

STATE OF MICHIGAN  
COURT OF APPEALS

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ELIZABETH McGEE, Legal Guardian for  
DAVID McGEE, a Legally Incapacitated Person,

UNPUBLISHED  
January 31, 1997

Plaintiff-Appellant,

v

No. 182456  
Court of Claims  
LC No. 94-15435 CM

STATE OF MICHIGAN, DEPARTMENT OF  
MENTAL HEALTH and NORTHVILLE  
REGIONAL PSYCHIATRIC HOSPITAL,

Defendants-Appellees.

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Before: Young, P.J., and O’Connell and W.J. Nykamp,\* JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the circuit court granting summary disposition in favor of defendants. We affirm.

Plaintiff filed suit against defendants, some of which are governmental entities, in the Court of Claims in June 1994. In November 1994, summary disposition was granted in favor of defendants. On December 14, 1994, plaintiff filed a motion for reconsideration. In the motion, plaintiff asserted *inter alia* that, contrary to the court’s decision, her complaint had stated a claim upon which relief could be granted and that any deficiencies in the complaint could be cured by allowing her to amend the complaint to plead her case with greater specificity. On January 4, 1995, the court denied the motion, implicitly declining to allow plaintiff to amend her complaint.

Plaintiff filed a claim of appeal approximately two weeks later, on January 19, 1995. In September 1995, while her appeal was proceeding in this Court, plaintiff filed a motion in the Court of Claims to amend her complaint. In her brief in support of the motion, plaintiff took pains to distinguish this motion from the earlier motion for reconsideration, stating “[p]laintiff is not asking the [c]ourt to revisit its prior ruling [with respect to the motion for reconsideration]. Plaintiff is seeking to add a new theory . . . .” In November 1995, the Court of Claims denied the motion to amend, reasoning that

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

because plaintiff had already filed a claim of appeal, jurisdiction lay in the Court of Appeals and, accordingly, the Court of Claims was without jurisdiction.

On appeal, plaintiff raises a single allegation of error, that she “should be permitted to amend her complaint to add [the] claim” discussed in her September 1995 motion to amend. We decline to review this issue because it has not first been addressed by the trial court.

The Court of Claims properly denied plaintiff’s September 1995 motion to amend. Once a claim of appeal is filed in a civil case, the trial court “may not set aside or amend the judgment or order appealed from except by order of the Court of Appeals, by stipulation of the parties, or as otherwise provided by law.” MCR 7.208. This prohibition encompasses the amendment of complaints. *Wiand v Wiand*, 205 Mich App 360, 369-370; 522 NW2d 132 (1994). Thus, because none of the exceptions set forth in MCR 7.208 obtained, the Court of Claims properly denied plaintiff’s motion on the ground of lack of jurisdiction.

As noted above, plaintiff sought to add an entirely new theory of recovery to her complaint in her motion of September 1995, a theory of recovery that was not raised in her December 1994 motion for reconsideration or at any time prior to September 1995. The Court of Claims properly denied the motion on procedural grounds because, in light of the fact that a claim of appeal had been filed, it no longer had jurisdiction over the case. MCR 7.208(A). The court never reached the substance of plaintiff’s arguments to evaluate whether those arguments warranted amendment of the complaint or whether they were meritless.

Thus, plaintiff now asks this Court to “review” an issue that has never been addressed on its merits by the court of original jurisdiction, the Court of Claims. An appellate court is obligated to review only issues which are properly raised and preserved. *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994). Generally, an issue is not properly preserved if it is not raised before and addressed by the trial court or administrative tribunal. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Therefore, because the Court of Claims has never considered on its merits whether plaintiff’s proffered amendment should be allowed, we decline to address this issue.

We would note that this is not an instance of “passing the buck,” with the Court of Claims directing plaintiff to the Court of Appeals and, after a two year delay, the Court of Appeals ducking its responsibility and directing plaintiff back to the Court of Claims. The error in this case occurred when plaintiff attempted to amend her complaint some nine months after filing a claim of appeal, and then predicated all of her arguments on appeal on the tardy motion to amend. Handled properly, plaintiff would have sought leave to amend her complaint *before* filing her claim of appeal. In this manner, the Court of Claims would have had jurisdiction over the matter and would have issued a ruling, which this Court could then review.

Plaintiff having presented no argument why the order granting summary disposition in favor of defendants should be reversed, it is affirmed.

Affirmed.

/s/ Robert P. Young  
/s/ Peter D. O'Connell  
/s/ Wesley J. Nykamp