

STATE OF MICHIGAN
COURT OF APPEALS

ROLAND BROCKRIEDE, D.D.S.,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF
CONSUMER & INDUSTRY SERVICES,

Defendant-Appellant.

UNPUBLISHED

January 18, 2002

No. 228630

Genesee Circuit Court

LC No. 00-067823-AA

Before: Hoekstra, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court's order granting in part and denying in part its motion for summary disposition. Defendant claims that the trial court lacked subject matter jurisdiction, and thus this case should have been dismissed in its entirety. We agree and therefore reverse.

This case arises from defendant's pursuit of an administrative disciplinary action against plaintiff, a dentist, concerning his license to practice dentistry.¹ In October 1997, defendant filed an administrative complaint against plaintiff with the Michigan Department of Consumer and Industry Services, Office of Health Services, Board of Dentistry Disciplinary Subcommittee (DDSC). In a superseding administrative complaint, defendant alleged, among other things, that plaintiff had violated the Public Health Code, MCL 333.1101 *et seq.*,² by over-prescribing controlled substances. After an administrative hearing, a hearing referee issued a proposal for decision, finding that defendant had proven some of its allegations, but had failed to prove others. Both parties filed exceptions to the proposal for decision and the matter was submitted to the DDSC for its consideration.

¹ Although this matter has a complicated and extensive procedural history in the administrative forum, in the circuit court, and in this Court, we limit our factual recitation to those facts pertinent to this Court's grant of leave to appeal limited to the questions presented in the application for leave.

² More specifically, defendant alleged violations of certain subsections of MCL 333.16221.

Before the DDSC issued its decision, plaintiff filed in the circuit court the complaint at issue in the instant case.³ Plaintiff requested declaratory and injunctive relief, alleging that defendant's investigation and filing of the disciplinary action against plaintiff, along with aspects of the administrative hearing before the hearing referee, violated plaintiff's substantive and procedural due process rights. In response, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(4), arguing that the circuit court lacked subject matter jurisdiction over plaintiff's claims. When ruling on the motion, the trial court made a distinction between issues in the complaint that involved the administrative decision relative to plaintiff's license and those that addressed the procedures employed in the administrative action. The trial court granted summary disposition on the former, but denied summary disposition on the latter. Regarding the procedures at issue, the trial court held that it had the jurisdiction to resolve the constitutional due process challenges that plaintiff raised in his complaint. The trial court also stated that plaintiff was entitled to discovery and a trial in regard to his constitutional claims. Defendant filed a request for interlocutory review, and this Court granted leave to appeal and stayed further proceedings.

On appeal, defendant argues that the circuit court erred in denying its motion for summary disposition regarding plaintiff's complaint because the circuit court lacked subject matter jurisdiction.⁴ Specifically, defendant argues that jurisdiction lies exclusively in the Court of Appeals pursuant to MCL 333.16237(6) (subsection 16237(6)), and thus the circuit court cause of action should have been dismissed.

In order to draw a clearer picture of what this case involves, we begin by noting aspects of this case that are not in dispute and/or are not before us to resolve. The first aspect is the very nature of the complaint. Plaintiff claims that defendant violated his constitutional right to due process by improper investigation, inadequate substantiation of the charges against him, and a protracted administrative process. Presumably, defendant takes a different view regarding whether these allegations are true or, even if true, whether they amount to a deprivation of plaintiff's constitutional right to due process. In any event, plaintiff's complaint undeniably challenges the process and procedures that occurred during the administrative proceeding.⁵ Importantly, they are not substantive challenges to the authority of defendant to conduct an investigation, to hold an administrative hearing, and to take action against plaintiff's dentistry license.

Next, we observe that defendant does not challenge the basic notion that plaintiff is entitled to due process in the disciplinary proceedings. Plaintiff does not maintain that the hearing referee, who made a recommendation to the DDSC, did not have the authority to address plaintiff's due process complaints about the proceeding. Indeed, from the record before us and

³ At the same time, plaintiff also filed a motion to stay the administrative disciplinary proceedings, which the circuit court denied.

⁴ We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Likewise, whether a court has subject matter jurisdiction is reviewed de novo. *Genesis Center, PLC v Commissioner of Financial & Ins Svcs*, 246 Mich App 531, 540; 633 NW2d 834 (2001).

⁵ This Court does not have a record of the administrative proceedings.

the briefing, it is our impression that plaintiff consistently presented the same due process violation claims to the hearing referee, but that the hearing referee rejected those claims. Nor does defendant maintain that plaintiff must accept the resolution of his due process claims as resolved within the administrative proceedings themselves. Rather, defendant's position is that a review occurs only within the confines of the appeal provisions of subsection 16237(6).

With these aspects of the case in mind, we now turn to whether plaintiff's action for declaratory and injunctive relief in the circuit court is a proper forum for addressing plaintiff's due process claims. We begin by taking exception to defendant's statement of the issue presented in this appeal. Defendant maintains that the circuit court lacks jurisdiction over the issues presented in this case because the Court of Appeals has exclusive jurisdiction over appeals from disciplinary subcommittee decisions pursuant to subsection 16237(6). While defendant's assertion regarding appeals may or may not be correct, we believe that defendant's statement of the question is far too broad.

In this case, we need not determine what possible options are available to plaintiff to seek redress for his claims. Rather, we only need to address whether the course that plaintiff has chosen is permissible. Here, plaintiff has not filed an appeal from the DDSC's final decision.⁶ Instead, plaintiff has initiated a new cause of action for a declaratory judgment and injunctive relief. Although plaintiff's complaint is an original action, not an appeal, plaintiff seeks to accomplish what ordinarily would be addressed through an appeal, i.e., plaintiff seeks review of the proceedings held before an inferior tribunal. Accordingly, we believe that the only issue that must be resolved in this appeal is whether constitutional due process challenges to the administrative proceedings regarding plaintiff's license to practice dentistry can be reviewed, and relief awarded, pursuant to an independent cause of action filed in the circuit court for declaratory judgment and injunctive relief. We hold that no such independent action is permitted.

"A court lacks subject-matter jurisdiction to enter a declaratory judgment in the absence of a case or actual controversy." *Durant v State of Michigan (On Remand)*, 238 Mich App 185, 204; 605 NW2d 66 (1999), citing MCR 2.605(A) and *McGill v Automobile Ass'n of Michigan*, 207 Mich App 402, 407; 526 NW2d 12 (1994). "Generally, an actual justiciable controversy exists where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Durant, supra* at 204. See also *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 54-55; 620 NW2d 546 (2000).

Here, plaintiff does not present a controversy that is subject to action for a declaratory judgment. Plaintiff claims that the administrative proceeding regarding his license to practice dentistry is procedurally flawed for a number of reasons. However, a declaratory judgment is not necessary to guide plaintiff's future conduct in order to preserve his legal rights. Rather, plaintiff may raise his claims of violation of constitutional due process on appeal from the DDSC's final decision. At their core, the claims plaintiff raises in this action are issues appropriately reviewed through an appellate process. Proceeding pursuant to MCR 2.605

⁶ We note that in a separate action, Docket No. 228678, plaintiff has filed an appeal as of right of the DDSC's decision.

(declaratory judgment) cannot be substituted for adequate and available review procedures that are provided by law. See *Lajiness v Yaeger*, 352 Mich 468, 471; 90 NW2d 487 (1958). What means for review are available either by direct or interlocutory appeal is not for us to decide.

Further, because the circuit court has no jurisdiction to render a declaratory judgment, there can be no grounds on which to issue an injunction, and it too is precluded. Moreover, because we reverse the trial court's denial of summary disposition, we need not address defendant's arguments concerning discovery and trial.

Reversed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ William C. Whitbeck