

STATE OF MICHIGAN  
COURT OF APPEALS

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LEON PERCIVAL SR,

Plaintiff-Appellant,

v

SHERRIE ANDREWS,

Defendant-Appellee.

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UNPUBLISHED

May 12, 2011

No. 298454

Alger Circuit Court

LC No. 2008-004824-CZ

Before: RONAYNE KRAUSE, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted from an order of the circuit court dismissing his claim pursuant to MCR 2.116(C)(4) for lack of subject matter jurisdiction. We reverse and remand.

Plaintiff is a prisoner. Defendant Sherri Andrews is an office assistant at Alger Maximum Correctional Facility. Plaintiff alleges that defendant opened his legal mail outside of his presence even though the fact that the mail came from his attorney was evidenced on the outside of the envelope. He also alleges that defendant then failed to reseal it and treat it as legal mail. Plaintiff filed suit in Alger Circuit Court, and claimed that defendant's actions violated his constitutional rights, violated his right to privacy and his right to attorney-client privilege, and constituted conversion of his property.<sup>1</sup> Plaintiff claimed compensatory damages in the amount of \$1,500. Defendant moved for summary disposition for lack of subject matter jurisdiction pursuant to MCR 2.116(C)(4). In support, defendant cited MCL 600.8301 and argued that jurisdiction instead lay in the district court. The trial court agreed, and granted defendant's motion. Plaintiff now appeals.

Plaintiff argues that the trial court erred when it found that it lacked jurisdiction over plaintiff's claims. This Court reviews decisions regarding subject matter jurisdiction de novo. *L & L Wine & Liquor Corp v Mich Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d

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<sup>1</sup> We do not discuss the validity of any of plaintiff's underlying claims as they are not at issue in this appeal.

107 (2007). A motion for summary disposition brought under MCR 2.116(C)(4) tests the trial court's subject matter jurisdiction. *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004).

Pursuant to MCL 600.5501, the initial provision of the Prisoner Litigation Reform Act, MCL 600.5501 *et seq.*, “[a] civil action concerning prison conditions shall be brought in the circuit court or the court of claims, as appropriate.” MCL 600.5531(a) provides:

“Civil action concerning prison conditions” means any civil proceeding seeking damages or equitable relief arising with respect to any conditions of confinement or the effects of an act or omission of government officials, employees, or agents in the performance of their duties, but does not include proceedings challenging the fact or duration of confinement in prison, or parole appeals or major misconduct appeals under section 34 or section 55 of 1953 PA 232, MCL 791.234 and 791.255.

Here, plaintiff's claim arose from what he maintains was an improper act by defendant, a prison official, in opening his legal mail and in later failing to treat it properly as legal mail. Plaintiff asserts, and defendant did not dispute below, that plaintiff's claims would be covered under MCL 600.5531(a), at least if the amount in controversy exceeded \$25,000. However, as defendant noted in her trial brief, MCL 600.8301(1) provides, “The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.00.” Thus, the question becomes, of the two grants of jurisdiction, which controls.

Plaintiff does not cite any authority directly on point. However, we note that in *Driver v Hanley*, 207 Mich App 13; 523 NW2d 815 (1994), this Court addressed a substantially similar issue concerning whether removal from the circuit court to the district court under MCR 4.003<sup>2</sup> for a claim brought under the Whistleblowers' Protection Act, MCL 15.361 *et seq.*, was proper because plaintiff's damages were likely to be below the then \$10,000 jurisdictional limit. This Court reversed the trial court's decision, after finding that the specific grant of jurisdiction under the WPA trumped the general grant of jurisdiction contained in MCL 600.8301. *Driver*, 207 Mich App at 16-18.

In *Baxter*, this Court held that the circuit court also possesses exclusive jurisdiction of claims under the Civil Right Act, even when potential damages are less than the limit in MCL 600.8301. *Baxter*, 171 Mich App at 591-592. Similarly, in *Brewer v Oaks (On Remand)*, 218 Mich App 392, 395-396; 554 NW2d 345 (1996), regarding a land contract summary proceeding, this Court followed *Driver* to find that the district court retained jurisdiction that was obtained under MCL 600.8032(3), even when the amount in controversy became greater than the limit contained in MCL 600.8301, because the grant of jurisdiction in the former was specific.

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<sup>2</sup> This court rule has since been repealed.

Here, as between MCL 600.8301 and MCL 600.5501, the latter is the more specific statute. Thus, because the parties do not dispute that plaintiff's claim falls within this statute, this Court should find that plaintiff properly filed suit in circuit court.

Reversed and remanded. We do not retain jurisdiction.

/s/ Amy Ronayne Krause  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher