

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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STUDIO 8 HAIR LAB, LLC, a Michigan  
limited liability company,

Plaintiff,

v

File No. 2023036818CB  
HON. KEVIN A. ELSSENHEIMER

CITY OF TRAVERSE CITY, a Municipal  
Corporation, LEE MAYNARD, an individual,  
MADELINE HARRIS, an individual,  
HEATHER SPOONER, an individual, and  
MICHIGAN DEPARTMENT OF CIVIL  
RIGHTS,

Defendants.

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SUPPLEMENTAL ORDER AFTER FEBRUARY 21, 2024 HEARINGS

On March 20, 2024, the Court issued a Decision and Order After February 21, 2024 Hearings: (1) granting Maynard, Harris and Spooner's Joint Consolidated Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and Sanctions Pursuant to MCR 1.109(E) and MCL

§600.2591; (2) granting the City’s Motion to Dismiss Action for Declaratory Relief No Justiciable Controversy and (3) denying Plaintiff’s Motion for Immediate Declaratory Judgment Re: Michigan Civil Rights Act and Traverse City Non Discrimination Ordinance.

Article V, Section 29 of the Michigan Constitution establishes a civil rights commission. It is the duty of the Michigan Civil Rights Commission to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and the Constitution and to secure the equal protection of such civil rights without such discrimination.<sup>1</sup>

When there is a purported civil rights violation, the first step is the filing of a formal complaint alleging unlawful discrimination with MDCR.<sup>2</sup> After MDCR investigates the claim, the matter is either dismissed or a conciliation conference is scheduled.<sup>3</sup> If the respondent to the complaint refuses to address the situation in conciliation, MDCR may issue a formal charge of discrimination and set a date for public hearing.<sup>4</sup> A hearing officer then conducts a public hearing on the discrimination charge.<sup>5</sup> All witnesses testify under oath, the rules of evidence apply and all parties have the right to cross examine witnesses.<sup>6</sup> Following the hearing, the hearing officer will decide whether discrimination took place and if so, what penalty should apply.<sup>7</sup> The Michigan Civil Rights Commission reviews the findings and allows the parties to argue whether they should be adopted.<sup>8</sup> The Michigan Civil Rights Commission will then issue a final order either dismissing the case or requiring corrective action.<sup>9</sup> **Appeals from final orders of the Commission**, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law.<sup>10</sup> On information and belief, a public hearing on the discrimination charges against Plaintiff are scheduled for April 3, 2024. At this time, it has not

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<sup>1</sup> The Commission shall have power, in accordance with the provisions of the Constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The Commission shall have other powers provided by law to carry out its purposes. The Michigan Department of Civil Rights (MDCR) is the operational arm of the Michigan Civil Rights Commission. MCL §37.2103(d).

<sup>2</sup> Michigan Administrative Rule 37.4.

<sup>3</sup> *Id.* at Rule 37.5-37.6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* 37.12-37.15.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 37.16.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Michigan Constitution Art V, §29.

been determined whether discrimination took place and if so, what penalty should apply, and the Michigan Civil Rights Commission has not yet reviewed any findings issued a final order in the case. As noted by the Court, if the Michigan Civil Rights Commission ultimately determines in a final order that discrimination took place, Plaintiff may *then* appeal the final order in the Circuit Court.

Moreover, Courts are bound to take notice of the limits of their authority.<sup>11</sup> Subject matter jurisdiction is defined as a court's power to hear and determine a cause or matter; more specifically, subject matter jurisdiction is the deciding body's authority to try a case of the kind or character pending before it, regardless of the particular facts of the case.<sup>12</sup> Whether subject matter jurisdiction exists is a question of law and when a court is without jurisdiction of subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void.<sup>13</sup>

As for the constitutional claims against MDCR, the Court of Claims has exclusive jurisdiction to hear and determine any claim or demand, statutory or constitutional...or any demand for monetary, *equitable, or declaratory relief*...against the state or any of its departments or officers.<sup>14</sup> The "state or any of its departments or officers" means the state of Michigan or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties.<sup>15</sup>

The MDCR is a department of the Michigan Civil Rights Commission, as established by the Michigan Constitution. There can be no question that MDCR is a "state department" pursuant to MCL §600.6419. Moreover, Plaintiff's claims against the MDCR request declaratory and injunctive (equitable) relief, which are to be heard exclusively by the Court of Claims. Finally, none of the exceptions to exclusive jurisdiction apply in this case.<sup>16</sup>

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<sup>11</sup> *Fox v Board of Regents University of Mich*, 375 Mich 238; 134 NW2d 146 (1965).

<sup>12</sup> *O'Connell v Director of Elections*, 316 Mich App 91; 891 NW2d 240 (2016).

<sup>13</sup> *Id*; *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000).

<sup>14</sup> MCL §600.6419. A complaint against the state can only be filed in the Court of Claims. Emphasis added.

<sup>15</sup> *Id*.

<sup>16</sup> MCL §600.6421(1) provides circuit court jurisdiction over a lawsuit for which there is a right to a trial by jury. Seeking right to declaratory relief does not entitle one to a jury trial where the right to a jury trial does not otherwise exist. *Golden v Kelsey-Hayes Co.*, 73 F3d 648 (CA6, 1996). MCL §600.6440 divests the Court of Claims of jurisdiction over a claim for which the claimant has an adequate remedy upon that claim in federal court, but Plaintiff is not asserting any federal claims. MCL §600.6419(3) relating to worker's disability compensation, §600.6419(4)

The Court finds that it does not have subject matter jurisdiction to hear and determine the constitutional claims against MDCR, as those are explicitly reserved for the Court of Claims. Therefore, because this Court is without jurisdiction of subject matter, the claims against MDCR must be dismissed.

IT IS SO ORDERED.



03/21/2024  
02:56PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293  
PROXY SIGNED BY TGIRARDIN

HONORABLE KEVIN A. ELSENHEIMER  
Circuit Court Judge

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relating to the general sales tax act, §600.6419(5) relating to appeals from the district court and administrative agencies and §600.6419(6) relating to prerogative and remedial writs do not apply.