STATE OF MICHIGAN

COURT OF APPEALS

MARTIN A. LEWIS,

Plaintiff-Appellant,

v

ATTORNEY GENERAL and KALAMAZOO COUNTY PROSECUTOR,

Defendants-Appellees.

UNPUBLISHED
October 20, 2011

No. 299743
Kalamazoo Circuit Court
LC No. 10-000147-CZ

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

In this case involving the Michigan Prison Litigation Reform Act ("the PLRA"), MCL 600.5501 *et seq.*, plaintiff Martin A. Lewis, a prisoner at the Kinross Correctional Facility, appeals the trial court's dismissal of his complaint for a declaratory judgment that MCL 750.316 is unconstitutional. Because the trial court did not err when it dismissed plaintiff's complaint pursuant to MCL 600.5509(2)(a), we affirm.

The only issue before this Court is whether the trial court erred when it dismissed plaintiff's complaint pursuant to MCL 600.5509(2)(a) on the basis that plaintiff's complaint was frivolous, i.e., devoid of arguable legal merit. We review the trial court's interpretation and application of the PLRA de novo and the trial court's determination that plaintiff's claim was frivolous for clear error. *Johnson v Detroit Edison Co*, 288 Mich App 688, 695; 795 NW2d 161 (2010); *ER Zeiler Excavating, Inc v Valenti Trobec Chandler, Inc*, 270 Mich App 639, 652; 717 NW2d 370 (2006). And, we apply a de novo standard of review when we review the interpretation of constitutional provisions. *Adair v State*, 486 Mich 468, 477; 785 NW2d 119 (2010).

Under the PLRA, a circuit court "shall review as soon as practicable a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." MCL 600.5509(1); MCL 600.5501. MCL 600.5509(2)(a) provides that "the court shall dismiss the complaint . . . if the court finds" that the "complaint is frivolous." MCL 600.5531(c) defines "frivolous" as "that term as defined in . . . MCL 600.2591." Under MCL 600.2591(3)(a)(iii), "frivolous" means that a party's legal position was devoid of arguable legal merit.

In this case, plaintiff's complaint sought redress from a governmental entity and officers or employees of a governmental entity because plaintiff's complaint (1) requested that the Michigan Department of Corrections discharge him from its custody and (2) named as defendants the Michigan Attorney General and the Kalamazoo Prosecuting Attorney in their official capacities. MCL 600.5509(1)-(2)(a). Therefore, MCL 600.5509(1)-(2) applied in this case.

Furthermore, the trial court's determination that plaintiff's claim was devoid of arguable legal merit and, thus, frivolous was not clearly erroneous. Plaintiff's claim asserted that MCL 750.316 was unconstitutional because Section 36 of Article 4 of the Constitution of 1963 prohibited the Legislature from enacting 1969 PA 331 and 1980 PA 28: amendments to MCL 750.316, Michigan's first-degree murder statute. Section 36 provides the following: "No general revision of the laws shall be made. The legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles." Essentially, plaintiff contends Section 36 prohibits the Legislature from amending a statute. No legal authority supports such a contention.

First, this Court has addressed the Constitution's use of the term "general revision" and concluded that the term is not synonymous with the Constitution's use of the term "amendment." See *Citizens Protecting Mich's Constitution v Secretary of State*, 280 Mich App 273, 292-305; 761 NW2d 210 (2008) (discussing a distinction in the Constitution of 1963 between amendments and general revisions). In *Citizens*, we looked to our Supreme Court's decision in *Kelly v Laing*, 259 Mich 212; 242 NW 891 (1932), where the "Supreme Court considered the difference between a 'revision' and an 'amendment' in the context of a city charter." *Id.* at 296. We quoted the *Kelly* Court, stating:

> "Revision and "amendment" have the common characteristics of working changes in the charter and are sometimes used inexactly, but there is an essential difference between them. Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail. *Id.*

Our analysis in *Citizens* illustrates that plaintiff's interpretation of Section 36 is incorrect. The use of the term "general revision" in Section 36 does not prohibit the Legislature from amending statutory law; rather, Section 36 prohibits a general revision: a "re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old." See *id.*

Second, the provisions of the Constitution must be read harmoniously. See *Straus v Governor*, 459 Mich 526, 533; 592 NW2d 53 (1999) ("Where, as here, there is a claim that two different provisions of the constitution collide, we must seek a construction that harmonizes them both."). As the provisions of the Constitution of 1963 were adopted simultaneously, "neither can logically trump the other." *Id.* Plaintiff's interpretation of Section 36 is inconsistent with the

other provisions of Article 4 that vest the legislative power in the Senate and the House of Representatives and provide for legislation by bill. Const 1963, art 4, §§ 1, 22, 33. Indeed, plaintiff's interpretation of Section 36 essentially nullifies Section 25, which states that "[n]o law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length." The plain language of Section 25 illustrates that the Legislature has the authority to amend Michigan's statutory law. Moreover, our Supreme Court has recognized that "[t]he legislative power is the authority to make, alter, amend, and repeal laws." *Harsha v City of Detroit*, 261 Mich 586, 590; 246 NW 849 (1933). And, "[i]t is well-established that decisions concerning what constitutes a particular [criminal] offense are matters peculiarly within the jurisdiction and province of the Legislature." *People v O'Donnell*, 127 Mich App 749, 756; 339 NW2d 540 (1983). "[T]he Legislature has the inherent power to define crimes . . . ." *People v Rosecrants*, 88 Mich App 667, 671; 278 NW2d 713 (1979).

Accordingly, the trial court did not err when it dismissed plaintiff's complaint pursuant to MCL 600.5509(2)(a).[1]

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio

[1] We reject plaintiff's argument that the trial court should have considered the merits of his claim because he had standing and MCR 2.605 is available to prisoners to pursue a declaratory judgment that a penal statute is unconstitutional. The trial court clearly considered the merits of plaintiff's claim when it concluded that his complaint was frivolous.