

STATE OF MICHIGAN  
COURT OF APPEALS

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SAMI POOTA & SONS, INC., d/b/a WIXOM  
FOOD MARKET,

Plaintiff-Appellant,

v

MICHIGAN LIQUOR CONTROL  
COMMISSION and WIXOM SHOPPE, INC.,

Defendants-Appellees.

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UNPUBLISHED  
June 30, 2009

No. 285836  
Oakland Circuit Court  
LC No. 2008-089130-AA

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order dismissing its complaint for a writ of superintending control seeking to overturn the decision of the Michigan Liquor Control Commission (“defendant”) to grant a specially designated distributor (“SDD”) license to defendant Wixom Shoppe, Inc. The circuit court dismissed the complaint because plaintiff failed to challenge defendant’s decision in a circuit court appeal pursuant to MCL 600.931. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).<sup>1</sup>

Plaintiff challenges the circuit court’s dismissal of its complaint for superintending control. In general, this Court reviews for an abuse of discretion a circuit court’s decision to grant or deny an order of superintending control. *Shepherd Montessori Ctr Milan v Ann Arbor Twp*, 259 Mich App 315, 346; 675 NW2d 271 (2003). To the extent that plaintiff is raising an issue of law, our review is de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). “For superintending control to lie, the plaintiff must establish that the defendant has

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<sup>1</sup> We disagree with defendant’s argument that this Court lacks jurisdiction over this appeal. Defendant’s argument is based on the incorrect premise that plaintiff filed a complaint for superintending control in this Court, for which dismissal is required under MCR 3.302(D)(2). However, plaintiff did not file a complaint for superintending control in this Court, but rather timely filed a claim of appeal from the circuit court’s order dismissing its complaint for superintending control filed in that Court. Thus, MCR 3.302(D)(2) is not applicable to this appeal.

failed to perform a clear legal duty and that plaintiff is otherwise without an adequate legal remedy.” *In re Credit Acceptance Corp*, 273 Mich App 594, 599; 733 NW2d 65 (2007), aff’d 481 Mich 883 (2008).

Plaintiff argues that the circuit court appeal authorized by MCL 600.931 would not have provided an adequate remedy at law because, under *J & P Market, Inc v Liquor Control Comm*, 199 Mich App 646; 502 NW2d 374 (1993), the circuit court would have been limited to determining whether defendant’s decision was “authorized by law.” Plaintiff’s reliance on *Cahill v Fifteenth Dist Judge*, 393 Mich 137; 224 NW2d 24 (1974), and *Shaughnesy v Tax Tribunal*, 420 Mich 246; 362 NW2d 219 (1984), as examples of cases in which superintending control was granted despite the availability of an appeal is misplaced. Neither of those cases involved a claim that appellate relief would have been inadequate because the scope of review would have been too limited.

Here, plaintiff attributes the alleged inadequacy of the relief available through a circuit court appeal to the deference accorded to an agency’s decision and interpretation of its rules. However, to the extent that plaintiff sought to show that defendant violated its rules, a circuit court appeal could have provided adequate relief. See *Semaan v Liquor Control Comm*, 425 Mich 28, 37, 41; 387 NW2d 786 (1986) (a court may examine whether an agency violated its rules to determine whether the agency’s decision was “authorized by law”). To the extent that plaintiff sought judicial intervention to change a rule or craft a new rule, neither a circuit court appeal nor a writ of superintending control could accomplish that goal. Thus, the circuit court did not err in dismissing plaintiff’s complaint.

Plaintiff also argues that where superintending control is not available, the circuit court had jurisdiction to consider his complaint as a delayed application for leave to appeal. After plaintiff filed its claim of appeal in this matter, however, plaintiff filed a delayed application in the circuit court for leave to appeal the commission’s decision, which the circuit court denied. We therefore reject this claim of error. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

We affirm.

/s/ Peter D. O’Connell  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio