STATE OF MICHIGAN

COURT OF APPEALS

In re THOMAS LAWRENCE.

THOMAS LAWRENCE,

Plaintiff-Appellant,

v

FIFTY-TWO FOUR DISTRICT COURT,

Defendant-Appellee.

UNPUBLISHED
September 21, 2010

No. 292796
Oakland Circuit Court
LC No. 2009-097068-AS

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying his motion for summary disposition, granting summary disposition to defendant pursuant to MCR 2.116(I)(1) and (2), and dismissing his complaint for a writ of superintending control. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was issued a traffic citation for failing to possess proof of insurance. He appeared before a district court magistrate who determined that plaintiff admitted responsibility for not possessing proof of insurance when it was requested by the officer. Because plaintiff had submitted proof of insurance before his appearance date, the court did not assess any fine or costs, but assessed a $25 fee as permitted by MCL 257.328(3). Plaintiff sought to appeal the $25 fee, but defendant refused to accept the appeal as of right. Plaintiff thereafter filed this action for a writ of superintending control to compel defendant to accept his appeal as a matter of right. Plaintiff thereafter moved for summary disposition. Defendant opposed the motion and requested judgment in its favor. The trial court denied plaintiff's motion and granted judgment in favor of defendant.

Summary disposition may be granted under MCR 2.116(I)(1) when "the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact . . . ." Summary disposition may be granted under MCR 2.116(I)(2) "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment . . . ." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

To the extent that plaintiff raises an issue of law, this Court's review is de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

"For superintending control to lie, the plaintiff must establish that the defendant has failed to perform a clear legal duty and that plaintiff is otherwise without an adequate legal remedy." *In re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007), aff'd 481 Mich 883 (2008). Plaintiff alleged that defendant had a clear legal duty to process his appeal as of right pursuant to MCR 4.101(H)(2). However, MCR 4.101(H)(3) specifies that "[t]here is no appeal of right from an admission of responsibility."

Although plaintiff argues that he did not intend to admit responsibility at the district court proceeding, the district court magistrate's determination that plaintiff admitted responsibility with an explanation controls whether plaintiff was entitled to appeal as of right under MCR 4.101. The proper method for challenging that decision was to request withdrawal of the admission that plaintiff claimed was improperly entered, see MCR 4.101(H)(3), not to file an appeal as of right or a complaint for an order of superintending control to compel acceptance of an appeal as of right. Indeed, at the suggestion of defendant's clerk's office, plaintiff filed a request to withdraw his admission, which the district court denied. Plaintiff did not pursue appellate relief from that order. Because the district court's determination that plaintiff had admitted responsibility with an explanation made him ineligible for an appeal as of right pursuant to MCR 4.101(H)(3), defendant did not have a clear legal duty to process his appeal as of right under MCR 4.101(H) as alleged in plaintiff's complaint.

We disagree with plaintiff's argument that the preclusion of an appeal by right from an admission of responsibility as provided in MCR 4.101(H)(3) conflicts with the right to appeal "an adverse judgment *entered at an informal hearing*" afforded by MCL 257.746(5). (Emphasis added.) An admission of responsibility does not involve an informal hearing. MCL 257.745 sets forth options for a person who has received a citation. The provisions in that statute that address admissions of responsibility do not refer to a formal or informal hearing. The provisions that concern formal and informal hearings apply when a person denies responsibility for a civil infraction. MCL 257.745(5); MCL 257.746. Because MCL 257.746(5) does not afford the right to appeal following an admission of responsibility with an explanation, MCL 257.746(5) does not conflict with MCR 4.101(H)(3).[1]

Plaintiff also argues that the circuit court violated his due process rights by granting summary disposition in favor of defendant and dismissing his complaint when defendant had not filed a motion for summary disposition. We disagree.

"Whether a party has been afforded due process is a question of law." *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). "Due process is a flexible concept, the essence of which requires fundamental fairness. The basic requirements of due process in a

[1] We note that plaintiff also refers to the Troy city ordinances. But because Troy Ordinance §§ 2.10e and 2.10f are similar to MCL 257.745 and MCL 257.746, our analysis of the statutes applies equally to the ordinances.

civil case include notice of the proceeding and a meaningful opportunity to be heard. *Id.* Although a trial court has authority to grant summary disposition sua sponte under MCR 2.116(I)(1), the court may not do so in contravention of a party's due process rights. *Al-Maliki,* 286 Mich App at 489.

The record does not support plaintiff's argument that he did not have notice that his case could potentially be dismissed where he was the only party who had filed a motion for summary disposition, or that he did not have an opportunity to present reasons why his case should not be dismissed. The court rules alert parties of the potential for a court to grant judgment in favor of a party opposing a motion for summary disposition. MCR 2.116(I)(1) and (2). Further, when defendant specifically requested this relief at the hearing on plaintiff's motion, the circuit court asked plaintiff if he wanted to reply. Plaintiff did so. Therefore, plaintiff was not denied his right to due process.

We also disagree with plaintiff's argument that it was inappropriate for the circuit court to rely on plaintiff's statements at the district court proceeding because those statements were hearsay and were not admissible under MRE 801(d)(2). Contrary to what plaintiff argues, the circuit court did not rely on plaintiff's statements at the district court proceeding for a hearsay purpose. Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801. The circuit court's analysis did not involve the use of plaintiff's statements for the truth of the matters asserted. Plaintiff's acknowledgement that he did not have proof of insurance when the police officer stopped him was not considered for the purpose of proving whether plaintiff had the proof of insurance, but rather for the purpose of proving that he told the district court that he did not. Because the statements were not considered for a hearsay purpose, the applicability of MRE 801(d)(2)(A) is immaterial.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Jane M. Beckering