

STATE OF MICHIGAN
COURT OF APPEALS

BLAKEWOODS SURGERY CENTER, L.L.C.
and JACKSON MEDICAL SERVICES, INC.,
PAUL ERNEST, M.D., KEVIN LAVERY, M.D.,
ANTHONY SENSOLI, M.D., SIGMUND
ANCEREWICZ, M.D., KHAWAJA IKRAM,
D.O., SHARON ROONEY-GANDY, D.O.,
ARTHUR WIERENGA, M.D., MARTIN
PATRIAS, M.D., MICHAEL CHAMES, M.D.,
GHULUM DASTGIR, M.D., and KABINDRA
MISHRA, M.D.,

Plaintiffs-Appellants,

v

MICHIGAN INSURANCE COMMISSIONER,

Defendant-Appellee.

UNPUBLISHED
January 19, 2001

No. 221494
Ingham Circuit Court
LC No. 98-088770-CZ

Before: Sawyer, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant on plaintiffs' single count complaint seeking declaratory judgment. We affirm.

Plaintiffs filed their complaint under MCL 550.1619(3); MSA 24.660(619)(3) and MCR 2.605, requesting that the trial court issue a declaratory judgment that defendant had the duty and authority to issue a cease and desist order to enjoin alleged ultra vires and illegal conduct on the part of Blue Cross and Blue Shield of Michigan (BCBSM). Plaintiffs also requested that the trial court issue declarations that various of BCBSM's practices related to its freestanding ambulatory surgical facility provider class plan were discriminatory and violative of numerous provisions of 1980 PA 350, the Nonprofit Health Care Corporation Reform Act. MCL 550.1101 *et seq.*; MSA 24.660(101) *et seq.*

Following a hearing on defendant's motion for summary disposition, brought pursuant to MCR 2.116(C)(4), (7), (8) and (10), the trial court granted the motion in an order entered June 9,

1999. The court ruled that with respect to the requested declarations regarding BCBSM's practices, such relief could not be granted because BCBSM was not named as a party. With respect to plaintiffs' requested declarations concerning defendant, the court determined that under the act the commissioner's only mandated responsibility was set forth in MCL 550.1509; MSA 24.660(509), pursuant to which the commissioner could review the provider class plan central to plaintiffs' allegations. Noting that the review process provided by § 509 was scheduled to be undertaken beginning in July 1999, and finding that the statutory structure would adequately address plaintiffs' underlying requested relief, the court ruled that it would not interfere with defendant's exercise of his authority.

Plaintiffs argue to this Court that jurisdiction over plaintiffs' complaint was proper under MCL 550.1619(3); MSA 24.660(619)(3), and request that the action be remanded for a determination on the merits of BCBSM's alleged illegal and ultra vires activity.

Under MCR 2.116(C)(4), summary disposition is proper where a party has failed to exhaust administrative remedies. *Blair v Checker Cab Co*, 219 Mich App 667, 671; 558 NW2d 439 (1996). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support of a claim. The court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence that is part of the record. MCR 2.116(G)(5); *Ashworth v Jefferson Screw Products, Inc*, 176 Mich App 737, 741; 440 NW2d 101 (1989). To succeed on the motion the moving party must establish that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Id.* at 741-742. This Court reviews de novo the trial court's rulings regarding questions of law and declaratory judgment actions. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 271; 568 NW2d 411 (1997).

The issuance of a declaratory judgment is discretionary with the court and one can only be granted where there is an actual controversy. *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978). An actual controversy exists where the declaratory judgment is necessary to guide the litigants' future conduct in order to preserve their legal rights. *Recall Blanchard Comm v Secretary of State*, 146 Mich App 117, 121; 380 NW2d 117 (1985). Where no actual controversy is found to exist, the court lacks subject matter jurisdiction over a declaratory request. *Shavers, supra*; *Recall Blanchard, supra*.

Pursuant to MCL 550.1509(1); MSA 24.660(509)(1), the commissioner is authorized to review BCBSM's freestanding ambulatory surgical facility provider class plan to determine if BCBSM has substantially achieved the goals of the corporation as provided in MCL 550.1504; MSA 24.660(504) and achieved the objectives contained in the plan. The statute directs that during such a review process, the commissioner "shall consider" comments submitted by plaintiffs. MCL 550.1509(4)(e); MSA 24.660(509)(4)(e); see also MCL 550.1505(2); MSA 24.660(505)(2). The commissioner must also prepare a detailed statement of findings supporting his determination. MCL 550.1509(5); MSA 24.660(509)(5). This statement ultimately serves as a record for later appeals under MCL 550.1515; MSA 24.660(515) and MCL 550.1518; MSA 24.660(518). See *In re Provider Class Plan*, 203 Mich App 707; 514 NW2d 471 (1994).

Defendant, pursuant to § 509(1), initiated review of the provider class plan at issue on July 6, 1999. It was with awareness of this imminent consideration that the trial court granted defendant's motion for summary disposition one month earlier. We agree with the trial court's

implied finding that no actual controversy existed, and we hold that contrary to plaintiffs' arguments, no declaratory judgment is necessary to guide the litigants' future conduct in order to preserve their legal rights. *Recall Blanchard, supra*. Assuming that plaintiffs' underlying concerns regarding BCBSM's conduct under the act are well-founded, we are not convinced that the statutory review process, and its available avenues of appeal, will fail to provide plaintiffs with the ultimate relief herein requested.

Additionally, to the extent plaintiffs' prayer for relief requested a declaration that defendant has a duty to issue a cease and desist order to enjoin the alleged illegal conduct on the part of BCBSM, that request essentially sought the issuance of a writ of mandamus. Such a writ is considered an extraordinary remedy that is properly granted only when, for all practical purposes, there is no other remedy that might achieve the same result. *McDonald's Corp v Canton Twp*, 177 Mich App 153, 156; 441 NW2d 37 (1989). Because the statutory review proceedings present an alternate and adequate remedy, resort to mandamus would have been inappropriate. The trial court appropriately granted summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald