

STATE OF MICHIGAN
COURT OF APPEALS

TEAMSTERS LOCAL 214,

Plaintiff-Appellant,

v

GENESEE COMMUNITY MENTAL HEALTH
SERVICES,

Defendant-Appellee.

UNPUBLISHED

July 24, 2012

No. 304840

Genesee Circuit Court

LC No. 10-093223-CL

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing its complaint without prejudice. We reverse in part, affirm in part, and remand.

Plaintiff, the union which represents defendant's employees, filed a three count complaint against defendant on behalf of defendant's current employees and retirees concerning the distribution of retirement healthcare benefits as provided in the collective bargaining agreements between the parties dating back to 1982. In response, defendant filed a motion for partial summary disposition, arguing that plaintiff lacked standing to bring the lawsuit on behalf of retirees. After a hearing, the trial court concluded that plaintiff lacked standing to represent defendant's retirees, and indicated that to avoid dismissal on standing grounds plaintiff would have to add retirees to the complaint. Plaintiff did not comply with the trial court's order, and defendant brought a motion to dismiss the complaint. The trial court granted the motion and entered an order dismissing plaintiff's complaint, without prejudice.

"In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. This Court reviews de novo a trial court's determination on a motion for summary disposition as well as the legal question of whether a party has standing to sue." *Int'l Union v Central Mich Univ Trustees*, 295 Mich App 486, __; __ NW2d __ (Docket No. 299785, issued February 28, 2012), slip op, p 4 (quotations, citations, and footnotes omitted).

"The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.'" *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010), quoting *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995).

[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Sch Ed Ass'n*, 487 Mich at 372 (footnote omitted).]

Standing sufficient to seek a declaratory action under “MCR 2.605(A)(1) requires a case of actual controversy within the trial court’s jurisdiction brought by an interested party. The key is that plaintiffs plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Groves v Dep’t of Corrections*, 295 Mich App 1, 10; 811 NW2d 563 (2011) (quotations and citation omitted). “[W]hether a party has standing is a question of law, which we review de novo.” *City of Huntington Woods v Detroit*, 279 Mich App 603, 614; 761 NW2d 127 (2008).

In the present case there is no dispute that plaintiff has standing to pursue, on behalf of current employees, the relief sought in the complaint. Defendant concedes as much on appeal, and did not raise the standing issue relative to current employees in its motion for partial summary disposition. For this reason, the trial court’s order must be reversed to the extent it dismissed plaintiff’s claims against defendant that were raised on behalf of current employees.¹

The more interesting question is whether plaintiff has standing to pursue claims on behalf of defendant’s retirees without their permission. Defendant’s argument is two-fold. First, defendant contends that its retirees did not have any rights under the current collective bargaining agreement that could be asserted by plaintiff. Second, defendant argues that because its retirees are not employees, plaintiff did not have a duty-and absent consent had not ability to represent the retirees.

Plaintiff, on the other hand, argues that it has an interest in seeing that the contractual rights it negotiated on behalf of the retirees (when they were employees, of course) are enforced, and that this interest is sufficient to give it standing. In support of this position, plaintiff relies mostly upon *Sloan v City of Madison Hts*, 425 Mich 288, 294-295; 389 NW2d 418 (1986) and the new standing standard articulated in *Lansing Sch Ed Ass'n*, 487 Mich at 372.

In conducting our de novo review, we hold that the trial court correctly held that plaintiff lacked standing to pursue these claims against defendant on behalf of retirees, absent the retirees’ consent. We reach this conclusion for several reasons. First, as defendant argues, plaintiff itself does not have any rights in the prior collective bargaining agreements that impact the retirees. The plain language of article XXXIX, § 1, of the November 20, 2007, contract provides that the

¹ We decline to address here, for the first time, the arguments raised by defendant that seek to uphold the dismissal on other grounds.

current agreement “supersedes all prior agreements”, and so to the extent plaintiff itself had any interests or rights in the prior contracts, they have been superseded by the current contract. In other words, although the retirees’ rights under the prior contracts are set in stone because they have not entered into new agreements with defendant, any of plaintiff’s rights under the prior contracts were bargained away, and superseded by, any rights it negotiated under the 2007 contract.

Second, and because of our conclusion on the first issue, *Sloan* is of no assistance to plaintiff. Unlike the present case, the union’s standing was upheld because the dispute, which was in part based upon which of two union contracts applied to promotions, was based on the current collective bargaining agreements with the defendant city. See *Sloan*, 425 Mich at 292-295. As we noted above, there is no dispute that plaintiff has standing, on behalf of the current employees, to pursue these claims against defendant. *Sloan* supports that conclusion, but does not touch upon a union’s standing to pursue claims on behalf of retirees.

Third, defendant is correct in noting that retirees are not employees, and that because retirees are not employees, a union does not have a statutory duty to represent them. See *West Ottawa Ed Ass’n v West Ottawa Pub Sch Bd of Ed*, 126 Mich App 306, 329-330; 337 NW2d 533 (1983). However, as in any other agency situation, retirees are free to appoint the union as its representative. See, e.g., *Cleveland Electric Illuminating Co v Utility Workers Union of America*, 440 F3d 809, 817 (CA 6, 2006), citing *Rossetto v Pabst Brewing Co, Inc*, 128 F3d 538, 539-541 (CA 7, 1997) (retirees must consent for union to represent them in arbitration). This, however, has not occurred.

For these reasons, the trial court’s order is affirmed in part, reversed in part, and this case is remanded for further proceedings. We do not retain jurisdiction.

Neither party may tax costs, as neither prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello