STATE OF MICHIGAN

COURT OF APPEALS

ALLENDALE PUBLIC SCHOOLS,

Plaintiff-Appellant,

v

SUPERINTENDENT OF PUBLIC INSTRUCTION and MICHIGAN DEPARTMENT OF EDUCATION,

Defendants-Appellees.

UNPUBLISHED
August 20, 1996

No. 179725
LC No. 93-18817 AA

JENISON PUBLIC SCHOOLS,

Plaintiff-Appellant,

v

SUPERINTENDENT OF PUBLIC INSTRUCTION and MICHIGAN DEPARTMENT OF EDUCATION,

Defendants-Appellees.

No. 179733
LC No. 93-18797 AA

Before: O'Connell, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

In these consolidated appeals, heard simultaneously below, plaintiffs appeal as of right the orders of the circuit court dismissing their respective appeals from defendant agency for want of

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* Circuit judge, sitting on the Court of Appeals by assignment.

jurisdiction and denying their respective requests for the issuance writs of mandamus. We reverse the court's dismissal of plaintiffs' appeals and affirm the court's denial of writs of mandamus.

Defendant agency is charged with auditing the number of full-time students attending the various school districts for purposes of state aid. Defendant audited plaintiffs' student counts for the 1990-1991 academic year. The audits resulted in a reduction of the number of "full-time equated pupils" (FTEs) credited to plaintiffs, meaning their aid was reduced correspondingly. Plaintiffs appealed their respective audit results to the Associate Superintendent and the Superintendent of Public Instruction as provided by the administrative rules. These appeals resulted in restoration of a small portion of the contested FTEs.

Plaintiffs then filed complaints with the circuit court seeking review of the agency decision, requesting a writ of mandamus compelling defendants to pay plaintiffs' school aid without any reduction based on the audit, and requesting that defendant be enjoined from reducing their respective aid based on the audits. The court ruled that it was without jurisdiction to hear plaintiffs' substantive appeal, and that a writ of mandamus was not warranted. Plaintiffs have appealed as of right. We affirm in part and reverse in part.

On appeal, plaintiffs raise three allegations of error. First, plaintiffs contend that the court erred in concluding that it was without jurisdiction to hear plaintiffs' appeals of defendant agency's decisions. Defendant concedes as much. As set forth in Const 1963, art 6, § 28, "[a]ll final decisions . . . of any administrative officer or agency . . . shall be subject to direct review by the courts as provided by law." We are aware of no statute expressly providing for review from defendant agency. However, MCL 600.631; MSA 27A.631, a "catch-all" provision, provides that "[a]n appeal shall lie from any order, decision, or opinion of any state board, commission, or agency . . . from which an appeal or other judicial review has not otherwise been provided for by law, to the circuit court . . . " Therefore, the circuit court had jurisdiction to hear plaintiffs' appeals from the decisions of defendant agency pursuant to MCL 600.631; MSA 27A.631, and the court erred in concluding that it lacked jurisdiction.

Second, plaintiffs challenge the substance of defendant's decisions with respect to their respective disputes concerning the number of FTEs credited to them for the 1990-1991 academic year. Specifically, plaintiffs submit that defendant's decisions were contrary to law, the relevant standard of review. See Const 1963, art 6, § 28; *J & P Market, Inc v Liquor Comm*, 199 Mich App 646, 650; 502 NW2d 374 (1993). The circuit court declined to address this issue based on its mistaken assumption that it lacked jurisdiction to hear the appeals. As set forth in *Spruytte v Owens*, 190 Mich App 127, 132; 475 NW2d 382 (1991), "this Court may properly review an issue if the question is one of law and the facts necessary for its resolution have been presented" even where the issue has not been addressed by the trial court. However, in the present case we decline to address this issue because it was not developed fully below and because, in light of our resolution of the jurisdictional question, plaintiffs will be free to raise this issue again before the circuit court. See *Roberts v Vaughn*, 214 Mich App 625, 630-631; 543 NW2d 79 (1995).

Third, plaintiffs argue that the court abused its discretion, *Delly v Bureau of State Lottery*, 183 Mich App 258, 261; 454 NW2d 141 (1990), in denying their respective requests for writs of

mandamus. To obtain a writ of mandamus, a plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, the defendant must have a clear legal duty to perform it, the act must be ministerial, and the plaintiff must be without other adequate legal or equitable remedy. *Tuscola Co Abstract Co v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994); *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994). Here, because of our resolution of the first two issues on appeal, plaintiffs have an adequate remedy available to them, obviating the necessity for a writ of mandamus should it be found that their substantive arguments are meritorious. We, therefore, affirm the court's denial of plaintiffs' requests for writs of mandamus.

Affirmed in part, reversed in part.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ George R. Corsiglia