

STATE OF MICHIGAN
COURT OF APPEALS

KEITH BROOKS and ERNEST L. JARRETT,

Plaintiffs-Appellants,

v

CITY OF DETROIT and DETROIT POLICE &
FIRE RETIREMENT SYSTEM,

Defendants-Appellees.

UNPUBLISHED

April 20, 2010

No. 288795

Wayne Circuit Court

LC No. 08-115996-CZ

Before: MURPHY, C.J., and JANSEN and ZAHRA, JJ.

PER CURIAM.

Plaintiff,¹ a 16-year veteran of the Detroit Fire Department, brought suit against defendants to obtain equitable and injunctive relief relating to his employment and retirement. The trial court dismissed plaintiff's suit for failure to exhaust his arbitration and grievance remedies. Plaintiff appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS AND PROCEDURE

Plaintiff was employed by the City of Detroit as a firefighter for over 16 years. In January 2007, plaintiff was charged with six felony counts, unrelated to his employment. He retained Ernest L. Jarrett to represent him in the criminal proceedings. Pursuant to its policy, the City suspended plaintiff without pay when it learned about the criminal charges. With his pay suspended, plaintiff did not have enough income to pay his attorney or keep up with his child support. He took steps to take early retirement so he could access his pension fund. Before he had a chance to meet with the board of the Retirement System and complete the retirement process, he was acquitted of the charges. He then sought to end his suspension and be reinstated to his position. However, the City informed him that he would be treated as a new hire, costing him his seniority and his right to back pay for the suspension period. The Retirement System

¹ Because Ernest L. Jarrett's rights are derivative as the subrogee of Keith Brooks, "plaintiff" is used in this report to refer to Brooks.

would not let him access his pension annuity because he had not completed the process for applying for those benefits, and because his reinstatement meant he was not “retired.”

Plaintiff contacted his union representative but, anxious to pay his bills and child support arrearage, he grew impatient with the grievance process and on June 25, 2008, he filed this suit for declaratory and injunctive relief, along with a motion for an order to show cause. Specifically, he asked for alternative, equitable remedies: (1) a declaration that his suspension was unlawful, entitling him to full back pay and restoration of his seniority and benefits; (2) a declaration that he had either aborted or rescinded his attempt to retire and therefore was entitled to full back pay and restoration of his seniority and benefits; (3) an injunction binding the Retirement System to the City’s designation of plaintiff as a retiree for as long as that was in place, entitling plaintiff to draw down his pension annuity, subject to repayment if the retiree designation was reversed.

The trial court held a hearing on July 14, 2008. Plaintiff argued in part that the issue did not have to first go through the grievance process because this was a constitutional matter: the City treated him as presumptively guilty when it suspended his pay. He also admitted that the matter was currently in the grievance process. Plaintiff insisted that he was entitled to equitable relief because he was facing irreparable harm in the form of criminal contempt charges due to his child support arrearage. The trial court found that the key to the whole matter was plaintiff’s employment status, which was subject to arbitration. The trial court concluded that the arbitration procedure could result in the relief plaintiff sought, reinstatement with seniority and back pay. Accordingly, the court dismissed the suit.

II. ANALYSIS

When a plaintiff has failed to exhaust available remedies, the trial court has no subject-matter jurisdiction; this presents a question of law that we review de novo. *Rudolph Steiner School v Ann Arbor Charter Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). De novo review also applies in equitable actions, *Cipri v Bellingham Frozen Foods*, 235 Mich App 1, 9; 596 NW2d 620 (1999), and where the question pertains to justiciability, ripeness, or constitutionality, *Huntington Woods v Detroit*, 279 Mich App 603, 614; 761 NW2d 127 (2008).

Plaintiff asserts that he has no grievance procedures to pursue against the Retirement System because it is not his employer. Plaintiff argues that he has no way, other than the instant lawsuit, to challenge the Retirement System’s determination that his employment was reinstated—a position that is inconsistent with the determination made by the City. Thus, plaintiff maintains, the trial court erred when it required him to exhaust grievance procedures.

With regard to the City, plaintiff maintains that a court must resolve whether [plaintiff’s] suspension was improper.” Plaintiff asserts there is, at best, only an unofficial “custom” of suspending employees during the pendency of criminal charges, making it “useless” to require exhaustion of remedies because there is no ordinance, rule, or contractual provision that authorizes the suspension. Plaintiff maintains that this is a purely legal determination that does not require the exhaustion of any grievance procedures.

With regard to plaintiff’s claims against the defendant Retirement System, we conclude the trial court correctly dismissed the case because it was not ripe for judicial intervention.

Plaintiff does not dispute that he never completed the steps necessary to request access to his pension funds. The Retirement System was never in a position to grant or deny him funds because his application was incomplete. Thus, plaintiff has not yet suffered an injury; in fact, he might never suffer an injury. Thus, there is no justiciable controversy.

We further conclude the trial court properly deferred to the arbitration process. Plaintiff admits his collective bargaining agreement provides for a grievance and arbitration procedure against the City. Plaintiff cites no authority for the proposition that arbitration can be avoided if the matter presented to the court is a question of law. Further, plaintiff admits that the remedy he seeks is contingent on the later determination of his employment status; that is, his claims cannot be conclusively established until his employment status is known.

Regardless of the availability of remedies through the grievance process, constitutional issues fall within the jurisdiction of the trial court, *Golembiowski v Madison Heights Civil Service Comm*, 93 Mich App 137, 153; 286 NW2d 69 (1979). However, plaintiff's claim that the city unconstitutionally suspended his pay while his criminal charges were pending is, at its core, an assertion that the City was not properly paying him the wages he is owed under his contract. Thus, it is also properly a matter to be decided by the grievance procedure. The trial court correctly declined to visit the constitutionality of the matter at this point.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra