STATE OF MICHIGAN

COURT OF APPEALS

GARY JENKINS,

Plaintiff-Appellee,

v

UNEMPLOYMENT INSURANCE AGENCY/DIRECTOR,

Defendant-Appellant.

UNPUBLISHED
March 7, 2013

Nos. 309625 & 309644
Ingham Circuit Court
LC No. 12-000006-AW

Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 309625, defendant appeals as of right from an order granting plaintiff's request for a writ of mandamus. In Docket No. 309644, defendant appeals by leave granted from an order finding defendant in civil contempt. Because the circuit court did not have subject-matter jurisdiction, we vacate the orders.

Plaintiff quit his job at a heating company in order to accept full-time, permanent employment at MWJ Construction, a company owned by his brother; however, after working for "part of one hour" at MWJ Construction, plaintiff was discharged. Plaintiff applied for unemployment benefits. On or about September 21, 2011, the Unemployment Insurance Agency issued a determination that plaintiff was disqualified from receiving benefits because he did not meet the requirements of the "leaving-to-accept" provision[1] of the Michigan Employment Security Act (MESA), MCL 421.1 *et seq*. Plaintiff protested the determination. On or about October 5, 2011, the agency issued a redetermination that plaintiff did not qualify for benefits.[2] Plaintiff appealed the redetermination and a hearing took place on November 7, 2011, before an administrative law judge (ALJ).

[1] See MCL 421.29(5). The agency determined, in pertinent part, that plaintiff "quit before [he was] hired by the new employer."

[2] The agency determined, in part, that plaintiff "did not actually perform work for the new employer."

On November 8, 2011, the ALJ mailed a decision reversing the October 5, 2011, redetermination and holding that plaintiff was entitled to benefits "if otherwise eligible and qualified." Plaintiff submitted the ALJ's decision to defendant, but defendant refused to pay. Instead, defendant initiated an investigation in order to determine whether MWJ Construction was an "employer" within the meaning of the MESA. Rather than exhaust his administrative remedies with respect to whether MWJ Construction was an employer, plaintiff filed a complaint requesting the circuit court to issue a writ of mandamus ordering the director of the agency to pay plaintiff unemployment benefits.

On January 27, 2012,[3] the circuit court ordered defendant to pay plaintiff unemployment benefits. Defendant did not pay and on February 20, 2012, plaintiff filed an ex parte motion for an order to show cause regarding why defendant should not be held in civil contempt for failure to comply with the court's order. Two days before the show-cause hearing, defendant tendered a check to the court in the full amount due to plaintiff. The check was payable to the court and plaintiff. At the show-cause hearing, the court found that the tendered check did not comply with the court order because it was payable to the court and plaintiff instead of being payable solely to plaintiff. The court found defendant in contempt of court, ordered defendant to pay plaintiff in accordance with the January 27 order, and ordered defendant to pay attorney fees and costs in connection with the contempt proceedings.

Although defendant raises several arguments on appeal, we only need to address the issue of subject-matter jurisdiction.

Issues concerning defects in subject-matter jurisdiction may be raised at any time. *Polkton Twp v Pellegrom*, 265 Mich App 88, 97; 693 NW2d 170 (2005). Whether a court has subject-matter jurisdiction is a question of law that this Court reviews de novo. *Susan R Bruley Trust v City of Birmingham*, 259 Mich App 619, 623; 675 NW2d 910 (2003). We also review de novo the interpretation of the meaning of a court order. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008).

Subject-matter jurisdiction is the right of a court to exercise jurisdiction over a class of cases and it "is presumed unless expressly denied by constitution or statute . . . ." *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998). In Michigan, the circuit courts have subject-matter jurisdiction to issue writs of mandamus. MCL 600.4401(1); *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000). However, "if the Legislature has expressed an intent to make an administrative tribunal's jurisdiction exclusive, then the circuit court cannot exercise jurisdiction over those same areas." *Id.* "As long as the statutory language chosen by the Legislature establishes the intent to endow the state agency with exclusive jurisdiction, courts must decline to exercise jurisdiction until all administrative proceedings are complete." *Papas v Gaming Control Bd*, 257 Mich App 647, 657; 669 NW2d 326 (2003). In other words, direct review by the courts is only available "[w]hen a person has exhausted all administrative remedies available within an agency, and is

[3] Although the order was dated January 27, 2012, it was formally entered on January 31, 2012.

aggrieved by a final decision or order in a contested case . . . ." MCL 24.301. Exhaustion of administrative remedies is required for several reasons:

> (1) an untimely resort to the courts may result in delay and disruption of an otherwise cohesive administrative scheme; (2) judicial review is best made upon a full factual record developed before the agency; (3) resolution of the issues may require the accumulated technical competence of the agency or may have been entrusted by the Legislature to the agency's discretion; and (4) a successful agency settlement of the dispute may render a judicial resolution unnecessary. [*Int'l Business Machines Corp v Dep't of Treasury*, 75 Mich App 604, 610; 255 NW2d 702 (1977).]

The MESA created a "specific procedure to be observed in the administration of the unemployment compensation act and [provided] for a limited judicial review, and . . . such provision is exclusive of any and all other possible methods of review." See *Mooney v Unemployment Compensation Comm'n*, 336 Mich 344, 355; 58 NW2d 94 (1953). First, if the employment agency itself does not request a hearing, an individual must protest the agency's initial determination. MCL 421.32a(1). From there, the agency must either issue a redetermination or refer the matter to a referee for a hearing. *Id*. If a redetermination is not in the individual's favor, the individual can request a hearing before a referee. See MCL 421.33(1). Thereafter, if the referee ruled in favor of the agency, the individual can appeal to the board of review. MCL 421.33(2).[4] If the individual fails to appeal, then the referee's decision is final. *Id*. Once there is a final order or decision, the losing party can appeal the decision to the circuit court. MCL 421.38(1). The circuit court's decision can then be appealed to this Court. MCL 421.38(4).

Defendant argues that the circuit court did not have jurisdiction because the agency had exclusive original jurisdiction to determine whether MWJ Construction was an "employer" and whether plaintiff's claim was valid. Plaintiff argues that the agency already exercised its jurisdiction when it issued the determination and redetermination indicating that plaintiff was not eligible for benefits. Thereafter, plaintiff claims, he exhausted his administrative remedies by appealing the decision to an ALJ, who issued a decision in plaintiff's favor. Plaintiff's argument is unpersuasive, however, because the ALJ did not decide whether MWJ Construction was an employer, and the ALJ's order was clearly conditional.

"[A] court speaks through its written orders and judgments." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). It is well-established that a point assumed, without actually being considered, has not been decided. *In re Apportionment of State Legislature – 1982*, 413 Mich 96, 113-114; 321 NW2d 565 (1982). The ALJ found that plaintiff resigned from his previous employer to "work for his brother . . . at [MWJ] Construction." The ALJ did not specifically find that MWJ Construction was an "employer" under the statute in

[4] The version of the statute in effect before December 19, 2011, referred to the "board of review." The statute currently in effect refers to the "Michigan compensation appellate commission."

question. In the issue statement, the ALJ did not indicate that MWJ Construction's status as an employer was an issue. Also, although the ALJ cited MCL 421.29(1)(a) and MCL 421.29(5) as the applicable law, there was no mention of MCL 421.41 (defining "employer"). Additionally, the record does not show whether the ALJ even heard testimony relating to whether MWJ Construction was an employer, and the ALJ's analysis essentially centered on the leaving-to-accept provision, without expressly considering whether MWJ Construction was an employer.[5] The ALJ held that:

> The claimant is not disqualified from receiving benefits under the provisions of Section 29(1)(a) of the Act.
>
> The leaving-to-accept provisions and transfer of wages apply in accordance with Section 29(5) of the Act.
>
> The claimant is entitled to benefits for each claimed week following the filing for benefits, *if otherwise eligible and qualified*. [Emphasis added.]

The order clearly did not decide all issues because it was conditioned on plaintiff's being "otherwise eligible and qualified." Even though MCL 421.29(5), in pertinent part, requires an individual to "accept permanent full-time work with another *employer*" (emphasis added), the ALJ's opinion simply did not specifically address this point. Thus, we conclude that whether MWJ Construction was an "employer" fell within the proviso at the conclusion of the ALJ's decision. Because the term "employer" is defined in the statute, not everyone who might commonly be considered an employer will satisfy the requirements of the statute. MCL 421.14 provides that the agency may determine whether an entity is an employer. Pursuant to its authority to make a determination, the agency was in the process of determining whether MWJ Construction was an employer at the time the circuit court took jurisdiction. Because the administrative process was ongoing with respect to whether MWJ Construction was an employer, the circuit court's assumption of jurisdiction was in error. The circuit court did not simply enforce the ALJ's decision; it usurped the administrative process by ordering defendant to pay benefits before the agency determined that benefits were due.

Because the circuit court lacked jurisdiction to enter the January 27, 2012, order, it erred in finding defendant in contempt for disobeying that order. "One may not be held in contempt for disobedience of an order or command which the court had no jurisdiction to make." *Town & Country Motors, Inc v Local Union 328*, 355 Mich 26, 48; 94 NW2d 442 (1959).

[5] The ALJ stated that "Claimant left his position with Employer to accept permanent full-time employment with [MWJ] Construction. It is further undisputed that Claimant did perform services for [MWJ] Construction."

Both the order granting plaintiff a writ of mandamus and the order of civil contempt are vacated.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Michael J. Kelly