

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

---

JOSEPH A. THOMAS,

Plaintiff-Appellant,

and

PATRICK D. RICHARD,

Plaintiff,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellee.

---

UNPUBLISHED

February 6, 2007

No. 272447

Ingham Circuit Court

LC No. 06-000686-CL

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Plaintiff Joseph A. Thomas<sup>1</sup> appeals as of right an order granting defendant's motion for summary disposition under MCR 2.116(C)(4). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, currently a lieutenant, has been employed by defendant Department of State Police since 1987. In April of 2005, he twice sought promotion to first lieutenant, applying for a position in the Professional Standards Sections (Internal Affairs) and to be the commander of the Flint Post. Each time, after reviewing his qualifications under its Targeted Selection Process, defendant rejected plaintiff's application. Plaintiff then filed suit in circuit court, seeking (1) a declaration that the Targeted Selection Process violates the Michigan Constitution and Michigan Civil Service Commission (MCSC) rules, (2) an injunction barring defendant from using the process in the future, and (3) an order setting aside the results of the Targeted Selection Process as to the two positions he sought. In response, defendant filed a motion for summary disposition, asserting that the trial court lacked subject matter jurisdiction because plaintiff failed to exhaust the administrative remedies available before the MCSC. The trial court granted the motion and the instant appeal followed.

---

<sup>1</sup> Plaintiff Patrick Richard is not a party to this appeal so further use of "plaintiff" in this opinion will refer to only plaintiff Thomas.

A motion for summary disposition brought under MCR 2.116(C)(4) tests the trial court's subject matter jurisdiction. *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). Summary disposition for lack of jurisdiction "is proper when a plaintiff has failed to exhaust its administrative remedies." *Id.*, quoting *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

The Michigan Constitution gives the MCSC "broad discretion over most, if not all, aspects of civil service employment." *Bays v Dep't of State Police*, 119 Mich App 719, 721; 326 NW2d 620 (1982). Article 11, § 5 requires it to

classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, *determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service*, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service. [Emphasis added.]

See also *York v Civil Service Comm*, 263 Mich App 694, 699-700; 689 NW2d 533 (2004). The commission "has plenary and absolute powers in its field." *Viculin v Dep't of Civil Service*, 386 Mich 375, 398; 192 NW2d 449 (1971).

Pursuant to its constitutional authority, the MCSC promulgated Rule 1-6, which provides:

All appointments and promotions to positions in the classified service, all measures for the control and regulation of employment in classified positions, and all separations from classified positions shall be based on merit, efficiency, and fitness, as provided in the civil service rules and regulations.

The MCSC has also provided rules allowing dissatisfied job applicants to file "technical complaints" with the commission. MCSC Rule 8-3. Specifically, Rule 8-3.1(d)(2) provides:

An unsuccessful candidate who alleges that the *selection, appointment, or certification process* for the position violated a civil service rule or regulation may file a technical appointment complaint. [Emphasis added.]

According to the definitions section of the MCSC rules, Section 9-1, a technical complaint is a written complaint alleging that a "technical decision (1) violated article 11, section 5, of the Michigan Constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious." Included in the definition of "technical decision" is "a decision of an appointing authority appointing a candidate to a position in the classified service." The Michigan Department of State Police constitutes one such appointing authority. See *Bays, supra*.

In the instant case, defendant denied plaintiff two promotions after reviewing his candidacy under the Targeted Selection Process. Because these were decisions of an appointing authority concerning appointment within the civil service, they constitute technical decisions. Further, plaintiff's complaint alleged that the use of the Targeted Selection process (1) violates article 11, § 5, of the Michigan Constitution; (2) is arbitrary and capricious; and (3) violates the

rules promulgated by the MCSC. Thus, plaintiff challenges a pair of technical decisions on all three of the grounds on which such a decision may be challenged in a technical complaint.

Rather than file a technical complaint with the MCSC, plaintiff initiated the instant suit in the circuit court. But where an administrative procedure exists, an aggrieved party must exhaust “all administrative remedies available within an agency” before the issue may be reviewed by the courts. MCL 24.301; *Bonneville v Michigan Corrections Org, Serv Emp Int’l Union, Local 526M, AFL-CIO*, 190 Mich App 473, 476; 476 NW2d 411 (1991). Because plaintiff failed to take advantage of the administrative remedy available to him, the trial court did not err in finding that it lacked subject matter jurisdiction over his complaint. Consequently, we affirm the trial court’s order granting defendant’s motion for summary disposition under MCR 2.116(C)(4).

Affirmed.

/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald  
/s/ Pat M. Donofrio