STATE OF MICHIGAN

COURT OF APPEALS

ADAMS OUTDOOR ADVERTISING LIMITED PARTNERSHIP, Plaintiff-Appellant, v DEPARTMENT OF TRANSPORTATION, Defendant-Appellee, and JOHN DOE and JANE DOE, Defendants.	UNPUBLISHED January 11, 2018 No. 336420 Court of Claims LC No. 16-000251.MK

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Plaintiff Adams Outdoor Advertising Limited Partnership appeals as of right the Court of Claims' order granting summary disposition to defendant the Michigan Department of Transportation (MDOT) under MCR 2.116(C)(4) based on lack of subject matter jurisdiction. Because the Court of Claims erred by concluding that it lacked subject matter jurisdiction, we reverse and remand for further proceedings.

Adams owns a billboard located on the north side of 1-94 near Ypsilanti, which is subject to the provisions of the Highway Advertising Act (HAA), MCL 252.301 *et seq.* MDOT is the agency responsible for administering the HAA. See MCL 252.302(f). On November 25, 2015, Adams submitted a permit application to MDOT under MCL 252.311a to remove vegetation around the billboard. MDOT denied the permit application on November 30, 2015. Thereafter, on December 28, 2015, Adams sought review and reconsideration of MDOT's decision under MCL 252.311a(10). MDOT conducted two levels of review and, at both levels, Adams's requests for relief were denied. Notably, under MCL 252.311a(11), MDOT's review and reconsideration should be conducted within 120 days. MDOT failed to complete its review in this time period.

In October of 2016, Adams filed the current lawsuit in the Court of Claims, alleging statutory claims, constitutional claims involving violations of due process and equal protection,

and a claim under 42 USC § 1983. All of Adams's claims involve the basic assertion that MDOT failed to comply with the timeframe for review in MCL 252.311a(11) as well as the procedures set forth in MDOT's "Billboard Vegetation Appeal Procedure." According to Adams, once the statutory time period expired, MDOT was without power to act and MDOT no longer had the authority to deny Adams's request for a vegetation removal permit.

Acting sua sponte, the Court of Claims ordered the parties to file briefs addressing whether the Court of Claims had subject matter jurisdiction. Following briefing by the parties, the Court of Claims issued an opinion and order, concluding that the Court of Claims lacked subject-matter jurisdiction. Specifically, examining the HAA and the Court of Claims Act (CCA), MCL 600.6401 *et seq*., the Court of Claims determined that the circuit court had exclusive jurisdiction over Adams's administrative appeal under MCL 252.311a(12) and MCL 600.6419(5). Thus, the Court of Claims reasoned that it lacked subject matter jurisdiction, and it granted summary disposition to MDOT under MCR 2.116(C)(4). Adams now appeals as of right.

On appeal, the issue before us is whether the Court of Claims has subject matter jurisdiction over Adams's claims relating to MDOT's review of the denial of Adams's vegetation removal permit application. Adams argues that the Court of Claims has jurisdiction under MCL 600.6419(1)(a) and that the Court of Claims erred by concluding that MCL 600.6419(5) applied. In particular, Adams maintains that its claims are constitutional and that they cannot be considered an administrative appeal. Alternatively, Adams asserts that under MCL 252.311a(12), the Court of Claims is a "court of competent jurisdiction" with authority to hear and decide this case.

We review de novo a trial court's decision to grant summary disposition. *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). Summary disposition is properly granted under MCR 2.116(C)(4) when "[t]he court lacks jurisdiction of the subject matter." Whether a court has subject matter jurisdiction presents a question of law that this Court reviews de novo. *Bank v Mich Ed Ass'n-NEA*, 315 Mich App 496, 499; 892 NW2d 1 (2016). Issues of statutory interpretation relating to jurisdiction are also reviewed de novo. *AFSCME Council 25 v State Employees' Ret Sys*, 294 Mich App 1, 6; 818 NW2d 337 (2011).

"Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case." *Forest Hills Co-operative v Ann Arbor*, 305 Mich App 572, 617; 854 NW2d 172 (2014). Michigan's circuit courts are courts of general jurisdiction." *Okrie v Michigan*, 306 Mich App 445, 467; 857 NW2d 254 (2014). "Circuit courts have original jurisdiction to hear and determine all civil claims and remedies . . . ." MCL 600.605. However, this general jurisdiction is not without exceptions, and the circuit court does not have jurisdiction when the constitution or a statute gives exclusive jurisdiction to another court, such as the Court of Claims. *Prime Time Intl Distrib, Inc v Dep't of Treasury*, __ Mich App __, __; __ NW2d __ (2017); slip op at 4-5; *Okrie*, 306 Mich App at 468.

"The Court of Claims is created by statute and the scope of its subject-matter jurisdiction is explicit." *O'Connell v Dir of Elections*, 316 Mich App 91, 101; 891 NW2d 240 (2016) (citation and quotation marks omitted). In particular, except as provided in MCL 600.6421 and MCL 600.6440, which do not appear to be relevant to this case, "the jurisdiction of the court of

claims, as conferred upon it by [the CCA], is *exclusive*." MCL 600.6419(1) (emphasis added). The Court of Claims' "exclusive" jurisdiction includes the power:

> To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court. [MCL 600.6419(1)(a).]

Stated simply, "MCL 600.6419 generally vests the Court of Claims with exclusive jurisdiction over claims against the state or any of its departments." *Prime Time Intl Distrib, Inc*, __ Mich App at __; slip op at 6.

However, there are exceptions to the statutory grant of jurisdiction to the Court of Claims. Relevant to the present dispute, the CAA does not vest the Court of Claims with jurisdiction over an appeal from an administrative agency if the circuit court has exclusive jurisdiction over such appeals. See MCL 600.6419(5). Specifically, MCL 600.6419(5) states that the CAA "does not deprive the circuit court of exclusive jurisdiction over appeals from the district court and administrative agencies as authorized by law." By its plain terms, MCL 600.6419(5) applies when (1) the case is an appeal from an administrative agency or district court and (2) the circuit court has "exclusive jurisdiction as authorized by law."

Initially, we note that, contrary to Adams's arguments, we agree with MDOT and the Court of Claims that this case is properly considered an appeal from an administrative agency. "The determination whether the Court of Claims possesses jurisdiction is governed by the actual nature of the claim, not how the parties phrase the request for relief or the characterization of the nature of the relief." *AFSCME Council 25*, 294 Mich App at 6. See also *Michigan's Adventure, Inc v Dalton Twp*, 287 Mich App 151, 155; 782 NW2d 806 (2010) ("In determining jurisdiction, this Court will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim."). Fairly considered, Adams seeks review of MDOT's vegetation permit decision and, in particular, a determination that MDOT was powerless to act following the expiration of the 120-day statutory window for MDOT's review under MCL 252.311a(11). In other words, Adams seeks a determination that MDOT's decision was not authorized by law and that, as a result, Adams is entitled to a vegetation removal permit and other relief. This type of review of an agency decision, including consideration of whether MDOT's actions were authorized by law, constitutes an appeal of an agency decision. See, e.g., *NW Nat'l Cas Co v Ins Com'r*, 231 Mich App 483, 488; 586 NW2d 563 (1998). Insofar as Adams uses constitutional labels, such as due process and equal protection, the alleged constitutional nature of the claims does not alter the fact that these challenges involve MDOT's permit decision and the procedures employed in reaching that decision, and these constitutional claims arising during MDOT's decision-making process are properly raised in an appeal from an administrative decision as opposed to an independent action. See *Womack Scott v Dep't of Corr*, 246 Mich App 70, 81; 630 NW2d 650 (2001); *Krohn v Saginaw*, 175 Mich App 193, 198; 437 NW2d 260 (1988). See also *Teddy 23, LLC v Mich Film Office*, 313 Mich App 557, 563, 565-568; 884 NW2d 799 (2015) (considering where jurisdiction was proper for an administrative appeal that included allegations involving fraud, equal protection, and due process). In sum, the Court of Claims properly considered Adams's claims to be an appeal from an administrative agency.

Having concluded that this case is an appeal from an administrative agency, the question becomes whether the Court of Claims has jurisdiction to hear this appeal under MCL 600.6419(1)(a) or whether this matter is within the exclusive jurisdiction of the circuit court such that MCL 600.6419(5) applies. In considering whether the circuit court possesses "exclusive jurisdiction" over an appeal from an administrative agency, it is important to note that MCL 600.6419(5) does not *confer* jurisdiction on the circuit court. See *Prime Time Intl Distrib, Inc*, __ Mich App at __; slip op at 6. More fully, considering a similarly worded provision in the CCA, specifically MCL 600.6419(6),[1] this Court has explained:

> We cannot construe the phrase "does not *deprive* the circuit court of exclusive jurisdiction" as language affirmatively *conferring* exclusive jurisdiction to the circuit court that it has never possessed. The distinction is subtle, but the phrase "does not *deprive* the circuit court of exclusive jurisdiction" does not assert that the circuit court *has* exclusive jurisdiction. [*O'Connell*, 316 Mich App at 104.]

Instead, the appropriate inquiry is whether—under some source outside of the CCA—the circuit court has exclusive jurisdiction over the administrative appeal. See *Prime Time Intl Distrib, Inc*, __ Mich App at __; slip op at 7-8; *O'Connell*, 316 Mich App at 104-106. If the circuit court has *exclusive* jurisdiction then, and only then, does MCL 600.6419(5) apply as an exception to the Court of Claims' jurisdiction under MCL 600.6419(1)(a). In contrast, if the circuit court has concurrent jurisdiction with another court, MCL 600.6419(1)(a) will grant the Court of Claims exclusive jurisdiction and divest the circuit court of jurisdiction. See *Prime Time Intl Distrib, Inc*, __ Mich App at __; slip op at 7-8; *O'Connell*, 316 Mich App at 104-106.

Thus, to determine the applicability of MCL 600.6419(5) in this case, the dispositive question is whether the circuit court has exclusive jurisdiction over matters involving an appeal from MDOT proceedings involving vegetation management permits under MCL 252.311a. Cf. *Prime Time Intl Distrib, Inc*, __ Mich App at __; slip op at 7-8. Judicial review of administrative decisions is available as provided by law. Const 1963, art 6, § 28. Generally, "[a] litigant seeking judicial review of an administrative agency's decision has three potential avenues of relief: (1) the method of review prescribed by the statutes applicable to the particular agency; (2) the method of review prescribed by the APA, MCL § 24.201 *et seq.;* MSA 3.560(101) *et seq.;* or (3) an appeal under MCL § 600.631; MSA 27A.631, a provision of the Revised Judicature Act (RJA)." *Jackson Community College v Mich Dep't of Treasury*, 241 Mich App 673, 678-679; 621 NW2d 707 (2000).

In terms of the avenues of relief available to Adams, the HAA contains two provisions allowing for judicial review of MDOT's decisions: MCL 252.311a(12) and MCL 252.323(3).[2]

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[1] MCL 600.6419(6) provides that the CCA "does not deprive the circuit court of exclusive jurisdiction to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963."

[2] It does not appear that the APA or MCL 600.631 apply to this case. MCL 600.631 only applies when "an appeal or other judicial review has not otherwise been provided by for law." Here, the HAA allows for judicial review. In terms of the APA, its judicial review provisions apply in

As the more specific provision governing judicial review of a decision involving a vegetation removal permit application, MCL 252.311a(12) is the relevant provision in this case.[3] This statute states: "If, after review and reconsideration under [MCL 252.311a(10)], the applicant is denied a permit or issued a limited permit, the applicant may appeal the decision of the department to *a court of competent jurisdiction.*" MCL 252.311a(12) (emphasis added).

The CCA does not define the phrase "a court of competent jurisdiction." However, in other contexts, this Court has interpreted the phrase to refer to "a court in the Michigan judiciary" as opposed to purely administrative agencies. See *Summer v Southfield Bd of Ed*, 310 Mich App 660, 673; 874 NW2d 150 (2015); *Baumgartner v Perry Pub Sch*, 309 Mich App 507, 531; 872 NW2d 837 (2015). Nowhere does MCL 252.311a(12) refer to the circuit courts, and nothing in MCL 252.311a(12) suggests that "a court of competent jurisdiction" means a circuit court in particular. Cf. *Etefia v Credit Techs., Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001). Certainly, nothing in MCL 252.311a(12) indicates that circuit courts have *exclusive* jurisdiction.

At most, circuit courts appear to have concurrent jurisdiction under MCL 252.311a(12). That is, while the circuit courts are courts of general jurisdiction, MCL 600.605, the Court of Claims has been granted jurisdiction under MCL 600.6419(1)(a) "[t]o hear and determine any claim or demand," statutory or otherwise, "against the state or any of its departments." Adams's demand for judicial review of MDOT's decision as permitted by MCL 252.311a(12) falls within this grant of jurisdiction to the Court of Claims. It follows that, even if the circuit courts would otherwise have jurisdiction to hear appeals under MCL 252.311a(12), the circuit court's concurrent jurisdiction does not trigger the exception under MCL 600.6419(5), and the circuit court's concurrent jurisdiction under MCL 252.311a(12) has instead been displaced by the Court

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"contested cases," meaning those cases where a decision is "required by law to be made by an agency after an opportunity for an evidentiary hearing." See MCL 24.203(3); MCL 24.301. The proceedings under MCL 252.311a(11) do not require an evidentiary hearing, and thus it does not appear that the APA applies. In any event, previously, in the context of determining whether MCL 600.6419(5) divested the Court of Claims of jurisdiction in a case involving an administrative appeal, we determined that the judicial review of agency decisions available under either the APA or MCL 600.631 *required* an appeal to the circuit court and thus the Court of Claims lacked jurisdiction under these provisions. *Teddy 23, LLC*, 313 Mich App at 568. In short, if the Court of Claims has jurisdiction in this case it is because the HAA does not confer exclusive jurisdiction on the circuit court.

[3] MCL 252.323(2) allows an individual aggrieved by an action or inaction of MDOT to request a formal hearing, which is conducted in accordance with the procedures for a contested case under the APA. Following the formal hearing, MCL 252.323(3) allows the individual to seek judicial review of MDOT's decision under the APA. In this case, there has been no formal hearing under the APA and thus MCL 252.323(3) is inapplicable. In comparison, MCL 252.311a(12) allows for judicial review following a request for MDOT's review under MCL 252.311a(10), which applies specifically when a vegetation management permit application is at issue.

of Claims' exclusive jurisdiction under MCL 600.6419(1)(a).[4] In short, MCL 600.6419(5) is inapplicable, MCL 600.6419(1)(a) applies, and the Court of Claims erred by concluding that it lacked subject matter jurisdiction.

Because the Court of Claims had jurisdiction to consider this case, it erred by granting summary disposition to MDOT under MCR 2.116(C)(4).[5] Accordingly, we reverse the decision of the Court of Claims and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Joel P. Hoekstra
/s/ Brock A. Swartzle

[4] In reaching a different conclusion, the Court of Claims concluded that the phrase "court of competent jurisdiction" does not include the Court of Claims because MCL 600.6419(5) generally recognizes that the circuit court has exclusive jurisdiction over administrative appeals. This reasoning does not comport with *Prime Time Intl Distrib, Inc* or *O'Connell*. In other words, the Court of Claims erred by concluding that MCL 600.6419(5) can be read to have conferred exclusive jurisdiction on the circuit courts. See *Prime Time Intl Distrib, Inc*, __Mich App at __; slip op at 7; *O'Connell*, 316 Mich App at 104.

[5] On appeal, MDOT raises a variety of other grounds for granting summary disposition to MDOT, including governmental immunity arguments and assertions that Adams has failed to state a claim on which relief can be granted. These various arguments were not addressed or decided by the Court of Claims. As such they are unpreserved, and we decline to consider these unpreserved arguments for the first time on appeal. See *O'Connell*, 316 Mich App at 109; *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005).