

STATE OF MICHIGAN  
COURT OF APPEALS

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GARY BLANCHARD,

Plaintiff-Appellee,

v

MICHIGAN STATE UNIVERSITY,

Defendant-Appellant.

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UNPUBLISHED

July 7, 1998

No. 183030

Ingham Circuit Court

LC No. 91-068120-AZ

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Plaintiff, a tenured professor at defendant university, was suspended for a two-year period as a condition of retaining his tenure following allegations of sexual harassment against him. Plaintiff brought multiple lawsuits, three of which were summarily disposed on defendant's motion. In the instant case, the circuit court issued a permanent injunction against enforcement of the suspension and awarded attorney fees to plaintiff. Defendant appeals as of right the circuit court's final order. We reverse.

The circuit court erred in failing to grant defendant's motion for summary disposition under MCR 2.116(C)(4) and (6). The existence of subject matter jurisdiction is an issue of law which is reviewed de novo. *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994). A court's decision on a motion for summary disposition is reviewed de novo. *Barnell v Taubman Co, Inc*, 203 Mich App 110; 512 NW2d 13 (1993). Plaintiff's complaints in the four lawsuits were as follows:

Court of Claims No. 91-013234-CM: After stating seventeen paragraphs of "common allegations," plaintiff sought damages for breach of contract. This matter was summarily disposed on defendant's motion on June 21, 1991.

Circuit Court No. 91-068120-AZ (the instant case): After stating similar common allegations, this complaint sought injunctive relief as to defendant, damages pursuant to 42 USC §1983 against an individual not a party to this appeal, and money damages from defendant as a result of various contract claims. The court dismissed the

damage claims against defendant university per defendant's motion for summary disposition on the basis of jurisdiction, but denied the motion with respect to the count for injunctive relief. The court did not address defendant's argument to dismiss based on duplicative claims.

Court of Claims No. 93-014847-CM: This case was consolidated with the instant case, and was summarily disposed on January 11, 1995.

Circuit Court No. 93-074680-AZ: This case was removed to federal court as to president of defendant, and dismissed by that court. The court remanded the claims against defendant to state court, where a judge different from the instant case summarily disposed of the claim on defendant's motion on March 2, 1994.

On April 17, 1991, the circuit court heard defendant's motion for summary disposition in the instant case, No. 91-068120-AZ. The motion was premised on MCR 2.116(C)(4)(lack of subject matter jurisdiction) and (C)(6)(claim barred because it is a duplicative action). The court granted the motion in part as it pertained to the breach of contract claim, which sought money damages, ruling that such was within the exclusive jurisdiction of the Court of Claims. The court denied the motion as to count one, seeking injunctive relief, and count two, a claim based on 42 USC § 1983 which also sought injunctive relief.

The trial court erred with respect to jurisdiction. As noted by the Michigan Supreme Court in *Silverman v University of Michigan Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994):

A complaint seeking only money damages against the state must be filed in the Court of Claims. A complaint seeking only equitable or declaratory relief must be filed in circuit court. A complaint seeking money damages from the state as well as equitable or declaratory relief against the state *may only be filed in the Court of Claims*, because that is the sole forum that is capable of deciding the whole case. MCL 600.6419a; MSA 27A.6419(1).

As pleaded by the plaintiff, this case is within the exclusive jurisdiction of the Court of Claims. MCR 7.302(F)(1). (Emphasis added.)

Plaintiff's complaint sought both equitable and legal relief from defendant. "As pleaded by plaintiff," the litigation could only be filed in the Court of Claims. It must be noted that the complaint also alleged malfeasance on the part of an individual, who could only be sued in circuit court. That individual is not part of this appeal.

The circuit court did not reach the question of whether the circuit court claim was duplicative and therefore barred. MCR 2.116(C)(6). This Court may review the issue when it presents a question of law and the facts needed for its resolution have been presented. *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 146; 530 NW2d 510 (1995).

In 1991, plaintiff filed two complaints in state court. In the Court of Claims, plaintiff filed a seven-page complaint seeking damages for breach of a contract of employment. That complaint alleged both an oral and written contract. In the circuit court, plaintiff filed a thirteen-page complaint seeking equitable relief and other damages. As discussed above, the court summarily disposed of the claims for damages. The first seventeen paragraphs of the two complaints are nearly identical. A review of both complaints reveals that plaintiff was in fact making the same claim in both cases. As such, defendant should have been granted summary disposition under MCR 2.116(C)(6). See *Rowry v University of Michigan*, 441 Mich 1, 21-22 (Riley, J. concurring); 490 NW2d 305 (1992), citing Restatement of Judgments, 2d, § 24.

In summary, we conclude that the circuit court erred in failing to summarily dispose of all counts on the grounds presented by defendant. Plaintiff's complaint seeking money damages against defendant university, *as well as* equitable or declaratory relief could only be filed in the Court of Claims, because that was sole forum that was capable of deciding the whole case. MCL 600.6419 and 600.6419a; MSA 27A.6419 and 27A.6419a;<sup>1</sup> *Silverman, supra*. Similarly, the pleadings show that plaintiff was in fact making the same claim in both courts. *Rowry, supra* at 21-22.

Finding the above issues dispositive, we do not reach defendant's remaining issues. We reverse the order for permanent injunction and attorney fees, and remand to the circuit court for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ Roman S. Gribbs  
/s/ William B. Murphy  
/s/ Hilda R. Gage

<sup>1</sup> MCL 600.6419; MSA 27A.6419 provides in pertinent part:

(1) Except as provided in sections 6419a and 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, board, institutions, arms, or agencies.

MCL 600.6419a; MSA 27a.6419a provides in pertinent part:

In addition to the powers and jurisdiction conferred upon the court of claims by section 6419, the court of claims has concurrent jurisdiction of any demand for equitable relief and any demand for a declaratory judgment when ancillary to a claim filed pursuant to section 6419.