

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL BROWN and JAMES WARREN,

Petitioners - Appellees,

v

CIVIL SERVICE COMMISSION,

Respondent,

and

BUREAU OF WORKERS' & UNEMPLOYMENT
COMPENSATION,

Respondent-Appellant.

UNPUBLISHED
February 24, 2004

No. 240428
Emmett Circuit Court
LC No. 00-005985-AA

MICHAEL BROWN and JAMES WARREN,

Petitioners-Appellees,

v

CIVIL SERVICE COMMISSION,

Respondent-Appellant,

and

BUREAU OF WORKERS' & UNEMPLOYMENT
COMPENSATION,

Respondent.

No. 240429
Emmett Circuit Court
LC No. 00-005985-AA

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Respondent Civil Service Commission and respondent Bureau of Workers' & Unemployment Compensation appeal by leave granted an order reversing a decision of the Civil Service Commission regarding petitioners' job reclassification entered by the circuit court. On appeal respondents argue the circuit court did not have subject matter jurisdiction to hear the appeal, that the circuit court misapplied the doctrine of promissory estoppel, and finally that the circuit court exceeded its constitutional authority. On appeal, we find that the circuit court lacked subject matter jurisdiction to hear petitioners' appeal, and decline to reach the remaining issues since the circuit court's actions are void for want of subject matter jurisdiction. We reverse the circuit court's opinion and order.

Petitioners are employed by respondent Bureau of Workers' and Unemployment Compensation (formerly known as the Michigan Employment Security Commission and the Michigan Unemployment Agency) ("the MUA"). In 1985, petitioner Brown accepted a position as an auditor in an agency pilot project. Petitioner Warren joined the project in 1989. Petitioners claimed that at the time they accepted these positions, the MUA promised them that their new positions would be reclassified to a higher level by civil service in the future. However, the MUA never asked civil service to reclassify the positions and discouraged petitioners from taking steps to petition for reclassification. Petitioners finally did file individual petitions for reclassification with the Department of Civil Service in November 1991. However, in November 1992, a reorganization of the department led to the abolishment of their positions. Petitioners apparently continue to work for the MUA, but in lower-classified positions.

After review, civil service staff declined to reclassify petitioners' positions. Petitioners appealed, and the Technical Hearing Officer ("THO") Sylvia Elliott, reclassified their positions to Unemployment Insurance ("UI") Analyst VI. However, she failed to specify an effective date for the reclassification or its duration. Petitioners sought clarification of the effective date of the reallocation, and the Employment Relations Board remanded the case to the THO for a determination of the unresolved timing issues.

On remand, THO Elliott designated November 1990 as the retroactive effective date of the reclassifications because it was one year prior to the date petitioners filed their requests for reclassification, and retroactive relief is limited to one year by civil service regulations although she found that the evidence supported that petitioners had been performing at that level since 1988. THO Elliott also concluded that petitioners' salaries should be "red-circled", i.e., although petitioners were now at a lower-paying classification, they should be paid at the reclassified UI Analyst VI level until the pay of their current positions rose to that level. Petitioners appealed to the Employment Relations Board and the Civil Service Commission, but each denied leave to appeal.

Petitioners then sought circuit court review of the Employment Relations Board and Civil Service Commission's decision in April 1996. However, the initial petition named only the Department of Civil Service and the MUA, and not the Civil Service Commission. In November 1996, the court remanded the matter to the THO "to consider estoppel and make findings of fact and conclusions of law relative to estoppel, to determine if additional retroactive relief should be granted, and whether or not respondents should be estopped from availing themselves of the one-year limit and to determine the appropriate remedies to be afforded to Petitioners." On remand, THO Ruth Kahn determined that estoppel did apply to bar the MUA's assertion of the one-year-

back rule and ordered the date of petitioners' reclassification to be made retroactive to their respective original dates of hire.

Both the MUA and the Department of Civil Service appealed the decision to the Employment Relations Board. The Employment Relations Board recommended that the THO's decision be reversed and the retroactive effect of the reclassification be limited to one year stating that THO Kahn had abused her authority in exceeding the one year limitation and reversed the reallocation. The Civil Service Commission adopted the recommendation of the board and limited the retroactive effect of the reclassification to one year. The commission held in part that because a THO has no equitable powers, THO Kahn lacked jurisdiction to apply estoppel. It also reasoned that the circuit court, by virtue of the separation of powers doctrine, was without authority to vest the THO with such powers. Even if THO's had such powers, the commission held that the MUA's negligent or culpable conduct could not be used to undermine the commission's exercise of its authority because the Department of Civil Service and the MUA are separate entities. Finally, the commission held that promissory estoppel was inapplicable because the MUA never had the authority to implement the promised reclassifications. Accordingly, the commission reversed the decision of THO Kahn and reinstated the one-year limitation on retroactive reclassification. Petitioners appealed the decision to circuit court and the circuit court reversed and reinstated the decision of THO Kahn.

Respondents argue that the circuit court lacked subject matter jurisdiction because when petitioners first filed their petition for review in 1996, the Civil Service Commission was not named as a respondent despite the fact that petitioners were challenging the commission's decision. Rather, the petition named only the Department of Civil Service and the MUA leaving the commission not before the court.

A party may challenge subject matter jurisdiction at any time, including on appeal. Therefore, this issue is preserved. *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999). Subject matter jurisdiction is a question of law we review de novo. *Bass, supra*, 238 Mich App 23.

MCL 24.304(1) requires that an application for review from an agency decision be filed within sixty days of the date of the mailing of notice of the final appeal. *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002). "Failure to file a timely claim of appeal deprives the circuit court of jurisdiction to hear the appeal." *Id.* at 375 citing *Shippey v Madison Dist Public Schools*, 55 Mich App 663, 667; 223 NW2d 116 (1974); *Schommer v Director, Dep't of Natural Resources*, 162 Mich App 110, 120-122; 412 NW2d 663 (1987); *Attorney General v Public Service Comm*, 172 Mich App 778, 782; 432 NW2d 437 (1988); and *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79, 82; 382 NW2d 737 (1985). "The burden of establishing jurisdiction is with the petitioner." *Id.* citing *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

Respondents cite *Davis, supra*, for the proposition that petitioners failed to vest the circuit court with jurisdiction to hear their appeal in 1996 by failing to name the Civil Service Commission as a respondent. In *Davis, supra*, the petitioner failed to name either the commission or the Civil Service Department as respondents, and named only her employer, the Department of Corrections, in the petition. *Id.* at 374. The Court held that the petitioner's belated amendment outside the sixty-day appeal period was ineffective for two reasons: first, the

amendment was procedurally invalid where the applicable statute did not permit delayed appeals, and second, the circuit court could not be vested with subject matter jurisdiction over the commission's decision by petitioner's service of the amended petition on the department because the Department of Civil Service and the Civil Service Commission are separate entities under Const 1963, art 11, § 5. *Id.* at 375.

Petitioners' 1996 petition for review named the Department of Civil Service and the "Michigan Employment Security Commission," petitioners' employer, as respondents. Petitioners admit in their brief on appeal that the Civil Service Commission was not listed as a respondent, but was added some time later after the sixty day appeal period, in connection with the second appeal following remand. The *Davis* Court explicitly stated that "failure to file a timely claim against the Civil Service Commission deprived the court of subject matter jurisdiction and was fatal to petitioner's claim." *Davis, supra*, 251 Mich App at 378. Because *Davis, supra*, is binding precedent, and the circumstances almost identical, we apply the *Davis* reasoning to the instant case and find the circuit court lacked jurisdiction to hear the 1996 petition.

When there is a lack of subject matter jurisdiction, a court's actions are void. *Altman v Nelson*, 197 Mich App 467, 473; 495 NW2d 826 (1992). Since the circuit court lacked subject matter jurisdiction to hear this case, we decline to address the remaining issues raised on appeal.

Reversed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen