STATE OF MICHIGAN

COURT OF APPEALS

LOCAL 6000 UNITED AUTOMOBILE and UNITED AUTOMOBILE, AEROSPACE & AGRICULTURE IMPLEMENT WORKERS OF AMERICA,

Plaintiffs-Appellants,

v

MICHIGAN DEPARTMENT OF CORRECTIONS, MICHIGAN CIVIL SERVICE COMMISSION, and CORRECTIONAL MEDICAL SERVICES, INC,

Defendants-Appellees.

UNPUBLISHED
June 18, 2002

No. 229613
Ingham Circuit Court
LC No. 00-091573-CZ

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Plaintiffs, two unions comprised of civil service employees, appeal by right from the circuit court's order granting summary disposition for defendants. On defendants' motions under MCR 2.116(C)(1), (4), (7), (8), and (10),[1] the court held that plaintiffs failed to exhaust their administrative remedies. We affirm.

Plaintiffs argue that summary disposition was improper because they should not have been required to exhaust their administrative remedies before filing a judicial appeal. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Exhaustion of remedies is a controlling issue of circuit court subject-matter jurisdiction. MCR 2.116(C)(4); *Michigan Supervisors' Union OPEIU Local 512 v Dep't of Civil Service*, 209 Mich App 573, 579; 531 NW2d 790 (1995). Therefore, we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998) (MCR 2.116[C][4]).

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[1] It is unclear from the record on which subrule the court relied.

As an initial matter, this Court has previously upheld the Civil Service Commission's (CSC) authority to disburse funds for independent contractor employment agreements where it is efficient and economical to do so. *Int'l Union United Auto Aerospace & Agricultural Implement Workers of America v Civil Service Comm*, 223 Mich App 403, 405-408; 566 NW2d 57 (1997); *Michigan State Employees Ass'n v Civil Service Comm*, 141 Mich App 288, 291-292; 367 NW2d 850 (1985); *Detroit Automobile Inter-Ins Exchange v Ins Commr*, 125 Mich App 702, 709-712; 336 NW2d 860 (1983). In the present case, plaintiffs briefly acknowledge that case law defeats their position. However, plaintiffs do not argue that these cases should be reversed because they were wrongly decided. See *In re Edgar Est*, 425 Mich 364, 380; 389 NW2d 696 (1986) (courts may disregard stare decisis to prevent error or promote better law pursuant to change in circumstances). Indeed, stare decisis requires that we follow *Int'l Union*. MCR 7.215(H); *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993).

Plaintiffs essentially contend that mere initiation of an administrative grievance is sufficient to allow a judicial appeal under *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 166-167; 365 NW2d 93 (1984). However, plaintiffs concede that they abandoned their administrative grievance before filing suit because they believed the administrative process was meaningless. Therefore, they are not entitled to relief because the standards set out for intermediate judicial appeal in *Michigan State Employees Ass'n*, *supra* at 166 only apply if the plaintiff is concurrently pursuing administrative and judicial appeals. In any event, plaintiffs have not persuaded us that this case presents extraordinary circumstances and a risk of irreparable harm.

In addition, plaintiffs claim that the administrative appeals process is too slow, making the process futile. *Christensen v Michigan State Youth Soccer Ass'n, Inc*, 218 Mich App 37, 40; 553 NW2d 638 (1996). We disagree. A remedy is not so inadequate that it authorizes judicial intervention before exhaustion of the remedy merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action or proceeding that indicates to the court that it will not be able to protect the rights of the litigants or afford them adequate redress otherwise than through the exercise of this extraordinary jurisdiction. *Bennett v School Dist of Royal Oak*, 10 Mich App 265, 269; 159 NW2d 245 (1968). In fact, in the present case, there was no allegation concerning when the contract would be completed, providing plaintiffs with an adequate, indefinite timeframe in which to secure a remedy. Thus, the CSC's authority to resolve this dispute must be affirmed. *Int'l Union*, *supra* at 405-408.

Plaintiffs imply that defendants intentionally delayed the administrative appeals process so the employment contracts expired before an administrative remedy could be obtained. If so, then the proper course of action was to petition the lower court for a writ of mandamus or a writ for superintending control. See MCR 3.302, MCR 3.305, *Teasel v Dep't of Mental Health*, 419 Mich 390, 409-411; 355 NW2d 75 (1984); *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 205-206; 452 NW2d 471 (1989). Const 1963, art 11, § 5 also provides for judicial appeal by mandamus to enforce the timeliness of the administrative grievance process. See, also, *WA Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 525-526; 534 NW2d 206 (1995). Thus, mandamus or superintending control was the appropriate procedure for plaintiffs' claim that the CSC violated its own rules by not properly considering plaintiffs' objection. Const 1963, art 11, § 5.

Finally, plaintiffs briefly claim that the administrative appeal process is likewise inadequate because it afforded no pre-decision hearing or decision deadline. This is a due process argument, although plaintiffs do not directly argue due process. Nonetheless, the argument fails because plaintiffs do not dispute the existence of procedures described in the constitution to air and resolve the grievance involved. *Michigan Supervisors' Union OPEIU Local 512*, *supra* at 579. In addition, contrary to plaintiffs' argument, civil service rule 4-6.8 does allow an "interested party" to be heard before a decision on a contract is made. Nonetheless, employees may pursue an administrative grievance only *after* a position is abolished—not before, as plaintiffs desired. Const 1963, art 11, § 5. Plaintiffs concede they abandoned this process. Similarly, a citizen's judicial appeal rights only vest *after* a decision on the contract has been made. Const 1963, art 11, § 5. Ultimately, this Court must enforce the plain intent of this constitutional provision. *Int'l Union*, *supra* at 406.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper