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STATE OF MICHIGAN

COURT OF APPEALS

MAUREEN DAVIS,

Plaintiff-Appellant,

v

MONTCALM CENTER FOR BEHAVIORAL HEALTH, MONTCALM COUNTY COMMUNITY MENTAL HEALTH AUTHORITY, doing business as MONTCALM CARE NETWORK, and MUNICIPAL EMPLOYEES RETIREMENT SYSTEM,

Defendants-Appellees.

UNPUBLISHED
August 26, 2021

No. 354049
Montcalm Circuit Court
LC No. 2019-025942-CZ

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

In this dispute over retirement benefits, plaintiff, Maureen Davis, appeals as of right the trial court's order dismissing her case against defendants under MCR 2.116(C)(4) for lack of subject-matter jurisdiction. Plaintiff raises several claims on appeal. Because we agree with her contention that the trial court erred by concluding that it lacked subject-matter jurisdiction, we reverse and remand for further proceedings.

I. BACKGROUND AND PROCEDURAL HISTORY

In August 1991, plaintiff started working for Montcalm County Community Mental Health Authority, which at the time was known as Montcalm Center for Behavioral Health (MCBH). In September 2005, plaintiff terminated her employment with MCBH. Sometime afterward, Montcalm County Community Mental Health Authority started conducting business as Montcalm Care Network (MCN).

In February 2018, MCN informed plaintiff she was entitled to a pension for the years she worked at MCBH. She completed the necessary form, and effective March 2018, plaintiff began receiving a benefit in the amount of $2,312.03 per month. She questioned the accuracy of the amount and was told that it was accurate. However, less than a year later, MCN informed plaintiff

that her benefit had been miscalculated and she was only entitled to $914.32 per month. MCN also advised her that it intended to recoup the alleged overpayments.

In March 2019, MCN adopted MERS's Defined Benefit Plan under which MERS would administer MCN's pension plan starting in May 2019.

In April 2019, plaintiff notified MCN of her disagreement with the decision to reduce her benefit, and she asked for information including the plan document, amendments to the plan, and any procedures for appealing the decision relating to the reduction of her benefits. In response, MCN sent plaintiff a letter informing her that if she wished to appeal its decision to diminish her monthly benefits, she could find the applicable appeals procedure in its 2015 Restatement of the MCBH Pension Plan. MCN provided plaintiff with a copy of the plan and a copy of the Summary Plan Description. Plaintiff's counsel responded by letter indicating that he did not believe the pension plan documents provided any appeal procedure that applied to the dispute at issue, but in the event he was mistaken, his letter was intended to serve as an appeal.

In July 2019, MERS informed plaintiff that MCN had engaged it as its Plan Administrator, effective May 1, 2019, and it enclosed a copy of MERS's Plan Document, which was to become effective on June 25, 2019, and which contained an appeals procedure in § 72. Section 72 provided for an administrative hearing before an administrative law judge pursuant to the Administrative Procedures Act (APA), MCL 24.271 *et seq*. Plaintiff's counsel responded by letter, explaining why the APA was not applicable to the situation.

In October 2019, plaintiff filed her complaint in the trial court against the above-named defendants seeking a declaratory judgment and damages associated with MCN's attempt to reduce her pension. In lieu of filing an answer to the complaint, MERS filed a motion to dismiss under MCR 2.116(C)(4), contending that the trial court did not have jurisdiction over this matter because plaintiff had not exhausted her administrative remedies; the trial court agreed and granted MERS's motion. Plaintiff moved for reconsideration, which the trial court denied. Plaintiff now appeals as of right.

II. ANALYSIS

Plaintiff argues that the trial court erred by concluding that it lacked jurisdiction over this matter because the MERS's appeal procedure pursuant to the APA does not apply in this case. We agree.

"This Court reviews de novo a motion for summary disposition brought pursuant to MCR 2.116(C)(4)." *McKenzie v Dep't of Corrections*, 332 Mich App 289, 296; 957 NW2d 341 (2020) (quotation marks and citation omitted). A motion brought pursuant to MCR 2.116(C)(4) "tests the trial court's subject-matter jurisdiction." *Id*. (quotation marks and citation omitted). When reviewing such a motion, "this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Id*. (quotation marks and citation omitted). "We review de novo as a question of law whether a trial court has subject-matter jurisdiction." *Id*. Additionally, we review questions of statutory construction de novo, "with the fundamental goal of giving effect to the intent of the Legislature." *Id*. (quotation marks and citation omitted). "When

interpreting statutory language, we begin with the plain language of the statute." *Jesperson v Auto Club Ins Ass'n*, 499 Mich 29, 34; 878 NW2d 799 (2016).

"Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case." *Id*. (quotation and citation omitted). "Michigan's circuit courts are courts of general jurisdiction and derive their power from the Michigan Constitution." *Id*. MCL 600.605 provides that "[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." Accordingly, a circuit court is presumed to have subject-matter jurisdiction over a civil case unless "Michigan's Constitution or a statute expressly prohibits it from exercising jurisdiction." *McKenzie*, 332 Mich App at 297.

In this case, MERS explained in its motion to dismiss that the MERS Retirement Board had full authority to establish "the provisions of the plan" pursuant to MCL 38.1536(2)(a) of the Municipal Employees Retirement Act of 1984, MCL 38.1501 *et seq*., and under MCL 38.1536(2)(a), the Board adopted the MERS Plan Document, which provided an administrative appeal process that conformed to the APA and required plaintiff to exhaust her administrative remedies before filing suit. A brief review of MERS's evolutional history and the APA is helpful to an analysis of this argument.

Before August 15, 1996, MERS was part of Michigan's executive branch, and it operated within the Department of Management and Budget. MCL 38.1536(1). However, after August 14, 1996, MERS became a public corporation that did not operate within Michigan's executive branch. MCL 38.1536(1). The Retirement Board, which was created to administer the MERS Act, had the following powers and duties after August 14, 1996:

> The retirement board shall determine and establish all of the provisions of the retirement system *affecting benefit eligibility, benefit programs, contribution amounts, and the election of municipalities*, judicial circuit courts, judicial district courts, and judicial probate courts to be governed by the provisions of the retirement system. The retirement board shall establish all retirement system provisions. *As of 12:01 a.m. on August 15, 1996, the retirement system provisions must not differ materially from the defined benefit provisions that are in effect under this act at 11:59 p.m. August 14, 1996*. This subdivision does not limit the retirement board's authority after August 15, 1996 to establish additional programs, including, but not limited to, defined benefit, defined contribution, ancillary benefits, health and welfare benefits, and other postemployment benefit programs. The retirement board may adopt the provisions of the reciprocal retirement act, 1961 PA 88, MCL 38.1101 to 38.1106, on behalf of the employees of the retirement board. [MCL 38.1536(2)(a) (emphasis added).]

"The APA provides the procedure for state agencies hearing contested cases." *Bisco's, Inc v Mich Liquor Control Comm*, 395 Mich 706, 719; 238 NW2d 166 (1976). Importantly, it "confers a right to appeal, after exhaustion of all administrative remedies, upon a person aggrieved by a final decision or order in a contested case." *J & P Market, Inc v Liquor Control Comm*, 199 Mich

App 646, 649; 502 NW2d 374 (1993) (quotation marks, citation, and emphasis omitted). MCL 24.301 specifically provides that

> [w]hen a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law.

A "contested case" is a proceeding "in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3). If an evidentiary hearing is not required by statute, the proceeding is not a contested case covered by the APA's appeals procedure. *J & P Market, Inc*, 199 Mich App at 650. Additionally, an "agency" is "a state department, bureau, division, section, board, commission, trustee, authority or officer, created by the constitution, statute, or agency action." MCL 24.203(2). This means that an agency must be a state unit or position created by the constitution, a statute, or agency action. *League Gen Ins Co v Mich Catastrophic Claims Ass'n*, 435 Mich 338, 343; 458 NW2d 632 (1990). If those two requirements are met, the agency is subject to the APA. *Id*.

Although the trial court found that it did not have jurisdiction over plaintiff's claim because she failed to comply with the exhaustion requirements in MCL 24.301, it is worth noting that there is a difference between "jurisdictional" prescriptions and "claim-processing" rules. *Fort Bend Co, Tex v Davis*, __ US __, __; 139 S Ct 1843, 1849; 204 L Ed 2d 116 (2019). Claim-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Id*. (quotation marks and citation omitted). For a procedural rule to be considered jurisdictional, the statute in question must "expressly" prohibit the circuit court's exercise of jurisdiction. *McKenzie*, 332 Mich App at 297.

There is nothing in the plain language of MCL 24.301 establishing that the Legislature intended to specifically prohibit the trial court from exercising its jurisdiction over a case concerning the APA. However, a rule requiring a claimant to exhaust administrative remedies may still be mandatory and successfully utilized by the opposing party as an affirmative defense. *Fort Bend Co, Tex*, 139 S Ct at 1851-1852.

At any rate, the appeal procedure contained in the MERS plan document did not apply to plaintiff because she initiated the dispute involving the calculation of her benefits before the MERS plan was effective. Plaintiff was notified about the alleged miscalculation of her benefits in January 2019. In April 2019, plaintiff sent a letter to an MCN representative expressing her disagreement with the miscalculation and requesting information regarding the appropriate appeal procedure. Plaintiff received a response in May 2019, which included the MCN summary plan description. On June 17, 2019, plaintiff's counsel sent a written request for appeal in which he expressed his view that the summary plan document did not include a procedure to appeal a decision of the pension committee. According to a letter plaintiff received from MERS's counsel in July 2019, MCN engaged MERS as plan administrator of its pension plan effective May 1, 2019, and the MERS's plan document was effective as of June 25, 2019. MERS is attempting to apply to this case the appeals process contained in the MERS plan document. But because the decision to diminish plaintiff's benefits and her request for an appeal occurred before the MERS plan

document became effective on June 25, 2019, the appeal procedure contained in the MERS plan was not in place when plaintiff initiated her appeal, and she was not required to follow its procedures. See *Rhodes v Aetna Life Ins Co*, 135 Mich App 735, 741; 356 NW2d 247 (1984) (holding that on remand, the trial court was required to determine whether the review procedures contained in a letter of agreement between the employer and union were in place at the time the plaintiff's benefits were terminated).

Moreover, plaintiff was not required to exhaust administrative remedies if the administrative body could not provide the relief she requested. "The doctrine of exhaustion of administrative remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court." *Cummins v Robinson Twp*, 283 Mich App 677, 691; 770 NW2d 421 (2009). However, the doctrine does not apply if the administrative appellate body cannot provide the relief sought. *Id*. In this case, plaintiff raised several claims in her complaint, including breach of contract, estoppel, and unjust enrichment, in which she sought equitable relief and damages. Such claims would not be resolved by an administrative judge. Indeed, this Court has concluded "that the doctrine of exhaustion of administrative remedies would not deprive the trial court of its jurisdiction with respect to properly filed, viable common-law tort claims, such as fraud or gross negligence." *Id*. Accordingly, even if the appeals process in MERS plan applied to plaintiff's situation, at least some of her claims would not be subject to the administrative appeals process.

Finally, even if the MERS plan document applied to plaintiff, pursuant to MCL 24.301, the APA's requirement that an individual first exhaust all administrative remedies before filing a complaint in the circuit court does not apply to the circumstances in this case for two reasons. First, this matter does not involve a "contested case" because an evidentiary hearing is not required by statute to determine whether plan administrators erred by decreasing the amount of plaintiff's monthly benefits. MCL 24.203(3). See also *J & P Market, Inc*, 199 Mich App at 650 (explaining that "[b]ecause an evidentiary hearing is not required by statute in connection with a transfer request, such a proceeding is not a contested case and therefore is not covered by the appeals procedure of the APA"). Secondly, although MERS was created by statute, as of August 14, 1996, MERS is no longer a state unit because it became a public corporation. MCL 38.1536(1). See also *Coalition Protecting Auto No-Fault v Mich Catastrophic Claims Ass'n (On Remand)*, 317 Mich App 1, 19; 894 NW2d 758 (2016) (stating that "the APA's definition of a 'state agency' is not concomitant or interchangeable with the term 'public body' as used in FOIA" because an entity "constitutes a 'public body' if it were merely created by state authority").

Therefore, because this matter does not involve a "contested case" or an "agency," pursuant to MCL 24.301, the administrative remedy provisions of the APA did not apply to this case, and plaintiff did not agree to be bound by the subsequent plan documents and appeal procedure. This means that not only was the exhaustion provision in MCL 24.301 inapplicable to this case but also that there was no remedy available to plaintiff. See *Cummins*, 283 Mich App at 691.

Defendants argue that even if the language contained in MCL 24.301 appears to be inapplicable to this matter, MCL 24.315(5) specifically states that the APA is applicable to MERS. Plaintiff counters that MCL 24.315(5) provides that Chapters 2, 3, and 5 do not apply to MERS because it is not an "agency" or a unit of the state of Michigan. Because MERS can still be a

"person" or a "party" in a contested case, the remaining chapters, including Chapter 4, remain applicable to MERS. We agree.

MCL 24.315(5) provides that

> Chapters 2, 3, and 5 do not apply to the municipal employees retirement system and retirement board created by the municipal employees retirement act of 1984, Act No. 427 of the Public Acts of 1984, being sections 38.1501 to 38.1555 of the Michigan Compiled Laws, on and after August 15, 1996.

1996 PA 222 added MCL 24.315(5) to MCL 24.315. This amendment was added and became effective in 1996, which was the same time that the Legislature changed MERS from a state entity to a public corporation. MCL 38.1536(2)(a).

The APA consists of eight chapters. Chapter 2 deals with agencies adopting administrative guidelines, Chapter 3 discusses promulgating administrative rules, and Chapter 5 discusses the authority to issue licenses. See MCL 24.224 to MCL 24.266; MCL 24.291 to MCL 24.292. Chapter 1 provides general provisions and definitions, Chapter 4 provides provisions regarding the procedures in contested cases, Chapter 6 discusses judicial review, Chapter 7 provides miscellaneous provisions, and Chapter 8 provides provisions regarding costs and fees. MCL 24.201 to MCL 24.211; MCL 24.271 to 24.288; MCL 24.301 to 24.328.

Additionally, MCL 24.271 of the APA provides that "[t]he parties in a contested case shall be given an opportunity for a hearing without undue delay." MCL 24.205(h) defines "party" as "a person or agency named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case," and MCL 24.205(i) defines "person" as "an individual, partnership, association, corporation, limited liability company, limited liability partnership, governmental subdivision, or public or private organization of any kind other than the agency engaged in the particular processing of a rule, declaratory ruling, or contested case."

In this case, the plain language of MCL 24.315(5) states that Chapters 2, 3, and 5 do not apply to MERS. See *McKenzie*, 332 Mich App at 296. This makes sense because Chapters 2, 3, and 5 provide guidance to agencies, and when MCL 24.315(5) was enacted, MERS transitioned from a state entity or "agency" to a public corporation. See 1996 PA 222; MCL 24.224 to MCL 24.266; MCL 24.291 to MCL 24.292. Therefore, MERS cannot adopt guidelines or rules, or issue licenses as defined by the APA. Additionally, because MCL 24.315(5) states that Chapters 2, 3, and 5 are inapplicable to MERS, it follows that the remaining chapters are applicable to MERS. This would be consistent with the fact that MERS could be a "party" or "person" in a contested case in which the APA was applicable. MCL 24.271; MCL 24.205(h); MCL 24.205(i). However, it does not mean or prove that the APA remains applicable to MERS as if it were a state entity or "agency" involved in a contested case because since 1996, MERS has not been a state entity and does not meet the definition of "agency." As defendants assert, MCL 24.315(5) indicates that Chapter 4 applies to MERS; however, that subsection also indicates that the definitions contained in Chapter 1 are also applicable to MERS. There is nothing in the plain language of MCL 24.315(5) that establishes that MERS may operate as an "agency" and that disputes before it are "contested cases" for purposes of Chapter 4 of the APA. Therefore, the definitions of terms such

as "agency" and "contested case" in MCL 24.203 apply, and MERS is not an "agency" and this dispute does not involve a "contested case."[1]

Because MERS's appellate procedures were inapplicable to the circumstances present in this case, plaintiff did not have an administrative remedy available to her. See *Cummins*, 283 Mich App at 691. Additionally, plaintiff was not required to exhaust her remedies pursuant to MCL 24.301. Therefore, we reverse the trial court's order of dismissal pursuant to MCR 2.116(C)(4).[2]

Reversed and remanded. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

[1] Further, we also note that MCL 24.233(3), which is located in Chapter 3, provides that "[a]n agency may promulgate rules prescribing procedures for contested cases. The rules must be consistent with this act and other applicable statutes." Chapter 3 is not applicable to MERS; however, state agencies are not permitted to create procedures for contested cases that are inconsistent with other sections of the APA.

[2] Plaintiff raised additional arguments in her brief on appeal. However, because they are not dispositive, we decline to address them.