

STATE OF MICHIGAN
COURT OF APPEALS

OAKLAND COUNTY,

Plaintiff-Appellee,

v

DEPARTMENT OF HUMAN SERVICES,

Defendant-Appellant.

FOR PUBLICATION
September 14, 2010

No. 288812
Court of Claims
LC No. 08-000051-MZ

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

SHAPIRO, J. (*concurring*).

Because I agree that the Court of Claims possessed subject-matter jurisdiction, I concur in the result. I write separately because I conclude that the Court of Claims had jurisdiction based on plaintiff seeking monetary damages from a state agency.

As noted by the majority, the jurisdiction of the court of claims is set forth in MCL 600.6419, which provides in relevant part:

(1) Except as provided in [MCL 600.6419a] and [MCL 600.6440], the jurisdiction of the court of claims, as conferred upon it by this chapter, shall be exclusive The court has power and jurisdiction:

(a) To hear and determine *all claims and demands*, liquidated and unliquidated, ex contractu and ex delicto, *against the state and any of its departments*, commissions, institutions, arms, *or agencies*.

* * *

(4) This chapter shall not deprive the circuit court of jurisdiction over . . . proceedings for declaratory or equitable relief, or any other actions against state agencies based upon the statutes of this state in such case made and provided, which expressly confer jurisdiction thereof upon the circuit court [Emphasis added.]

MCL 600.6419a then provides additional, concurrent jurisdiction to the Court of Claims for “any demand for equitable relief and any demand for a declaratory judgment when ancillary to a claim filed pursuant to section 6419.”

Plaintiff in this case made a claim or demand against defendant for a monetary award based on its allegation that the money was improperly collected. Thus, it expressed a claim against the state pursuant to MCL 600.6419(1)(a), which would be exclusively within the Court of Claims. That plaintiff also requested declaratory relief to prevent defendant from improperly raising rates in the future did not deprive the Court of Claims of jurisdiction, as the claim was ancillary to the request for money damages and, therefore, the Court of Claims had concurrent jurisdiction over the declaratory relief under MCL 600.6419a.

Michigan caselaw supports this interpretation. Initially, this Court repeatedly, and without change from our Supreme Court, held that the Court of Claims had exclusive jurisdiction over all money damage cases. See *Pomann, Callanan & Sofen, PC v Wayne Co Dep't of Social Services*, 166 Mich App 342, 346; 419 NW2d 787 (1988) (“This exclusive jurisdiction [in the Court of Claims] encompasses all claims against the state and its instrumentalities for money damages.”).

In 1994, our Supreme Court finally addressed Court of Claims jurisdiction in *Silverman v Univ of Michigan Bd of Regents*, 445 Mich 209, 215; 516 NW2d 54 (1994) (“This Court has not decided a case in which the statute is at issue . . .”). *Silverman* involved a claim for both equitable relief and money damages, and the Supreme Court determined that the Court of Claims had proper jurisdiction.

Subsequently, the Supreme Court again considered a Court of Claims jurisdictional issue in *Parkwood Ltd Dividend Housing Ass'n v State Housing Dev Auth*, 468 Mich 763; 664 NW2d 185 (2003). *Parkwood* involved a claim only under contract—no money damages. Because prior caselaw had required money damages before the Court of Claims had jurisdiction, the lower courts had determined that there was no jurisdiction based on the lack of money damages. Our Supreme Court observed, “[t]he plain language of § 6419(1)(a), the primary source of jurisdiction for the Court of Claims, does not refer to claims for money damages or to claims for declaratory relief.” *Parkwood*, 468 Mich at 772. Accordingly, it concluded that nothing in the statute *required* money damages and explicitly “disavowed” any caselaw “that have seemingly interpreted § 6419(1)(a) as granting Court of Claims jurisdiction over claims for money damages *only* (emphasis added).” 468 Mich at 775. It left untouched, however, the prior caselaw providing that where money damages were involved, the Court of Claims had exclusive jurisdiction.

The most recent case involving Court of Claims jurisdiction is *Duncan v State of Michigan*, 284 Mich App 246; 774 NW2d 89 (2009) rev'd ___ Mich ___ (July 16, 2010, Docket Nos. 139345, 139346 and 139347). In *Duncan*, this Court concluded that the claim sounded neither in contract nor tort, so that the Court of Claims was without jurisdiction. 284 Mich App at 287.¹ Notably, the plaintiffs in *Duncan* were not seeking money damages; they were

¹ The continued viability of this holding is in question, however, based on the Supreme Court's reversal “for the reasons stated in the Court of Appeals dissenting opinion.” ___ Mich at ___. Because the dissent never reached the question of jurisdiction in the Court of Claims, the statements in the majority opinion may now be simply dicta, as they are unnecessary to the

exclusively seeking declaratory relief without a contract or tort claim, which is explicitly reserved to the circuit courts. That is not the case here, where plaintiff is explicitly requesting money damages.

Additionally, it makes no difference whether plaintiff receives monetary damages or a later credit or offset from future payments. An order that a credit or offset be provided costs the state money and, therefore, is an award of money damages, regardless of whether it is paid or simply offset. See *Silverman*, 445 Mich at 216, n 7 (“The plaintiff phrases his request for money damages as a request for a declaratory judgment that he is entitled to a refund. That does not alter the nature of the claim—a demand for money damages.”); *Parkwood*, 468 Mich at 774 n 8 (“[W]e specifically reaffirm the statements in *Silverman* recognizing that the nature of the claim, rather than how the plaintiff phrases the request for relief, controls how a court will characterize the claim.”).

Accordingly, because plaintiff’s claim against defendant for money damages gave the Court of Claims jurisdiction, and MCL 600.6419a provided for concurrent jurisdiction for the Court of Claims to determine the ancillary declaratory relief requested, the Court of Claims properly denied defendant’s motion for summary disposition based on lack of jurisdiction.

/s/ Douglas B. Shapiro

resolution of the case. However, to the extent that the reversal based on the dissent is viewed as “reversal on other grounds,” the statements in the majority’s published opinion may remain controlling. Nevertheless, the holding does not change the outcome of the present case because, unlike the present case, *Duncan* did not involve money damages.