STATE OF MICHIGAN

COURT OF APPEALS

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA LOCAL 6000,

Plaintiff-Appellant,

v

FAMILY INDEPENDENCE AGENCY, STATE PERSONNEL DIRECTOR JOHN F. LOPEZ, DEPARTMENT OF CIVIL SERVICE, and CIVIL SERVICE COMMISSION,

Defendants-Appellees.

UNPUBLISHED
November 30, 1999

No. 214214
Ingham Circuit Court
LC No. 98-087890 AZ

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Plaintiff, a union that represents members of the state classified civil service, appeals as of right from the trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(8) to determine whether the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. All factual allegations supporting the claim, and any reasonable inferences that can be drawn from the facts, are accepted as true. *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

I

Plaintiff first argues that Const 1963, art 11, § 5 prohibits state agencies from contracting for positions in the state service for economic reasons. We review constitutional questions de novo. *Mahaffey v Attorney General*, 222 Mich App 325, 334; 564 NW2d 104 (1997).

This Court has recently reaffirmed that the Civil Service Commission is authorized to approve disbursements for services performed by persons outside the classified service for the purposes of efficiency and economy. See *Michigan Coalition of State Employees Unions v Civil Service Comm*, 236 Mich App 96, 108; 600 NW2d 362 (1999); see also *Int'l Union, United Automobile, Aerospace & Agricultural Implement Workers of America v Civil Service Comm*, 223 Mich App 403, 406; 566 NW2d 57 (1997); *Michigan State Employees Ass'n v Civil Service Comm*, 141 Mich App 288, 292-293; 367 NW2d 850 (1985); *DAIIE v Comm'r of Ins*, 125 Mich App 702, 709-712; 336 Mich App 860 (1983).

Plaintiff recognizes that this Court has already ruled contrary to its position. Plaintiff contends that the above cases were decided erroneously and urges us to overrule them. However, pursuant to MCR 7.215(H), we are bound by the precedential effect of the opinions in *Michigan Coalition of State Employees Unions* and *Int'l Union*. Moreover, plaintiff has not persuaded us that the above cases were wrongly decided.

II

Plaintiff next contends that the trial court erred in dismissing its claim that defendants failed to follow applicable rules when approving the personal services contracts at issue.[1] We disagree.

The trial court found that "there is nothing in plaintiff's pleadings in this case alleging facts which would amount to the Civil Service Commission or the Department of Civil Service having failed to follow their own rules." From our review of the complaint, the relevant counts consist almost exclusively of a lengthy list of bare allegations which are not supported by relevant facts. Even where plaintiff does make factual assertions, it fails to connect them to defendants' alleged failure to follow any specific rule or rules. The mere statement of the pleader's conclusions, unsupported by allegations of fact upon which they may be based, will not suffice to state a cause of action. *NuVision, Inc v Dunscombe*, 163 Mich App 674, 681; 415 NW2d 234 (1988). Consequently, we cannot find that the trial court erred in dismissing plaintiff's claim that defendants violated Commission rules.

III

Plaintiff also challenges the trial court's determination that it had to exhaust available administrative remedies before seeking judicial review of its claim. We are not persuaded that the trial court erred.

Michigan courts have long recognized the importance of the doctrine of exhaustion of administrative remedies. *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 191; 590 NW2d 747 (1998). It is only when a party has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision in a contested case, that the agency's decision is subject to review by the courts. See MCL 24.301; MSA 3.560(201); *Michigan State AFL-CIO v Secretary of State*, 230 Mich App 1, 39; 583 NW2d 701 (1998). The exhaustion requirement enables the parties and the agency to develop the facts and produce a complete record for review, to allow the agency to apply its expertise and correct its own errors, and to promote judicial economy by preventing

unnecessary resort to the courts. *Id*. There is, however, a judicially created exception to the exhaustion requirement for cases where an appeal to the administrative agency would be futile. *Christensen v Michigan State Youth Soccer Ass'n, Inc*, 218 Mich App 37, 40; 553 NW2d 638 (1996).

Plaintiff asserts that the time required for an administrative review is so long that decisions are insulated from effective review. However, a remedy is not inadequate so as to authorize judicial intervention before exhaustion of the remedy merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action or proceeding that indicates to the court that it will not be able to protect the rights of the litigants or afford them adequate redress otherwise than through the exercise of this extraordinary jurisdiction. *Bennett v Royal Oak School Dist*, 10 Mich App 265, 269; 159 NW2d 245 (1968).

Despite the delay in the present case, plaintiff has not clearly established that exhausting its administrative remedies would be an exercise in futility. See *Christensen*, *supra* at 41. No showing has been made that the results of an appeal are foreordained, and nothing in the record indicates that the Civil Service Commission will approve all contracts, regardless of whether substantial cost savings will result. Const 1963, art 11, § 5 permits the CSC to decide when to approve a contract for personal services. See *Michigan Coalition of State Employees Unions*, *supra*; *Int'l Union*, *supra*. A court must not interfere with the administrative process when the agency is authorized to decide the question presented.

If, as plaintiff claims, defendants were intentionally delaying the administrative process in order to allow the contracts to run to their completion, then the proper course of action was to petition the lower court for a writ of mandamus. See *Teasel v Dep't of Mental Health*, 419 Mich 390, 409-411; 355 NW2d 75 (1984) ("When agencies of government fail to perform duties imposed by the Legislature or the constitution, the courts will not hesitate to order performance."); *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 205-206; 452 NW2d 471 (1989) ("[N]o court should assume to interfere with the actions of duly appointed administrative bodies until the administrators arrive at some reviewable decision of finality, . . . other than to order the administrators to render a decision if the agency is guilty of unacceptable delay . . . .").

IV

Finally, plaintiff maintains that the trial court erred in concluding that Civil Service Commission rules did not violate the Due Process Clause of the Michigan Constitution. Again, we disagree.

Under the Michigan Constitution, persons are guaranteed not to be deprived of life, liberty, or property without due process of law . See Const 1963, art 1, § 17. Michigan's due process guarantee is construed no more broadly than the federal guarantee. *Syntex Laboratories v Dep't of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998). Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

Plaintiff concedes that an extensive administrative process is available and that judicial review is available at the conclusion of the administrative appeal. However, plaintiff asserts that the process is too slow. Plaintiff argues that it is entitled to a due process hearing before the Department of Civil Service approves a personal services contract.

After reviewing the rules, we conclude that, as a whole, they afford an interested party a meaningful opportunity to be heard before the department approves or disapproves a personal services contract. Civil Service Commission Rule 4-6.4 provides a multi-layer approval and review process in which "interested parties" like plaintiff may participate from the very start. This process provides plaintiff with the opportunity to contend that a particular contract does not meet the requirements for approval. With regard to plaintiff's contention that it is entitled to a hearing before the department renders a decision on a proposed contract, we cannot agree that due process mandates such interference with the routine exercise of agency authority. Const 1963, art 11, § 5 only permits a citizen to act in the event of a violation of its provisions, which cannot occur until *after* the Department of Civil Service approves a contract that does not comply with the requirements. In sum, we find no due process violation.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh

[1] To the extent that the parties' arguments regarding this issue refer to their respective proofs, they are irrelevant. A motion for summary disposition decided pursuant to MCR 2.116(C)(8) is decided on the pleadings alone. *Smith*, *supra*.