

STATE OF MICHIGAN
COURT OF APPEALS

MARY MONICA LINDEMANN,

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

November 21, 1997

No. 194692

Court of Claims

LC No. 95-015997 CM

MARY MONICA LINDEMANN,

Plaintiff-Appellant,

v

STATE OF MICHIGAN,

Defendant-Appellee.

No. 194693

Ingham Circuit Court

LC No. 95-081980 AS

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

These consolidated appeals follow the summary dismissal of plaintiff's actions for injunctive relief and monetary damages brought simultaneously in the Ingham Circuit Court and the Court of Claims. We affirm. These cases are being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's failure to challenge the circuit court's determination that it lacked subject matter jurisdiction precludes us from affording plaintiff any remedy in her circuit court action. *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Plaintiff's complaint filed in the Court of Claims alleges that her federal and state constitutional rights to free speech, association, due process and equal protection are being abridged by the director of the state agency at which she is employed. Plaintiff correctly asserts that the state cannot require an individual to relinquish free speech and free association rights guaranteed to the individual by the state and federal constitutions as a condition of public employment. *Council No. 11, American Federation of State, County, & Municipal Employees, AFL-CIO v Civil Service Commission*, 87 Mich App 420, 428-429; 274 NW2d 804 (1978), aff'd 408 Mich 385; 292 NW2d 442 (1980); see also *Abood v Detroit Board of Education*, 431 US 209, 233-235; 97 S Ct 1782; 52 L Ed 2d 261 (1977); *Elrod v Burns*, 427 US 347, 357-360; 96 S Ct 2673; 49 L Ed 2d 547 (1976); *Kusper v Pontikes*, 414 US 51, 56-57; 94 S Ct 303; 38 L Ed 2d 260 (1973).

Nevertheless, while plaintiff's complaint raises constitutional issues, the resolution of those issues depends on the resolution of factual issues that are within the competency of the Civil Service Commission to determine in the first instance. The essence of plaintiff's claim on appeal is that she has suffered a de facto demotion as a consequence of her off-duty involvement in partisan political activity. Whether plaintiff has indeed suffered a de facto demotion presents a fact question for the commission to resolve. *Hardy v State Personnel Director*, 392 Mich 1, 4-5, & 5, n 1; 219 NW2d 61 (1974). Under these circumstances, plaintiff's constitutional claims are not of the type that warrant immediate review and the exhaustion of administrative remedies doctrine controls. *Michigan Supervisors Union OPEIU Local 512 v Department of Civil Service*, 209 Mich App 573, 578-579; 531 NW2d 790 (1995); *Hardy, supra*, p 5, n 1.

Moreover, plaintiff has failed to adequately document her claim that she is being denied access to her administrative grievance procedures and, therefore, has failed to demonstrate the need for judicial intervention to guarantee her access to these administrative procedures.

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.