

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM Q. TINGLEY, III,

Plaintiff-Appellant,

v

WARD A. KORTZ, 900 MONROE, L.L.C., 940
MONROE, L.L.C., CITY OF GRAND RAPIDS,
DICKINSON WRIGHT, P.L.L.C., DYKEMA
EXCAVATORS, INC., FIFTH THIRD
BANCORP, PIONEER, INC., SUPERIOR
ENVIRONMENTAL CORP.,

Defendants-Appellees.

FOR PUBLICATION

June 24, 2004

9:05 a.m.

No. 245974

Kent Circuit Court

LC No. 02-009503-CE

Official Reported Version

Before: Meter, P.J., and Wilder and Borrello, JJ.

WILDER, J.

Plaintiff, William Q. Tingley, III, appeals by right the order dismissing his claims under the hazardous waste management act, MCL 324.11101 *et seq.*, and granting sanctions to defendants. We reverse.

I

This action stems from a property dispute involving an abandoned street in Grand Rapids. In one of two prior actions involving the parties, the trial court¹ entered an order granting summary disposition in favor of the defendants named in an amended complaint filed in *propria persona* by plaintiff and two other individuals, William Q. Tingley and Daniel R. Bradley. The order granting summary disposition also provided: "IT IS ORDERED that should William Q. Tingley III file additional *in propria persona* litigation or other litigation acting as counsel[,] the Clerk of the Court shall refer it to the Chief Judge who may make a determination as to whether such litigation shall be accepted for filing." The order entered by the trial court did not specifically articulate why plaintiff would be required to obtain approval from the chief judge

¹ The Honorable H. David Soet.

before initiating any additional litigation. Nevertheless, it is apparent from the substance of the opinion rendered from the bench by the trial court during the July 19, 2002, hearing, from which the order is derived, that the intent of the restrictive provisions of the order was to prevent plaintiff from engaging in the unauthorized practice of law.²

Plaintiff filed the instant action in propria persona on September 25, 2002. Plaintiff did not bring the July 2002 order to the clerk's attention and the clerk, if otherwise aware of the order, did not refer the instant action to the chief judge before accepting the complaint for filing. In the complaint, plaintiff alleged that defendants violated and conspired to violate the hazardous waste management act, MCL 324.11101 *et seq.*, by disposing of contaminated soil from the Berkey and Gay site at the Grand Rapids Water Filtration plant. Plaintiff asserted these claims against several parties sued in the prior action, 900 Monroe, L.L.C.; 940 Monroe, L.L.C.; Dickinson Wright, P.L.L.C.; Dykema Excavators, Inc.; Fifth Third Bancorp; Pioneer, Inc.; the city of Grand Rapids; Ward A. Kortz, a driver employed by defendant Pioneer, Inc.; and Superior Environmental, a company hired to manage removal of hazardous waste from the Berkey and Gay site.

On October 3, 2002, defendant Dykema Excavators, Inc. (Dykema), moved for dismissal of plaintiff's complaint on the basis that plaintiff had filed the summons and complaint without first referring the matter to the chief judge of the circuit court, contrary to the order in the prior action. Dykema also requested an award of sanctions against plaintiff. Defendant Dickinson Wright concurred in Dykema's motions and further asserted that res judicata barred plaintiff's suit. Defendants Kortz, 900 Monroe, L.L.C.; 940 Monroe, L.L.C.; and Pioneer, Inc., moved to dismiss plaintiff's complaint pursuant to MCR 2.116(C)(5) to (7), arguing that plaintiff lacked the capacity to sue, that another suit had been initiated involving the same claims and the same parties, and that plaintiff's claims were barred by res judicata.

At the hearing on the motions to dismiss, the trial court³ declined to rule on the motions, but instead referred the complaint for review by the chief judge in accordance with the July 2002 order.⁴ Thereafter, plaintiff filed a "Request for Determination" in which he specifically asked the chief judge to "immediately release the present action for litigation." In his request, plaintiff asserted that "the purpose of [the order requiring] referral [to the chief judge] was to permit the [c]hief [j]udge an opportunity to determine whether such a complaint was frivolous or whether the [p]laintiff was improperly engaged in the practice of law, and if either condition were so, the

² In the initial complaint and throughout the proceedings in the prior action, plaintiff, who is not a licensed attorney, had unlawfully purported to represent three corporations in which the individual plaintiffs were corporate officers.

³ The complaint was assigned to the Honorable Dennis B. Leiber; however, the motions were heard by the Honorable Robert A. Benson.

⁴ Several proposed orders reflecting Judge Benson's ruling were submitted under MCR 2.602(B)(3), and plaintiff filed an objection to entry of the proposed orders. The record does not establish, however, that an order referring the matter to the chief judge for review was ever entered.

[c]hief [j]udge could decide not to allow the complaint to be litigated" Plaintiff contended that the complaint was not frivolous and that he was not engaged in the practice of law and urged the chief judge to permit the action to proceed. Defendant Fifth Third Bancorp was the only defendant to file a brief in opposition to plaintiff's request. In its brief, defendant Fifth Third Bancorp asserted that collateral estoppel barred plaintiff's claims, that the complaint against it was not well grounded in fact or law, and that by filing the complaint plaintiff was again engaging in the unauthorized practice of law.

The chief judge found that the instant action had been filed in violation of the July 2002 order entered in the prior action, dismissed plaintiff's complaint with prejudice, and awarded sanctions, including costs and attorney fees to defendants.⁵ Plaintiff now appeals.

II

On grounds that were neither raised by plaintiff on appeal or below, nor considered by the chief judge, we reverse the orders dismissing plaintiff's complaint and awarding sanctions. Ordinarily, we do not address issues not raised below or on appeal, or issues that were not decided by the trial court. *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502, 519 NW2d 441 (1994); *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 533; 672 NW2d 181 (2003). However, this Court possesses the discretion to review a legal issue not raised by the parties. *Mack v Detroit*, 467 Mich 186, 206-209; 649 NW2d 47 (2002) (stating that "[t]he jurisprudence of Michigan cannot be, and is not, dependent upon whether individual parties accurately identify and elucidate controlling legal questions"). We conclude that the chief judge erred by entering substantive and dispositive orders in a case not assigned to him. *Schell v Baker Furniture Co*, 461 Mich 502, 515; 607 NW2d 358 (2000). Although the chief judge possesses broad administrative authority, "[s]ubstantive or dispositive rulings in individual cases are not exercises of administrative authority." *Id.* Absent a proper reassignment order under MCR 8.111, the case remained assigned to Judge Leiber, *id.*, and only Judge Leiber or an authorized substitute, see MCR 8.111(C), could appropriately enter substantive or dispositive orders in the case. Because the record does not contain an order properly reassigning this case to the chief judge, justice requires that we reverse the orders of the chief judge dismissing the case and awarding sanctions. On remand, the trial court may consider the substantive motions filed by defendants and conduct such other proceedings as are consistent with this opinion.

In so holding, we are compelled to note that the provision of the July 2002 order in the prior action, that purports to prohibit plaintiff from filing additional complaints without the approval of the chief judge has no authority in subsequent proceedings and is void in this case. The judicial power possessed by a circuit court consists of the power "to decide and pronounce its judgment and to carry it into effect between persons and parties who bring a case before it for decision." *Goetz v Black*, 256 Mich 564, 569-570; 240 NW 94 (1932), citing *Muskrat v United States*, 219 US 346; 31 S Ct 250; 55 L Ed 246 (1911); *Daniels v People*, 6 Mich 381, 388 (1859)

⁵ Defendant city of Grand Rapids did not request and was not awarded sanctions.

(stating that "judicial power" is "the power to hear and determine controversies between adverse parties, and questions in litigation"); see also *Kent Co Prosecuting Attorney v Kent Co Circuit Judges*, 110 Mich App 404, 407-408; 313 NW2d 135 (1981). Because the present case had not yet been filed and had not been assigned to the trial judge in the prior action, the trial judge had no judicial power in this case, and his order requiring review by the chief judge may not govern the proceedings in this case.⁶

Reversed and remanded for proceedings before the trial judge assigned to this action in accordance with MCR 8.111. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

Borrello, J., concurred.

⁶ We offer no opinion regarding whether the chief judge, in his administrative capacity, may enter an order of review applicable to all cases filed by a particular litigant for the purpose of ensuring that the litigant, who has been found to have engaged in the unauthorized practice of law, does not do so again.