

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DENNIS M. LYNK,

Plaintiff-Appellant,

v

MICHIGAN LIQUOR CONTROL COMMISSION  
and TED BERNDT,

Defendants-Appellees.

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UNPUBLISHED  
February 21, 1997

No. 181320  
Macomb Circuit Court  
LC No. 94-003895 CK

Before: Cavanagh, P.J., and Gage and D.A. Burress,\* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendants' motion for summary disposition. On appeal, plaintiff argues that the trial court improperly dismissed the action on the ground that plaintiff failed to exhaust administrative remedies. Plaintiff claims that the trial court both applied the wrong statute of limitations to his discrimination claim and erroneously determined that the due process claim was invalid. Plaintiff also argues that the Wayne Circuit Court erroneously granted defendants' motion for change of venue. We affirm.

I

In his first issue, plaintiff claims that the trial court erred in dismissing his claim for breach of contract on the ground that it lacked subject matter jurisdiction over these claims because plaintiff did not exhaust his remedies under the collective bargaining agreement. The issue of subject-matter jurisdiction is a question of law which this Court reviews de novo. *WA Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). It is well established that where an administrative grievance procedure is provided, exhaustion of that remedy, except where excused, is necessary before review by the courts may be obtained. *Bonneville v Michigan Corrections Organization*, 190 Mich App 473, 476; 476 NW2d 411 (1991).

Plaintiff claims that he exhausted his administrative remedies because he pursued his grievance through the first three steps as provided by the collective bargaining agreement. Plaintiff argues that his failure to advance the grievance to step four does not constitute failure to exhaust remedies because only the union, and not an individual employee, could pursue the grievance to step four. We disagree. In *James v Dep't of Mental Health*, 145 Mich App 229; 377 NW2d 824 (1985), the plaintiff's union failed to advance her grievance to arbitration. The

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

plaintiff filed a complaint against the union in circuit court, and filed a suit against the defendant in the Court of Claims. The plaintiff argued that she was excused from exhausting nonjudicial remedies because the collective bargaining agreement precluded her from utilizing the Civil Service Commission appeal procedures. *Id.* at 231-232. Specifically, the collective bargaining agreement provided that the arbitrator's decision would be final and binding, and not subject to review by the Civil Service Commission. *Id.* at 232, n 1. The Court of Claims dismissed the plaintiff's suit on the ground that it lacked subject matter jurisdiction over the action. *Id.* at 233.

This Court rejected the plaintiff's argument that the terms of the collective bargaining agreement precluded her from obtaining relief from the Civil Service Commission, reasoning that adoption of the argument "would mean that a union and a state agency could abrogate the constitutionally mandated jurisdiction of the commission and confer subject matter jurisdiction on a court which otherwise does not have that jurisdiction." *Id.* at 232-233. The Court further noted that the plaintiff had a remedy because she could have filed an unfair labor charge with the Civil Service Commission pursuant to Civil Service Commission Rule 6-12.1. *Id.* at 233.

Similarly, in the instant case, plaintiff could have pursued an unfair labor charge against his union when the union refused to advance his grievance to arbitration. His failure to do so does not confer jurisdiction on the circuit court when he has not exhausted his remedies under the collective bargaining agreement. The trial court therefore did not err in granting defendants' motion for summary disposition with regard to the breach of contract issue.

## II

Plaintiff next claims that the trial court erred in dismissing his claim that he was deprived of his property interest in employment without due process of law, contrary to Const 1963, art I, § 17. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). This Court reviews a motion for summary disposition pursuant to MCR 2.116(C)(8) by reference to the pleadings alone. *Monroe Beverage Co, Inc v Stroh Brewery Co*, 211 Mich App 286, 292; 535 NW2d 253 (1995). All factual allegations supporting a claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Id.*

Plaintiff claims that he was effectively denied the pretermination hearing to which he was entitled because his termination was a foregone conclusion at the time he was summoned to the meeting on January 11, 1990. A "public employee enjoys a property right in continued employment which the state may only take away in accordance with due process." *Garner v Michigan State University*, 185 Mich App 750, 759; 462 NW2d 832 (1990). The principle that a public employee is entitled to due process prior to termination of his employment is rooted in the United States Supreme Court's decision in *Cleveland Bd of Education v Loudermill*, 470 US 532; 105 S Ct 1487; 84 L Ed 2d 494 (1985). In *Loudermill*, the Supreme Court concluded that "all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures as provided by the Ohio statute." *Id.* at 547-548. Our Supreme Court has noted that under cases following *Loudermill*, "due process is satisfied if a discharged employee was given an opportunity to respond before termination, and posttermination procedures are available." *Tomiak v Hamtramck School Dist*, 426 Mich 678, 701; 397 NW2d 770 (1986).

Plaintiff claims that defendants violated his due process rights because they decided to terminate his employment before holding a disciplinary hearing. However, plaintiff made no such allegations in his complaint. Plaintiff alleged in his complaint that his due process rights were violated because he was not given the opportunity to cross examine witnesses against him, prepare a defense prior to the hearing, or seek legal counsel. However, such procedures are not required for the pretermination hearing. Plaintiff also argues that the posttermination administrative remedies provided by his collective bargaining agreement were inadequate under *Loudermill*. Plaintiff did not make this allegation in his complaint. Accordingly, the trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8).

### III

Plaintiff claims that the trial court erroneously granted defendants summary disposition with regard to his racial discrimination claims on the ground that the three-year statute of limitation for these claims had expired. Plaintiff sought relief for racial discrimination under both the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and the Michigan Constitution, Const 1963, art I, § 2. Actions brought under the Civil Rights Act are subject to the three-year statute of limitations for personal injury pursuant to MCL 600.5805(8); MSA 27A.5805(8). *Parker v Cadillac Gage Textron, Inc*, 214 Mich App 288, 289; 542 NW2d 365 (1995). Plaintiff concedes that his Civil Rights Act claims were time-barred. However, he argues that his claims under the constitution were not untimely. Plaintiff argues that the correct statute of limitations to apply to these claims is the six-year period for breach of contract actions, MCL 600.5807(8); MSA 27A.5807(8). Plaintiff claims that the damages he seeks in his equal protection claim are more similar in character to damages for breach of contract, and that the tort statute of limitations is therefore inapplicable.

We are not persuaded by this argument. Employment discrimination actions brought under the Civil Rights Act also are grounded in allegations of wrongful discharge rather than claims of injury to person or property, and yet the personal injury statute of limitations is applied. Adoption of plaintiff's argument would create an anomaly between discrimination claims brought against private employers and the government. Plaintiff has not offered any reason why government employees should be permitted a statute of limitations for discrimination claims twice as long as that permitted to private employees. We therefore affirm the trial court's grant of summary disposition.

### IV

Finally, plaintiff claims that the Wayne Circuit Court erred in granting defendants' motion for change of venue. We decline to review this issue. Because, as discussed in the first three issues, plaintiff was not entitled to relief as a matter of law, any error the trial court might have made in transferring venue was harmless. See MCR 2.613(C).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burress