STATE OF MICHIGAN

COURT OF CLAIMS

ROBERT DAVIS,

Plaintiff,

v

JOCELYN BENSON, in her official capacity, as the duly elected Secretary of State, JULIE DALE, in her official capacity as Assistant General Counsel of Third Judicial Circuit Court of Michigan, and RICHARD LYNCH, in his official capacity as General Counsel of Third Judicial Circuit Court of Michigan,

Defendants.
_____/

OPINION AND ORDER

Case No. 23-000128-MB

Hon. James Robert Redford

OPINION AND ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

By its opinion and order of November 14, 2023, the Court granted summary disposition in favor of defendant Secretary of State and dismissed with prejudice Counts I-IV and VI of plaintiff's amended verified complaint. The Secretary of State now moves for summary disposition under MCR 2.116(C)(4), (8), and (10) of plaintiff's remaining claims as alleged in Counts V, VII, and VIII of the complaint. Individual defendants also move for summary disposition of Count VIII under MCR 2.116(C)(4). Plaintiff requests summary disposition under MCR 2.116(I)(2). Although the Court finds that the Court of Claims has jurisdiction to entertain an original action for declaratory judgment under MCL 24.264, it also finds that plaintiff failed to

properly invoke the Court's jurisdiction. Consequently, defendants' motions are GRANTED. Plaintiff's three remaining causes of action are dismissed with prejudice.

I. BACKGROUND

Plaintiff alleges in Count V of his amended verified complaint that the Secretary of State violated MCL 168.848, a provision within the Michigan Election Law Act, MCL 168.1 *et seq*., because she failed to file her 2022 postelection campaign compliance affidavit before she began her second term of office at noon on January 1, 2023. The Secretary of State filed the requisite documentation with the Department of State on January 13, 2023. Plaintiff submitted a request to the Secretary of State on August 17, 2023, for entry of a declaratory ruling confirming that Secretary of State Benson had violated MCL 168.848. Under § 63 of Michigan's Administrative Procedures Act (APA), MCL 24.263, on the request of an interested person, an agency may issue a declaratory ruling concerning the applicability of statutes, rules, or orders of an agency "to an actual state of facts." The Secretary of State denied plaintiff's request for a declaratory ruling by letter dated September 12, 2023.

In Count VII of his amended verified complaint, plaintiff alleges that the Secretary of State breached her duties under § 15(1)(e) of the Michigan Campaign Finance Act (MCFA), MCL 169.215(1)(e), when she failed to issue a declaratory ruling in response to another of plaintiff's requests. Plaintiff had requested a declaratory ruling that Donn Fresard, the husband of Wayne Circuit Chief Judge Patricia Fresard, and attorney Todd Perkins, who formed a group called "Back the Bench," were required under MCL 169.203(4) to register that group as a political-action committee, and to file campaign finance reports as required by MCL 169.224(1). The Secretary of State denied plaintiff's request for a declaratory ruling on August 11, 2023.

Finally, in Count VIII of his amended verified complaint, plaintiff alleges that the Secretary of State violated her duties under § 15(1)(e) of the MCFA when she failed to advise the candidate committees for Wayne Circuit Judges Patricia Fresard, Kelly Ann Ramsey, and Sheila Ann Gibson that they were required to amend their campaign finance statements and reports to reflect "in kind" contributions from defendants Dale and Lynch because Lynch authorized Dale to represent the judges in other litigation initiated by plaintiff. The Secretary of State declined to issue the requested declaratory ruling on April 13, 2023.

Plaintiff now relies on these three remaining counts to obtain by original action the declaratory rulings denied him by the Secretary of State.

II. ANALYSIS

A court grants summary disposition under MCR 2.116(C)(4) when a review of the affidavits together with the pleadings, depositions, admissions, and other documentary evidence demonstrate a lack of subject-matter jurisdiction over an action. *Summer v Southfield Bd of Ed*, 310 Mich App 660, 668; 874 NW2d 150 (2015) *Cairns v East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007).

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint on the sole basis of the allegations contained in the pleadings, and examines whether the plaintiff has stated a claim on which relief may be granted. *Rataj v City of Romulus*, 306 Mich App 735, 746-747; 858 NW2d 116 (2014). "When considering such a motion, a trial court must accept all factual allegations as true[.]" *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). The Court may only grant the motion "when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id*.

"A motion for summary disposition under MCR 2.116(C)(10) may be properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Scharret v City of Berkley*, 249 Mich App 405, 411-412; 642 NW2d 685 (2002). This Court considers all of the documentary evidence in a light most favorable to the nonmoving party. *Id*.

A. DECLARATORY JUDGMENTS

(1) COUNT V

Plaintiff requests the entry of a judgment declaring that the Secretary of State violated MCL 168.848 when she failed to file her 2022 postelection campaign compliance affidavit before she began her second term of office on January 1, 2023, and violated MCL 168.31(1)(h) when she failed to refer her violation of MCL 168.848 to the Michigan Attorney General or a local prosecuting attorney for investigation and possible prosecution. He invokes this Court's original jurisdiction, and relies on MCR 2.605, MCL 24.263, and MCL 24.264 as support for doing so.

As already noted, under § 63 of the APA, on the request of an interested person, an agency may issue a declaratory ruling concerning the applicability of statutes, rules, or orders of an agency "to an actual state of facts." MCL 24.263; *Mich Farm Bureau v Dep't of Environment, Great Lakes, and Energy*, 343 Mich App 293, 305-306; 997 NW2d 467 (2022); *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 544-545; 747 NW2d 321 (2008). "A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court." MCL 24.263. A declaratory ruling issued by an agency is subject to judicial review in the same manner as an agency final decision or order in a contested case. *Id*.; *Sierra Club*, 277 Mich App at 545. The circuit court has exclusive jurisdiction over appeals from

administrative agencies. MCL 600.6419(5). If the agency denies a request to issue a declaratory ruling or fails to act upon the request expeditiously, a plaintiff may seek a declaratory judgment in the circuit court. MCL 24.264; *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 51; 620 NW2d 546 (2000). MCL 24.264 provides in relevant part:

> Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule . . . may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. *The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county*. [Emphasis added.]

This statutory provision reveals a general legislative intent to provide a party with an avenue other than appellate review to challenge either the validity or applicability of an agency rule, i.e., access to the courts through an original action for declaratory judgment. *Dep't of Agriculture & Rural Development v Zante, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 363515); slip op at 4; *Mich Farm Bureau*, 343 Mich App at 306; *Slis v State of Michigan*, 322 Mich App 312, 342; 956 NW2d 312 (2020). This access to the courts is limited, however. As explained in *Frill v Dep't of Corrections*, unpublished per curiam opinion of the Court of Appeals, issued May 30, 2006 (Docket No. 265090), p 3[1],

> [p]laintiff further contends that the trial court had jurisdiction to enter the declaratory judgment because, under MCL 24.264, the court had the authority to interpret the rule to determine its "applicability" to plaintiff's case. However, it is the administrative agency, not the court, which may issue a declaratory ruling as to the applicability of a rule "to an actual state of facts . . . ." MCL 24.263. MCL 24.264 (which governs the court's authority to enter a declaratory judgment) on the other hand, provides only that "the validity or applicability of a rule may be

[1] Although an unpublished decision of the Court of Appeals has no precedential value, this Court may follow the decision if it finds the reasoning persuasive. MCR 7.215(C)(1); *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 42 n 10; 761 NW2d 151 (2008).

> determined in an action for declaratory judgment when the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff." Notably absent from MCL 24.264 is mention of applying a rule to an actual state of facts. Omission of a provision in one part of a statute that is included in another part should be construed as intentional and the courts should not include provisions not included by the Legislature. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 103; 693 NW2d 170 (2005).
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> We conclude that while an administrative agency has the authority under MCL 24.263 to determine how to apply a rule to a particular set of facts, the circuit court's authority under MCL 24.264 is limited to determining if the rule applies to a particular set of facts. Because plaintiff sought a declaratory judgment regarding how defendant applied the rules, rather than whether defendant was required to apply the rules, we conclude that the trial court did not have jurisdiction to enter the declaratory judgment under MCL 24.264.

See also, *Zante, Inc*, ___ Mich App at ___; slip op at 3; *Bornschien v Dep't of Corrections*, unpublished per curiam opinion of the Court of Appeals, issued December 9, 2003 (Docket No. 243542), p 2.

The Court of Claims is not mentioned anywhere in MCL 24.264. Rather, the statutory provision references the circuit court generally, and the Ingham Circuit Court specifically, as the trial court upon which our Legislature vested the authority to enter a declaratory judgment. Nevertheless, MCL 600.6419 provides in relevant part:

> (1) Except as provided in sections 6421 and 6440[2], the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. All actions initiated in the court of claims shall be filed in the court of appeals. . . . Except as otherwise provided in this section, the court has the following power and jurisdiction:
>
> (a) To hear and determine . . . any demand for . . . declaratory relief . . . against the state or any of its departments or officers *notwithstanding another law that confers jurisdiction of the case in the circuit court*. [Emphasis added.]

[2] Neither MCL 600.6421 nor MCL 600.6440 have any application in this matter.

This current version of MCL 600.6419 was enacted by our Legislature as part of its extensive rewrite of the Court of Claims' jurisdiction that accompanied the Legislature's removal of the Court of Claims from the Ingham Circuit Court. It reflects a knowing and intentional expansion of the original jurisdiction of the Court of Claims to include "any demand for . . . declaratory relief . . . against the state or any of its departments or officers *notwithstanding another law that confers jurisdiction of the case in the circuit court*." See e.g., *Telford v State of Michigan*, 327 Mich App 195, 197-201; 993 NW2d 347 (2019) (MCL 600.6419(1)(a) expands the original jurisdiction of the Court of Claims to actions to enforce the Headlee Amendment.); *O'Connell v Dir of Elections*, 316 Mich App 91, 99-109; 891 NW2d 240 (2016) (MCL 600.6419(1)(a) expands the original jurisdiction of the Court of Claims to include any demands for extraordinary writs against the state or any of its departments or officers.). In light of *Telford* and *O'Connell*, and the plain and unambiguous language of MCL 600.6419(1)(a), and because the current version of MCL 24.264 predates[3] the current version of MCL 600.6419 and "all other things being equal, a more recent statute provision controls over an older statutory provision," *Telford*, 327 Mich App at 199, this Court concludes that MCL 600.6419(1)(a) expands the original jurisdiction of the Court of Claims such that a party may commence an original action seeking a declaratory judgment against a state agency or officer under MCL 24.264 in the Court of Claims.

Although the Court of Claims may have original jurisdiction over a request for a declaratory ruling under MCL 24.264, this statutory provision does not vest this Court with the authority to enter the particular declaratory judgment plaintiff now seeks. As noted, this Court has

[3] The current version of MCL 24.264 was enacted by 2011 PA 243, which became effective on December 8, 2011. The current version of MCL 600.6419 was enacted by 2013 PA 164, effective November 12, 2013.

the authority under MCL 24.263 and MCL 24.264 to determine *whether* a statute administered by an agency, or rules or orders of an agency are valid or *if* the particular statutes, or rules or orders of an agency at issue apply to a particular set of facts. It is the administrative agency, not this Court, which may issue a declaratory ruling as to how to apply a particular statute, rule, or agency order to a particular state of facts. In the present matter, plaintiff does not challenge the validity of a statute administered by an agency, or an agency rule or order. He also does not challenge the applicability of a particular statute, rule, or order to the circumstances presented. Instead, plaintiff requests the following relief in Count V of his amended verified complaint:

> **WHEREFORE**, Plaintiff Robert Davis prays and requests this Honorable Court enters judgment and grants the following relief against the Defendant Secretary of State as follows:
>
> a. Enter a declaratory judgment declaring Defendant Secretary of State violated MCL 168.848 of Michigan Election Law by failing to timely file her postelection compliance statement/affidavit prior to assuming office in January 1, 2023.
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> b. Enter a declaratory judgment declaring that Defendant Secretary of State has a statutory legal duty under MCL 168.31(1)(h) of Michigan Election Law to refer her failure to timely file her postelection compliance statement/affidavit as required under MCL 168.848 of Michigan Election Law to the Michigan Attorney General or local prosecuting attorney for investigation and possible prosecution as to be determined by the Michigan Attorney General's or prosecuting attorney's office.

As revealed by plaintiff's prayer for relief, he seeks a declaration from this Court advising the parties how to apply the referenced statutes to a particular set of facts. As such, plaintiff's Count V fails to state a proper claim for declaratory action to determine the applicability of a statute. His requested relief is outside this Court's authority under MCL 24.264 to grant. Plaintiff identifies no language in either MCL 24.263 or MCL 24.264 that either expressly or by implication reveals a legislative intent to confer a private statutory cause of action for declaratory relief outside the parameters expressly set by MCL 24.264. This Court may not create a remedy that only the

Legislature has the power to create. *Randall v Mich High Sch Athletic Ass'n*, 334 Mich App 697, 717; 965 NW2d 690 (2020). Summary disposition in favor of the Secretary of State is granted as to Count V under MCR 2.116(C)(4) and (8).

Even if the Court was to view plaintiff's prayer for relief as requesting a declaration concerning the general applicability of a statute to a particular set of facts, this Court would still lack authority to entertain plaintiff's request for a declaratory judgment because he has neither alleged nor demonstrated facts establishing that the application of the statutes he references would "interfere[] with or impair[], or imminently threaten[] to interfere with or impair" plaintiff's legal rights or privileges. MCL 24.264. For this reason, summary disposition in favor of the Secretary of State is appropriate under MCR 2.116(C)(4), (8), and (10).

(2) COUNTS VII & VIII

In plaintiff's two remaining counts, he requests declaratory rulings concerning the Secretary of State's administration of the MCFA. The MCFA tasks the Secretary of State with, among other duties, implementing the provisions of that act through the issuance of declaratory rulings in accordance with the APA. MCL 169.215(1)(e); *Citizens for Common Sense*, 243 Mich App at 51; *Mich State AFL-CIO v Secretary of State*, 230 Mich App 1, 5; 583 NW2d 701 (1998); *Mich State Chamber of Commerce v Secretary of State*, 122 Mich App 611, 614-615; 332 NW2d 547 (1983). "The APA provides a formal procedure for submitting requests for declaratory rulings and governing treatment of any such requests." *Citizens for Common Sense*, 243 Mich App at 51. Under MCL 169.215(1)(e) and MCL 24.263, the Secretary of State may issue declaratory rulings addressing the applicability of statutes, rules, or agency orders to "an actual state of facts." *Huron Valley Schs v Secretary of State*, 266 Mich App 638, 646; 702 NW2d 862 (2005); *Citizens for*

Common Sense, 243 Mich App at 51. In the present case, if the Secretary of State had issued a declaratory ruling with which plaintiff disagreed, then plaintiff's remedy would have been to seek judicial review of that ruling in the circuit court. MCL 24.263; *Huron Valley Schs*, 266 Mich App at 647; *Citizens for Common Sense*, 243 Mich App at 51; *Chamber of Commerce*, 122 Mich App at 616. However, because the Secretary of State declined to issue the declaratory rulings requested by plaintiff, the combined effect of MCL 169.215(1)(e), MCL 24.264, and MCL 600.6419(1)(a) allows him to initiate the instant original action for declaratory judgment in the Court of Claims, so long as plaintiff does not seek the issuance of a declaratory ruling as to how to apply a particular statute, rule, or agency order to a particular state of facts. The MCFA does not grant an unrestricted private right of action, either in law or in equity, to enforce its provisions; rather the means of enforcement prescribed in MCL 169.215 are the "exclusive means" by which the provisions of the act may be enforced and "by which any harm resulting from a violation of this act may be redressed." MCL 169.215(17).

Plaintiff requests the following relief in Counts VII and VIII of his amended verified complaint:

> **WHEREFORE**, Plaintiff Robert Davis prays and requests this Honorable Court enters judgment and grants the following relief against the Defendant Secretary of State as follows:
>
> a. Enter a declaratory judgment declaring that the Defendant Secretary of State violated MCL 169.203(4) and 169.224(1) of Michigan's Campaign Finance Act by failing to require and direct Mr. Fresard to register his group, "Back the Bench" as a committee or Political Action Committee (PAC), and to file the required campaign finance reports and statements for said group in accordance with the Michigan Campaign Finance Act.
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> b. Enter a declaratory judgment declaring that Mr. Fresard's group, "Back the Bench." was a "committee" as that term is defined under MCR [sic] 169.203(4) of the Michigan Campaign Finance Act that was required to register under the Michigan Campaign Finance Act.

c. Enter a declaratory judgment declaring that Mr. Fresard's group, "Back the Bench," as a "committee", was required to file campaign finance statements and reports with the Defendant Secretary of State in accordance with MCR [sic] 169.224(1) of the Michigan Campaign Act.

d. Enter a declaratory judgment declaring that the Defendant Secretary of State has a statutory legal duty under MCL 169.203(4) of the Michigan Campaign Finance Act to direct and advise Mr. Fresard to register his group, "Back the Bench." as a "committee" in accordance with the Michigan Campaign Finance Act.

e. Enter a declaratory judgment declaring that the Defendant Secretary of State has a statutory legal duty under MCL 169.224(1) of the Michigan Campaign Finance Act to direct and advise Mr. Fresard that campaign finance statements and reports reflecting the contributions and expenditures of his group, "Back the Bench," must be filed with the Defendant's office in accordance with the Michigan Campaign Finance Act.

* * *

a. Enter a declaratory judgment declaring that the Defendant Secretary of State violated the Michigan Campaign Finance Act by Failing to advise and direct the candidate committees for incumbent Third Circuit Court Judges Patricia Fresard and Kelly Ann Ramsey to amend their respective campaign finance reports and statements to accurately reflect the "in-kind" contributions and/or expenditures of Julie Dale and Richard Lynch made to their respective campaigns during the 2022 election cycle as required under MCL 169.266(1)(b) of the Michigan Campaign Finance Act.

b. Enter a declaratory judgment declaring that the Defendant Secretary of State's April 7, 2023 determination letter correctly concluded that Third Circuit Court employees Richard Lynch and Julie Dale violated MCL 169.257(1) of the Michigan Campaign Finance Act.

c. Enter a declaratory judgment declaring that the Defendant Secretary of State has a statutory duty under the Michigan Campaign Finance Act to direct and advise the candidate committees for incumbent Third Circuit Court Judges Patricia Fresard and Kelly Ann Ramsey to amend their respective campaign finance reports and statements to accurately reflect the "unlawful" "in-kind" contributions and/or expenditures made by Julie Dale and Richard Lynch during the 2022 election cycle.

d. Enter a declaratory judgment declaring that Third Circuit Court employees Defendants Julie Dale and Richard Lynch violated MCL 169.257(1) of the Michigan Campaign Finance Act during the 2022 election cycle as the Defendant Secretary of State correctly determined in her April 7, 2023 determination letter.

These requests for relief suffer the same dual deficiencies as plaintiff's requests for relief in Count V. First and foremost, he seeks multiple declarations from this Court advising the parties how the Secretary of State should apply the referenced statutes to the existing facts and, thus, the declarations he seeks are outside the authority granted this Court by MCL 24.264. To conclude otherwise would require this Court to read into the MCFA a private cause of action for declaratory relief outside the parameters expressly and exclusively set by MCL 169.215. MCL 169.215(17) plainly and expressly bars this Court from doing so.

Second, even if this Court were to conclude that these requests for relief properly sought general declarations concerning the applicability of the referenced statutes, this Court would still lack authority to entertain plaintiff's declaratory judgment requests because he has neither alleged nor demonstrated facts establishing that the application of the statutes he references would "interfere[] with or impair[], or imminently threaten[] to interfere with or impair" plaintiff's legal rights or privileges. MCL 24.264.

In addition to these shared deficiencies, and to the extent that these requests for relief essentially seek to undo previous administrative determinations of the Secretary of State, what plaintiff is actually seeking is judicial review of the merits of those prior administrative rulings. This Court lacks jurisdiction over appeals from the rulings of administrative agencies. Rather, the circuit court is vested with exclusive jurisdiction over such appeals. MCL 600.6419(5). Regardless, any appellate challenges to the March and April, 2023 dismissals of plaintiff's complaints under the MCFA concerning the campaign activities of Wayne Circuit Judges Patricia Fresard and Kelly Ann Ramsey were untimely raised because those appeals were not advanced within 21 days from the dates of the Secretary of State's decision, see MCL 600.631; MCR 7.104(A); *Champion v Dep't of State*, unpublished memorandum opinion of the Court of Appeals,

issued December 13, 2002 (Docket No. 233308), pp 1-2, or, alternatively, within 60 days after the date of mailing of the notice of the final decision, MCL 24.304(1); MCR 7.119(A), depending on whether the previous administrative rulings were subject to appellate review under § 631 of the revised judicature act, MCL 600.631, or under the § 104 of the APA, MCL 24.304, respectively. For these reasons, summary disposition in favor of the Secretary of State and the individual defendants is appropriate under MCR 2.116(C)(4), (8), and (10).

III. CONCLUSION

IT IS ORDERED that defendants' motions for summary disposition are GRANTED. Counts V, VII, and VIII are DISMISSED with PREJUDICE. Plaintiff's request for summary disposition under MCR 2.116(I)(2) is DENIED.

This is a final order and closes the case.

Date: June 12, 2024

Judge, Court of Claims