

STATE OF MICHIGAN
COURT OF APPEALS

BOARD OF BAY-ARENAC COMMUNITY
HEALTH SERVICES,

UNPUBLISHED
August 24, 2001

Plaintiff-Appellant,

v

No. 223123
Bay Circuit Court
LC No. 99-003378-CK

DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

Before: Fitzgerald, P.J., and Gage and C.H. Miel*, JJ.

MEMORANDUM.

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

This action concerns the treatment of plaintiff's gain on the sale of property in relation to matching funding provided by defendant. Defendant conducted an audit and determined that the gain on the sale consisted of revenue earned in providing matchable services, and the gain should be offset by a reduction in funding from defendant. An audit review affirmed that decision and the director agreed with the audit review.

Plaintiff did not timely seek administrative review of the decision. Instead, it brought this action in circuit court. The court granted defendant's motion for summary disposition, finding that the audit was conducted under defendant's statutory duties, MCL 330.1244 and MCL 330.1116(3)(e), and was not based on the contract. Plaintiff failed to exhaust its administrative remedies, and the present lawsuit was an appeal cleverly disguised as a breach of contract claim. Even if the case were considered a breach of contract action, plaintiff failed to plead a breach of contract, and it did not identify which provision of the contract was breached. The court lacked jurisdiction over an administrative appeal because it was untimely under MCL 600.631 and MCR 7.101(B)(1)(a). Finally, the court found that if the appeal had been timely, the decision would have been affirmed because it was authorized by law and supported by competent, material, and substantial evidence on the whole record.

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

There is no showing that the court erred in granting summary disposition. The complaint does not identify a contract, and it does not specify how that contract was breached. The trial court correctly viewed the matter as an administrative appeal from the audit review. Litigants seeking review of an administrative decision have three potential avenues of relief: (1) the method of review prescribed by the statutes applicable to the agency, (2) the review prescribed by the Administrative Procedures Act, or (3) an appeal under MCL 600.631. *Jackson Community College v Dep't of Treasury*, 241 Mich App 673, 678; 621 NW2d 707 (2000). Plaintiff failed to follow any of these avenues. The appeal was untimely under MCR 7.101(B)(1)(a). The circuit court lacked jurisdiction to consider plaintiff's claim. *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 485; 525 NW2d 466 (1994).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel