not violative of clearly established constitutional or statutory rights that a reasonable person would have known. *Thomas, supra* at 644. Prison officials and officers are government officials whose actions may be shielded by qualified immunity. *Id.* A constitutional right is clearly established if the law is clear in regard to a specific official's actions in a specific situation. *Id.* This standard is one of objective reasonableness that focuses on whether defendants reasonably could have thought their actions were consistent with the rights that plaintiff claims have been violated. *Id.* at 644-645. Immunity is inapplicable only if the official knew or should have known that his actions would violate the plaintiff's constitutional rights or if the official acted maliciously to deprive the plaintiff of his rights. *Id.* at 645. In this case, plaintiff failed to allege facts demonstrating that

defendants' actions were violative of a clearly established constitutional right that a reasonable person would have known. Therefore, we conclude that the trial court properly granted summary disposition on this ground.

III

Third, plaintiff contends that the circuit court erroneously concluded that plaintiff failed to allege that a constitutionally protected liberty interest had been violated by defendants. MCR 2.116(C)(8). Motions based on MCR 2.116(C)(8) test the legal sufficiency of the plaintiff's complaint and should be granted if the claims are clearly unenforceable as a matter of law. *Steele, supra* at 713. To defeat a motion for summary disposition on a 42 USC 1983 claim, the plaintiff must allege facts that demonstrate (1) that he was deprived of a federal constitutional right, (2) while the defendant was acting under the color of state law. *Davis v Wayne Co Sheriff*, 201 Mich App 572, 576; 507 NW2d 751(1993).

The United States Court of Appeals for the Fourth Circuit has recognized that prisoners enjoy a limited due process right to have false information expunged from their prison record. *Paine v Baker*, 595 F2d 197, 199 (CA 4), cert den 444 US 925 (1979).¹ Under *Paine*, a plaintiff must allege that (1) there is certain information in his file, (2) this information is false, and (3) the false information was relied on to a constitutionally significant degree. Plaintiff has failed to allege facts sufficient to survive summary disposition under this test. More importantly, the information placed in plaintiff's file was not false. Rather, it was a recommendation of plaintiff's risks to the security of the facility, based on the findings of properly conducted misconduct hearings. Consequently, we conclude that the circuit court correctly concluded that plaintiff failed to allege that a constitutionally protected interest had been violated by defendants and that summary disposition was properly granted.

IV

Finally, plaintiff maintains that the circuit court erroneously concluded that plaintiff's requests for declaratory relief were barred because plaintiff failed to observe the requisite procedural requirements. The court found, among other things, that plaintiff failed to name the Michigan Department of Corrections as a party defendant.²

MCL 24.264; MSA 3.560(164) states in pertinent part that "the validity or applicability of a rule may be determined in an action for declaratory judgment when the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with

¹ There are no reported Michigan cases recognizing this limited right. The recognition of this right by the Fourth Circuit Court of Appeals is not binding on this Court. We question whether such a due process right exists under either the Michigan or United States Constitution. Nonetheless, for purposes of resolving this case we shall assume, without deciding, that the limited due process right set forth in *Paine, supra*, may be asserted by plaintiff.

² The Michigan Department of Corrections (MDOC) was not named as a party defendant in this case. MDOC was added to this caption pursuant to this Court's policy. The fact that MDOC was not named as a party defendant is relevant to the resolution of this issue.

or impair, the legal rights of the plaintiff.” MCL 24.264 also provides that “[t]he agency shall be made a party to the action.” The use of the word “shall” designates a mandatory provision. *Depyper v Safeco Ins Co of America*, 232 Mich App 433, 438; 591 NW2d 344 (1998); *People v Kelly*, 186 Mich App 524, 529; 465 NW2d 569 (1990). Thus, the failure to name a required party precludes declaratory relief. The trial court correctly held that plaintiff’s failure to name the Michigan Department of Corrections as a party defendant barred plaintiff’s declaratory relief claims.

Affirmed.

/s/ Peter D. O’Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie