

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN J. REID,

Plaintiff-Appellant,

v

CITY OF FLINT and FLINT FIRE FIGHTERS
UNION,

Defendants-Appellees.

UNPUBLISHED

March 25, 1997

No. 173831

MERC

LC Nos. 93D40;93D106

Before: McDonald, P.J., Griffin and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the Michigan Employment Relations Commission (MERC), dismissing plaintiff's claims against defendant City of Flint on statute of limitations grounds and dismissing plaintiff's claim that defendant Flint Fire Fighters Union breached its duty of fair representation on res judicata grounds. We affirm.

Plaintiff was discharged from his position as a fire fighter by defendant city on June 2, 1987. Plaintiff had pursued unsuccessful appeals against defendant city from the city's civil service commission decision against reinstatement. Plaintiff filed a grievance against defendant union, which was adjudicated in favor of the union in a MERC order dated June 29, 1989. Plaintiff filed exceptions with MERC and moved for reconsideration, but failed to appeal to this Court. On April 20, 1993, plaintiff again filed a MERC complaint, this time against both the union and the city, arising from the same events that formed the basis of the first complaint. On March 10, 1994 MERC dismissed this new action, finding that the claim against the city was barred by the statute of limitations, and that the claim against the union was barred as a matter of res judicata from the MERC order of 1989.

Regarding the claim against the city, MCL 423.216(a); MSA 17.455(16)(a) provides a six-month limitations period for filing complaints with MERC. Plaintiff contends that the running of the limitations period was tolled by the filing of a suit against defendant city in federal district court, and the subsequent filing of a complaint with MERC within six months after the United States Supreme Court denied certiorari in the federal action. Plaintiff alleges that the federal suit arose from the same facts as

the present case, but does not assert that the federal suit involved the state law cause of action that is involved in the present case. Therefore, plaintiff's reliance on *Barczak v Rockwell*, 68 Mich App 759, 761-762; 244 NW2d 24 (1976), is misplaced, as *Barczak* addressed tolling in a proceeding involving the same *cause of action*, not in a proceeding merely arising from the same facts.

Regarding the claim against the union, MCL 423.216(e); MSA 17.455(16)(3) provides a twenty-day limitations period for appealing a MERC order, and provides that such appeal goes directly to this Court. The statute also provides:

If a timely petition for review is not filed under this subdivision by an aggrieved party, it shall be conclusively presumed that the commission's order is supported by competent, material, and substantial evidence on the record considered as a whole, and the commission or any prevailing party shall be entitled, upon application therefor, to a summary order enforcing the commission's order. [MCL 423.216(e); MSA 17.455(16)(e).]

Plaintiff did not appeal within the statutory twenty-day period. As noted in *Senior Accountants, Analysts & Appraisers v City of Detroit*, 399 Mich 449, 457-458 249 NW2d 121 (1976),

It is established law in this state that the doctrines of res judicata and collateral estoppel apply to administrative determinations which are adjudicatory in nature, where a method of appeal is provided, and where it is clear that it was the legislative intention to make the determination final in the absence of an appeal.

The MERC orders are adjudicatory in nature, and MCL 423.216; MSA 17.455(16) provides for appeal. Thus, the MERC orders are final in the absence of appeal and MERC correctly granted defendants' application for a summary order dismissing the case.

Arguing against application of the limitations periods, plaintiff contends that the union fraudulently misrepresented plaintiff as a new-hire employee during his discharge grievance hearing before the city's Civil Service Commission, and that such fraud should equitably estop defendants from invoking any limitations defense. Equitable estoppel will apply to preclude the defense of the statute of limitations, but the doctrine will usually be applied only if the party to be estopped clearly acted to induce the plaintiff to refrain from bringing action within the limitations period. *Executone Business Systems Corp v IPC Communications, Inc*, 177 Mich App 660, 669; 442 NW2d 755 (1989). Plaintiff has not demonstrated any circumstances that would justify applying equitable estoppel to defeat the statute of limitations defense or the limitations period for bringing appeal to this Court.

Arguing against application of the doctrine of res judicata, plaintiff claims to have alleged a new charge of "wrongful conspiracy in violation of MCL 423.24(a) [MSA 17.454(26)(a)]" on the part of defendants. However, while MCL 423.24(a); MSA 17.454(26)(a) provides for criminal penalties in cases of conspiracy to violate the state's labor dispute laws, it does not provide an administrative cause of action.

Plaintiff's argument that application of the limitations periods would violate the contracts clause of the United States Constitution, US Const art I, §10, is without merit. Plaintiff seems to contend that he was a beneficiary of the contract between the union and the city, that enforcement of the statute of limitations or the deadline for bringing an appeal to this Court would bar his recovery, and that application of the limitations provisions would therefore be unconstitutional under the contracts clause. Plaintiff's interpretation of the contracts clause would render all statutes of limitation for the enforcement of contract rights unconstitutional, and we decline to adopt it. Similarly, we reject plaintiff's claim that enforcement of the limitations periods results in a deprivation of due process of law.

The MERC order of March 10, 1994 is affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra