

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS SALMON and JOANN SALMON, d/b/a
T & J HOUSING INVESTOR,

UNPUBLISHED
April 11, 1997

Plaintiffs-Appellants,

v

No. 193290
St. Joseph Circuit Court
LC No. 93-000424

CITY OF THREE RIVERS,

Defendant-Appellee.

Before: Murphy, P.J., and Markey and A.A. Monton,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order granting summary disposition in favor of defendant. We affirm.

Defendant's motion was brought pursuant to MCR 2.116(C)(7), (C)(8) and (C)(10), but the circuit court did not specify under which subpart it granted the motion. Because we find the dispositive issue in this case to be subject matter jurisdiction, we review the court's grant of summary disposition de novo under MCR 2.116(C)(4). *Brown v Drake-Willock Int'l, Ltd*, 209 Mich App 136, 143; 530 NW2d 510 (1995). Thus, we must determine whether the pleadings demonstrate that defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact. *Steele v Dep't of Corrections*, 215 Mich App 710, 712; 546 NW2d 725 (1996).

Plaintiffs present essentially three grounds for reversing the circuit court's decision. First, plaintiffs argue that they were denied due process because defendant did not give them specific notice of the alleged violations of their properties and because their opportunity to be heard by the board of appeals was not meaningful. Second, plaintiffs argue that defendant committed a regulatory taking of their property in violation of state law and that this taking claim did not have to be filed within the statute of limitations for appealing an agency decision because a taking is a separate cause of action. Third,

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

plaintiffs argue that defendant discriminated against them because the revocation of their rental license was based upon the race of one of their tenants and not the conditions of the individual properties.

We initially hold that plaintiffs have waived any race discrimination claim because the general statements in their brief are insufficient to bring the issue before this Court. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). Moreover, we find that the remaining issues, the deprivation of due process and the unlawful taking, should also be dispensed with because the circuit court lacked subject matter jurisdiction to hear the appeal of the municipal administrative agency's decision to revoke plaintiffs' rental license.

The method for an appeal from a municipal administrative agency must have its source in the agency's underlying statute or in a general authorizing statute for judicial review of administrative decisions. *Eckstein v Kuhn*, 160 Mich App 240, 243-246; 408 NW2d 131 (1987). In this case, the City of Three Rivers rental housing code, is silent on whether a losing party has the right to judicial review of the board's decision. Additionally, the provisions of the Administrative Procedures Act granting judicial review, MCL 24.302 to 24.305; MSA 3.560(202) to 3.560(205), are inapplicable because the APA governs the procedures of state agencies, not municipal agencies. *Robertson v Detroit*, 131 Mich App 594, 597; 345 NW2d 695 (1983). Similarly, the judicial review provided in the Revised Judicature Act, MCL 600.631; MSA 27A.631, is specifically limited in applicability to state agencies that are authorized to promulgate rules. *Villa v Fraser Civil Service Comm*, 57 Mich App 754, 757; 226 NW2d 718 (1975).

Consequently, this Court has consistently held that absent authority granted by statute or court rule, circuit courts do not have jurisdiction to hear appeals from municipal administrative agencies like the board of appeals in this case. See, e.g., *O'Connor v Oakland Co Sheriff's Dep't*, 169 Mich App 790, 795; 426 NW2d 816 (1988); *Eckstein, supra*; *Robertson, supra*. In such cases, "review" may be had by filing an original action for an order of superintending control. *Eckstein, supra*, at 245 n 4. In this case, no such order was sought. Even if the circuit court or this Court had subject matter jurisdiction over appeals from municipal administrative agencies pursuant to a general grant of authority, review is not available for plaintiffs in this case because their appeal was not filed within the twenty-one day appeal period set by MCR 7.101(B). See *Schlega v Detroit Bd of Zoning Appeals*, 147 Mich App 79; 382 NW2d 737 (1985). Additionally, although unclear, even if we were to assume that the housing law of Michigan, MCL 125.401 *et seq.*; MSA 5.2771 *et seq.*, which provides for judicial review of any final decision of a housing board of appeals, MCL 125.542; MSA 5.2891(22), applies to this case, the trial court was still without jurisdiction to hear any appeal because that act requires filing a petition for an order of superintending control within twenty days of the decision. Such was not done in this case.

Moreover, the due process and taking claims do not provide independent bases for judicial review in this case because they allege defects relative to the decision of and procedures used by the administrative agency. See *Krohn v Saginaw*, 175 Mich App 193, 198; 437 NW2d 260 (1989). Specifically, the issue of whether plaintiffs received adequate notice of the violations or a meaningful opportunity to be heard alleges a defect in the procedure employed by the board of appeals. *Id.*

Similarly, the issue of whether an unconstitutional taking occurred by the revocation of plaintiffs' rental license addresses the result reached by the board of appeals in affirming defendant's action. *Id.* In other words, these issues were not separate causes of action, but in essence, an appeal of the agency's decision, over which the trial court had no subject matter jurisdiction.

Therefore, the circuit court did not err in granting defendant summary disposition because defendant was entitled to judgment as a matter of law, but the court should not have reached the merits of the issues in this case because it lacked subject matter jurisdiction. This Court will not reverse a lower court's decision where it reached the correct result, but for the wrong reason. *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 332-333; 520 NW2d 656 (1994).

Affirmed.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Anthony A. Monton