STATE OF MICHIGAN

COURT OF APPEALS

MITZI CAROL and LCC CHAPTER MICHIGAN EDUCATION ASSOCIATION,

Plaintiffs-Appellees,

v

LANSING COMMUNITY COLLEGE and LANSING COMMUNITY COLLEGE BOARD OF TRUSTEES,

Defendants-Appellants.

UNPUBLISHED
April 13, 2004

No. 246758
Ingham Circuit Court
LC No. 02-001551-CK

Before: O'Connell, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's order denying defendants' motion for summary disposition under MCR 2.116(C)(4), (8), and (10), and sanctions under MCR 2.114 and 2.625. The order also granted, in part, plaintiffs' motion to compel and motion for a protective order. We reverse in part and affirm in part.

The proper review of this issue is under MCR 2.116(C)(4). "Generally, summary disposition pursuant to MCR 2.116(C)(4) (lack of jurisdiction) is proper when a party . . . has failed to exhaust her administrative remedies." *Blair v Checker Cab Co*, 219 Mich App 667, 671; 558 NW2d 439 (1996). A claim that the trial court lacks subject matter jurisdiction is a question of law this Court reviews de novo. *Alliance for Mentally Ill of Michigan v Dep't of Community Health*, 231 Mich App 647, 659; 588 NW2d 133 (1998).

Defendants argue that plaintiffs failed to exhaust the administrative remedies mandated under the parties' collective bargaining agreement (CBA), so the trial court lacked subject matter jurisdiction. We agree.

Parties are "obligated to exhaust their remedies under the collective bargaining agreement before proceeding to circuit court." *AFSCME v Highland Park Bd of Ed*, 214 Mich App 182, 187; 542 NW2d 333 (1995), aff'd 457 Mich 74 (1998). Exhaustion advances the public policy of encouraging nonjudicial resolutions of labor disputes. *Id.*, citing *Clayton v UAW*, 451 US 679; 101 S Ct 2088; 68 L Ed 2d 538 (1981).

Neither party disputes that the CBA provides a mandatory grievance procedure, with the final step being binding arbitration. However, plaintiffs argue that they have exhausted this remedy, completing the grievance process. The grievance process culminated in an arbitration award, and plaintiffs' complaint sought enforcement of the award below. Plaintiffs did not merely seek enforcement of the award, however, but damages for its violation. This creates a problem in this case, because the arbitration award did not completely settle the dispute. It merely allowed plaintiff Carol to "continue to assert her rights for a two year period to *seek* restoration to a full time position *provided* such can be *reasonably* justified in academic terms." (Emphasis added.) This equivocation on the arbitrator's part prevents the award from being "self-executing," and makes further monitoring, interpretation, and resolution necessary. *United Papermakers & Paperworkers, Local 675 v Westvaco Corp*, 461 F Supp 1022, 1023-1024 (WD Va, 1978).

The award also required defendants to deal in good faith, and the arbitrator referred to the award as an extension of rights already contained in the CBA. Specifically, the arbitration award references Carol's option to seek restoration of a full-time position as an extension "of the College's obligations under Article VI (W)(5) to achieve a fair balancing of the parties' rights." This article states, in relevant part, "Full-time bargaining unit members to be laid off will be informed of existing vacancies for which they may qualify and will be encouraged to apply. The College shall make every effort to place that member in another position within the College for which he/she is qualified." This matter is further complicated by the fact that Carol filed additional, pending grievances related to her difficulty in gaining reinstatement to a full-time position. The relatively new grievances and the complaint all allege that defendants failed to make a good-faith effort to cooperate with plaintiffs in their attempts to restore Carol to full-time employment at LCC, which is governed under Article VI(W)(5) of the CBA and is now part of the arbitration award.

Under these circumstances, the arbitration award requires a level of factual monitoring and interpretation of the award and the CBA that is best left to the grievance and arbitration process. *United Papermakers, supra*; *POAM v Manistee Co*, 250 Mich App 339, 346-347; 645 NW2d 713 (2002). Should that process produce a readily executable award, plaintiffs may then complain to the circuit court for its entry and enforcement. *Armco Employees Independent Federation, Inc v Armco Steel Co, LP*, 65 F3d 492, 496-498 (CA 6, 1995). Until that time, plaintiffs have yet to exhaust their administrative remedies by distilling the dispute down to an executable award, and the circuit court has no subject matter jurisdiction. *Id*. at 498. Therefore, the trial court erred when it denied defendants' motion for summary disposition. *AFSCME, supra* at 187.

Finally, defendants claim that the trial court erred in denying their motion for sanctions. We disagree. We review for clear error a trial court's findings on a claim for sanctions. *Stablein v Schuster*, 183 Mich App 477, 483; 445 NW2d 315 (1990). The imposition of sanctions is mandatory under MCR 2.114 if a trial court finds that a pleading was signed with the knowledge that it presented a frivolous action or defense. Here, the trial court did not clearly err when it denied sanctions, because plaintiffs reasonably could have concluded that they were entitled to enforce the arbitration award in court without further resort to the grievance and arbitration process. MCR 3.602(I).

Reversed in part and affirmed in part. Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Christopher M. Murray