STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF WAYNE, and EDWARD H. MCNAMARA in his capacity as Chief Executive of the County of Wayne,

Plaintiffs-Appellees,

v

JOHN ENGLER in his capacity as Governor of the State of Michigan, STATE DEPARTMENT OF SOCIAL SERVICES, DOUGLAS ROBERTS in his capacity as Treasurer of the State of Michigan, STATE DEPARTMENT OF TREASURY, PATRICIA WOODWORTH in her capacity as Director of the State Department of Management and Budget, STATE DEPARTMENT OF MANAGEMENT AND BUDGET, LOCAL EMERGENCY FINANCIAL ASSISTANCE BOARD, STATE OF MICHIGAN, and GERALD H. MILLER in his capacity as Director of the State Department of Social Services,

Defendants-Appellants.

UNPUBLISHED
December 5, 1997

No. 183263
Wayne Circuit Court
LC No. 94-428402-AW

Before: Reilly, P.J. and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order granting, in part, plaintiffs' motion for summary disposition. This case was held in abeyance pending a decision by the Michigan Supreme Court in *Oakland Co v State of Michigan*, 456 Mich 144; 566 NW2d 616 (1997). Pursuant to the Supreme Court's decision in *Oakland Co*, *supra*, we now reverse and remand for further proceedings consistent with this opinion.

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* Circuit judge, sitting on the Court of Appeals by assignment.

On September 26, 1994, plaintiffs filed suit against defendants seeking a declaration that certain provisions of 1980 PA 328 violated the Headlee Amendment, Const 1963, art 9, § 29. Plaintiffs also sought to enjoin defendants from further enforcement of the challenged provisions. Public Act 328 amended the child care fund provisions of the Social Welfare Act. See MCL 400.117a and 400.117c; MSA 16.490(27a) and 16.490(27c); *Oakland Co, supra* at 147. Plaintiffs alleged that the amendment was a violation of the Headlee Amendment as a matter of law because it placed a cap on the amount of state funding provided to the counties for foster care services, thus improperly reducing state funding. See MCL 400.117a(4); MSA 16.490(27a)(4); *Oakland Co, supra* at 150-151. On September 30, 1994, the circuit court entered an order preliminarily enjoining defendants from further imposing operation of the challenged provisions upon plaintiffs. The parties filed cross motions for summary disposition and on December 7, 1994, the circuit court entered an opinion and order (1) granting plaintiffs' motion for summary disposition with respect to its claim that 1980 PA 328, as applied to MCL 400.117a and 400.117c; MSA 16.490(27a) and 16.490(27c), was in violation of the maintenance-of-support clause of the Headlee Amendment,[1] (2) granting defendant's motion for summary disposition as to plaintiffs' claims alleging other violations of the Headlee Amendment, (3) declaring 1980 PA 328, as applied to MCL 400.117a and 400.117c; MSA 16.490(27a) and 16.490(27c), in violation of the maintenance-of-support clause, and (4) permanently enjoining defendants from applying 1980 PA 328 to MCL 400.117a and 400.117c; MSA 16.490(27a) and 16.490(27c).

Defendants first argue that the circuit court was without subject matter jurisdiction to order the relief requested because plaintiffs' claim came within the exclusive jurisdiction of the Court of Claims. We disagree. Whether the circuit court had subject matter jurisdiction is a question of law. *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704, 705; 178 NW2d 677 (1991). This Court reviews questions of law de novo. *Shurlow v Bonthuis*, 218 Mich App 142, 148; 553 NW2d 366 (1996). In order to determine whether jurisdiction is proper in the Court of Claims we look past the form of relief requested to the actual nature of the plaintiff's claim. *Silverman v University of Michigan Board of Regents*, 445 Mich 209, 216 n 7; 516 NW2d 54 (1994); see also *In re Mahoney Trust*, 153 Mich App 670, 678; 396 NW2d 494 (1986). A complaint seeking only money damages against the state, or one seeking a combination of money damages as well as equitable or declaratory relief must be filed in the Court of Claims. *Silverman*, *supra* at 217. On the other hand, a complaint seeking only equitable or declaratory relief must be filed in the circuit court. *Id.*

Defendants characterize the order enjoining defendants from applying the cap as being, in effect, a money judgment against the state. Apparently, both plaintiffs and defendants assumed that, because of the off-set accounting methods used,[2] and the fact that plaintiffs retained funds in defiance of the cap prior to the circuit court's issuance of the preliminary injunction, the order enjoining defendants from enforcing the cap[3] precluded defendants from collecting funds retained by plaintiffs for foster care services provided before the circuit court's issuance of the preliminary injunction. We do not share this assumption. An order enjoining defendants from engaging in future violations of the Headlee Amendment would not bestow upon plaintiffs legal authority to keep the funds retained in defiance of

past Headlee Amendment violations. In this case, plaintiffs' complaint did not request an award of money damages as compensation for defendants' past misconduct. Instead, plaintiffs merely requested a declaration that the cap on state funding was unconstitutional and an order enjoining defendants from applying the cap in the future. This sort of declaratory relief is typically the appropriate remedy for a violation of the maintenance-of-support clause of the Headlee Amendment. See *Oakland Co*, *supra* at 168 (Mallet, C.J., concurring in part and dissenting in part), citing *Durant v State of Michigan*, 456 Mich 175, 204-206; 566 NW2d 272 (1997). Therefore, as pleaded by plaintiffs, this case was within the exclusive jurisdiction of the circuit court. *Silverman*, *supra* at 217.

Defendants next contend that the circuit court erred when it declared the challenged provisions of 1980 PA 328 unconstitutional. We agree. The portion of the Headlee Amendment at issue in this case was intended to prevent the state from burdening local governments by improper revenue shifting. See *Oakland Co*, *supra* at 150. The Michigan Supreme Court has explained that in order to establish a violation of the maintenance-of-support clause, a plaintiff must show (1) that there is a continuing state mandate, (2) that the state actually funded the mandated activity at a certain proportion of necessary costs[4] in the base year of 1978-1979, and (3) that the state funding of necessary costs has dipped or will dip[5] below that proportion in a succeeding year. *Id.* at 151. The fact that the state placed a cap on its funding requirement does not establish a *per se* violation of the maintenance-of-support clause. *Id.* This is so because defendants may not have complied with their statutory commitment to fund fifty percent of the expenditures in the base year, and the maintenance-of-support clause only requires the state to maintain the level of support that was actually in place during the base year. *Id.* at 151-152. Thus, a determination of whether there was or will be an actual reduction in the proportion of necessary costs funded requires a factual analysis. Because the circuit court declared the challenged provisions of 1980 PA 328 unconstitutional upon summary disposition without making the requisite factual findings, we must now reverse the order granting, in part, plaintiffs' motion for summary disposition. On remand, the circuit court must determine (1) the proportion of necessary costs actually funded during the base year and (2) whether there was a reduction in a subsequent year due to the challenged provisions of 1980 PA 328.

Finally, defendant argues that plaintiffs' claims are limited by the implementing act which (1) exempts "court requirements" from those activities considered "state requirements" and (2) provides that "state requirements" which do not exceed a "de minimus cost" are not included among the "necessary costs" of services provided by local units of government. See Const 1963, art 9, § 34; MCL 21.232(3) & (4); MSA 5.3194(602)(3) & (4); MCL 21.233(6); MSA 5.3194(603)(6); MCL 21.234(5); MSA 5.3194(604)(5). We disagree. Under the implementing act, a "state requirement" is a "state law which requires a new activity or service or an increased level of activity or service beyond that required of a local unit of government by an existing law." MCL 21.234(5); MSA 5.2194(604)(5); *Oakland Co*, *supra* at 159. A "court requirement" is exempted from the definition of a "state requirement." MCL 21.234(5)(c); MSA 5.2194(604)(5)(c); *Oakland Co*, *supra* at 159. This section of the implementing act is useful only in interpreting the second sentence of Const 1963, art 9, § 29. *Oakland Co*, *supra* at 160. Accordingly, the "court requirement" exemption is not applicable to cases addressing only the maintenance-of-support clause of the Headlee Amendment. *Id.* Similarly,

because a “de minimus

cost" is defined as being a cost "resulting from a state requirement," see MCL 21.232(4); MSA 5.3194(602)(4), the de minimus limitation is not applicable to claims brought under the maintenance-of-support clause of Const 1963, art 9, § 29. Cf. *Oakland Co*, *supra* at 160.

Reversed and remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette

[1] The "maintenance-of-support clause" of the Headlee Amendment is the first sentence of Const 1963, art 9, § 29:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law.

The obligation imposed on the state by the maintenance-of-support clause of § 29 begins with whatever level of support was in place when the Headlee Amendment was adopted in November of 1978. See *Oakland Co*, *supra* at 149, 152.

[2] The state pays one hundred percent of the costs of care for state wards during the fiscal year and the county pays one hundred percent of the costs of care for children receiving services pursuant to the child care fund during the fiscal year. The cost of state wards is substantially higher. At the end of the year, the county pays the state an amount to equalize the total amount paid by both parties. See generally *Oakland Co*, *supra* at 155-157.

[3] See MCL 400.117a(4); MSA 16.490(27a)(4) as amended by 1980 PA 328.

[4] See MCL 21.233(6); MSA 5.3194(603)(6).

[5] As long as there is an actual controversy, an action seeking declaratory judgment is not premature if brought before the underfunding has occurred. *Oakland Co*, *supra* at 151 n 4.