

STATE OF MICHIGAN  
COURT OF APPEALS

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J. JOHN BORNSCHEIN,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED  
December 9, 2003

No. 243542  
Ingham Circuit Court  
LC No. 00-092735-CZ

Before: Whitbeck, C.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the dismissal of his complaint seeking a declaratory judgment. Because we do not find any of plaintiff's arguments persuasive, and because we find that plaintiff's complaint should ultimately have been dismissed for lack of jurisdiction, we reverse and remand this case to the trial court with orders to dismiss for lack of jurisdiction under MCL 24.264.

First, plaintiff argues that the trial court erred in dismissing his case as an appeal from the parole board decision. We agree, but hold that the court should have dismissed the case as an improper action for declaratory judgment under MCL 24.264. The decisive issue is one of statutory interpretation and is a question of law that this Court reviews de novo. *People v Burgenmeyer*, 461 Mich 431, 436, n 10; 606 NW2d 645 (2000). In *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 224; 666 NW2d 299 (2003), our Supreme Court prescribed the method of analysis for interpreting statutes:

In interpreting a statute, our obligation is to discern the legislative intent that may reasonably be inferred from the words actually used in the statute. *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). A bedrock principle of statutory construction is that "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). When the statutory language is unambiguous, the proper role of the judiciary is to simply apply the terms of the statute to the facts of a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). In addition, words used by the Legislature must be given their common, ordinary meaning. MCL 8.3a.

In addition, this Court may consult dictionary definitions to determine the common, ordinary meaning of terms. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

Plaintiff alleges this case is distinguishable from a parole appeal because the relief he seeks would apply to future parole hearings. We agree. If plaintiff succeeded, he would not obtain parole, but a revised parole guidelines score. Because this would affect future parole hearings and not reverse a prior decision, we agree that the trial court's reclassification of this case as an appeal was improper. But dismissal was still appropriate because plaintiff's action was improper under MCL 24.264. MCL 24.264 is § 64 of the Administrative Procedures Act ("APA"). In pertinent part, it provides:

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule may be determined in an action for declaratory judgment when the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

Thus in order for the trial court to have jurisdiction under § 64, the action must seek to determine the applicability or validity of a rule.

Plaintiff argues the trial court had jurisdiction under § 64 because he sought to determine whether 1996 AACRS R 791.7716 was "applicable" to his parole guidelines scoring. Specifically, he argues that determining "applicability" means determining how the rule applies to the facts, so that a party could bring a declaratory action under § 64 each time a question arose regarding whether certain facts satisfied an aspect of the rule. But, defendant confuses the applicability of a rule with its interpretation.

*Random House Webster's College Dictionary* (1995) defines "applicable" as "relevant; suitable; appropriate: *a solution applicable to the problem.*" So a rule is applicable to a situation if it is capable of being used in that situation. The same source defines "interpret" as "1. to give or provide the meaning of; explain; elucidate: *to interpret a parable.*" It follows that an action to determine if a rule is "applicable" seeks to force the opposing party to use the rule. In contrast, an action contesting a rule's meaning is a matter of interpretation and not applicability.

Thus, § 64 allows a party to bring a declaratory action to determine if a rule should be used, not to determine what a rule means. For example, a suit to determine whether the parole board must use R 791.7716 when scoring parole guidelines would be a proper declaratory action under § 64. A suit to determine the meaning of the rule in light of particular facts is improper under § 64 because the question concerns interpretation and not applicability.

This case presents the latter of the two. There is no question that defendant used R 791.7716 to determine plaintiff's guidelines score. The score sheet lists all of the required variables and gives each a corresponding score as the rule prescribes. Plaintiff contends that defendant misapplied the scoring variables, not that defendant refused to acknowledge or apply them at all. Thus, plaintiff raises an issue of interpretation and not applicability. As such, plaintiff's suit was not a proper declaratory action to determine the applicability of a rule and the

trial court had no jurisdiction over the case under § 64. We therefore reverse the trial court's dismissal of plaintiff's case as an appeal and remand the case to the court for dismissal under MCL 24.264.

Plaintiff also argues that the Legislature created a liberty interest in high-scoring prisoners through the statutory scheme governing the parole process. We need not address this issue because we reject the trial court's conclusion that this was an appeal. Thus, whether plaintiff has a right to parole has no bearing on this case and we decline to reach the issue.

Next, plaintiff argues that the trial court ignored his rights to fair and just treatment under Const 1963, art 1, § 17. We disagree. This Court reviews constitutional issues de novo. *Wayne Co Chief Executive v Governor*, 230 Mich App 258, 263; 583 NW2d 512 (1998). Plaintiff fails to present any proof of unfair or unjust treatment beyond defendant's failure to succumb to his wishes. Defendant made one scoring error, and that error did not change plaintiff's score range. Our review of the record reveals no evidence of unfair or unjust treatment.

Finally, plaintiff argues that the trial court erred in refusing to hold an evidentiary hearing to investigate his allegations of fraud on the court. We disagree. This Court reviews a trial court's decision regarding an evidentiary hearing for abuse of discretion. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995). Plaintiff relies on *Kiefer v Kiefer*, 212 Mich App 176, 179; 536 NW2d 873 (1995), for the proposition that "where a party has alleged that a fraud has been committed on the court, it is generally an abuse of discretion for the court to decide the motion without first conducting an evidentiary hearing regarding the allegations." But this Court questioned *Kiefer* in *Williams*, *supra* at 398. The *Williams* Court held that "where the truth of fraud allegations can be determined without reference to demeanor, we do not believe that the law requires a trial court to devote its limited resources to an in-person hearing." *Id.* at 399.

Here, the trial court found that plaintiff's allegations of fraud were nothing but a disagreement with defendant's position, and we agree. Plaintiff presents no evidence that defendant lied to the trial court or concealed information. An opposing party does not commit fraud merely by taking an adversarial position, even if the court ultimately disagrees with that position. The trial court did not abuse its discretion.

Reversed and remanded for entry of dismissal consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio