

STATE OF MICHIGAN  
COURT OF APPEALS

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ROGER D. PEARSALL and SANDRA  
PEARSALL,

UNPUBLISHED  
May 13, 2004

Plaintiffs-Appellants,

v

No. 244828  
Wayne Circuit Court  
LC No. 01-117625-CK

CHARTER TOWNSHIP OF CANTON,

Defendant-Appellee.

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Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Plaintiff Roger Pearsall ("plaintiff" herein) formerly worked as a police officer for defendant Charter Township of Canton.<sup>1</sup> After leaving his employment with defendant, he was awarded worker's compensation benefits. The award was appealed and became final in November 1998, when our Supreme Court issued an order declining to consider the matter. See *Pearsall v Charter Township of Canton*, 459 Mich 909; 589 NW2d 284 (1998). Plaintiff filed this action in 2001, seeking recovery of supplemental duty disability benefits allegedly due under a collective bargaining agreement. The trial court granted defendant's motion for summary disposition, concluding that plaintiff failed to exhaust his administrative remedies, and further, that plaintiff's action was barred by the six-year statute of limitations, MCL 600.5807(8). Plaintiff appeals as of right. We affirm.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendant moved for summary disposition under MCR 2.116(C)(4), (7) and (10). Although the trial court did not state under which subrule it was granting the motion, we conclude that summary disposition was proper under MCR 2.116(C)(4) and (7).

Summary disposition may be granted under MCR 2.116(C)(4) where "[t]he court lacks jurisdiction of the subject matter." "Jurisdictional questions under MCR 2.116(C)(4) are

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<sup>1</sup> Plaintiff Sandra Pearsall is also a party to this case, but her claims are derivative of Roger Pearsall's claims. As used in this opinion, the term "plaintiff" refers solely to Roger Pearsall.

questions of law that are also reviewed de novo." *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001). "When reviewing a motion under MCR 2.116(C)(4), this Court 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 there was no genuine issue of material fact." *Bock v General Motors Corp*, 247 Mich App 705, 710; 637 NW2d 825 (2001).

Under MCR 2.116(C)(7), summary disposition is available when an action is barred due to the disposition of the claim before commencement of the action. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). The standard for considering motions under MCR 2.116(C)(7) is as follows:

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition based on his failure to exhaust administrative remedies because exercise of these remedies would have been futile. We disagree.

Plaintiff's claim to duty disability benefits was based upon his union's collective bargaining agreement with defendant. Defendant moved for summary disposition because plaintiff did not exhaust his administrative remedies under the collective bargaining agreement. When an administrative procedure is provided, a party must exhaust that remedy before a court can review the case. *Michigan Supervisors Union OPEIU Local 512 v Dep't of Civil Service*, 209 Mich App 573, 576-577; 531 NW2d 790 (1995). However, an exception to this rule exists if pursuing the remedy would be an exercise in futility and merely a formality. *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994).

Plaintiff concedes that he did not pursue available administrative remedies under the collective bargaining agreement, but contends it would have been futile to pursue these remedies because his labor representative had refused to assist him on another matter in 1994. We disagree. The letter on which plaintiff relies to argue that his union would not have assisted him pertains to another matter. And, the letter does not demonstrate that a request for representation in this matter would have been futile. Moreover, plaintiff was not prohibited from pursuing this matter on his own through the appropriate grievance process established in the collective bargaining agreement, independent of his union. MCL 423.211. For these reasons, upon a review de novo, we find that the trial court did not err in granting defendant's motion for summary disposition under either MCR 2.116(C)(4) or (7). *Papas v Gaming Control Bd*, 257 Mich App 647, 656; 669 NW2d 326 (2003); *Mollett v City of Taylor*, 197 Mich App 328, 332; 494 NW2d 832 (1992).

Plaintiff also contends that the trial court erred in granting defendant's motion for summary disposition on the basis that his claim was not timely filed. We disagree.

The trial court also granted summary disposition for defendant on the basis that plaintiff's claim was barred by the six-year limitation period for contract actions, MCL 600.5807(8). In general, a cause of action for breach of contract accrues when the breach occurs, or when the promisor fails to perform under the contract. *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 245-246; 673 NW2d 805 (2003). A claim for breach of contract accrues on the date of the breach, not when it is discovered. *Adams v Detroit*, 232 Mich App 701, 706; 591 NW2d 67 (1998). A plaintiff need not be aware of the invasion of his legal right in order for a claim to accrue. *Id.* In *Adams, supra*, this Court rejected the plaintiff's argument that a breach of contract claim did not begin accruing until this Court released a published opinion clarifying the plaintiffs' right to benefits under a retirement plan.

In this case, it is apparent that plaintiff's claim for duty disability began accruing, at the latest, when he was first awarded worker's compensation benefits in 1993. Even if that award was for a closed period only, payment of duty disability benefits was not limited only to open-ended awards. Because this action was not filed until 2001, it was untimely. We find no merit to plaintiff's argument that he was required to wait until all appeals had been exhausted in the worker's compensation case before he could bring this action. Upon a review de novo, we find that the trial court did not err in granting summary disposition to defendant under MCR 2.116(C)(7).

In his remaining two issues, plaintiff addresses the substantive merits of his claim. The trial court never reached these issues. Issues not addressed by the trial court are not properly before this Court. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003). In any event, in light of our disposition, we also need not consider these issues.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Kathleen Jansen  
/s/ Michael J. Talbot