

STATE OF MICHIGAN
COURT OF APPEALS

WARREN CONSOLIDATED SCHOOL
DISTRICT,

Plaintiff-Appellant,

v

SCHOOL DISTRICT OF THE CITY OF HAZEL
PARK,

Defendant-Appellee.

UNPUBLISHED
December 2, 2021

No. 354240
Macomb Circuit Court
LC No. 2020-000352-CZ

Before: SWARTZLE, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court’s order granting defendant summary disposition under MCR 2.116(C)(4). We vacate the order of the circuit court and remand for further proceedings.

I. FACTS

Plaintiff and defendant are neighboring school districts in the Detroit metro area. They each receive state funds under The State School Aid Act of 1979 (SSAA), MCL 388.1601 *et seq.* The SSAA governs the distribution of state funds to local school districts and appropriates funds on the basis of each district’s membership count. See MCL 388.1606(4); see also *Rowley v Garvin*, 221 Mich App 699, 709; 562 NW2d 262 (1997). A district’s membership count is generally comprised of pupils that reside in a district’s geographic area and whom the district educates. See MCL 388.1606(4)(a)-(b). The Michigan Department of Education (MDE) examines each district’s membership count annually in accordance with the SSAA for purposes of allocating funding. See MCL 388.1606(4); MCL 388.1620. Under the SSAA, a school district may include a nonresident pupil in its count if the school district is educating that student and if the resident district approves or if an exception to the required approval applies. MCL 388.1606(6)(a)-(o).

Beginning in approximately 2008, defendant collaborated with a nonprofit entity, International Network for Vocational Education Skills Training, Inc. (INVEST), to establish an alternative education program approved by the MDE. According to defendant, the program

provides a unique learning environment for students who benefit from its non-traditional class and curriculum structures. According to plaintiff, defendant partnered with INVEST to target non-English speaking families, particularly Chaldean families hesitant to enroll their children in a typical American public school, and to offer those students an alternative program. The parties agree that some of the students who attended defendant's INVEST program resided in plaintiff's district at that time, and that defendant did not obtain approval from plaintiff to educate those students. The parties also do not dispute that defendant included those students in its student count for purposes of determining state aid under the SSAA.

In 2011, plaintiff filed a complaint against defendant in the circuit court seeking declaratory and injunctive relief, as well as monetary damages, arising from the alleged improper count of defendant's students under a theory of unjust enrichment (the 2011 lawsuit). Plaintiff asserted that defendant had lured students who reside in plaintiff's district to attend defendant's INVEST program without obtaining plaintiff's permission and absent an applicable exception under the SSAA, thereby wrongfully depriving plaintiff of students within its own district.

In 2012, the circuit court granted defendant summary disposition under MCR 2.116(C)(10). The circuit court held that defendant had demonstrated that the students in question could be counted without plaintiff's approval under the SSAA because the alternative education program had been initiated before the 2010-2011 school year. The circuit court determined that because plaintiff had not submitted contrary proof and discovery had closed, defendant was entitled to summary disposition on that basis. The trial court denied defendant's motion for summary disposition that was premised on plaintiff's failure to exhaust its administrative remedies.

Thereafter, the circuit court granted plaintiff's motion for reconsideration and reopened the case, determining that discovery had not closed at the time of the circuit court's order and permitting plaintiff to present further proofs. In 2014, the circuit court again granted defendant summary disposition, this time on the basis that plaintiff had failed to exhaust its administrative remedies. The circuit court explained that when it previously determined that plaintiff had no obligation to exhaust administrative remedies under MCL 24.264, the circuit court had not been apprised of the appeal process set forth in the MDE Pupil Auditing Manual. The circuit court determined that the manual set forth a specific process for challenging a district's student count audit, thereby providing an administrative remedy that plaintiff had failed to exhaust.

Plaintiff did not appeal the circuit court's 2014 decision holding that the court lacked subject matter jurisdiction. Instead, plaintiff challenged the per pupil count of defendant's students before the MDE. In October 2016, the MDE's assistant director of the Office of Financial Management issued a letter denying plaintiff relief on the basis that plaintiff lacked standing to challenge defendant's pupil count and because the MDE could not award plaintiff the monetary relief it sought. The MDE also declined to issue a declaratory ruling that defendant had improperly claimed plaintiff's students.

Rather than appeal that administrative determination, plaintiff initiated a new action against defendant in the circuit court (the 2017 lawsuit), raising claims substantially similar to those raised in the 2011 lawsuit. Citing MCL 24.301, the circuit court dismissed plaintiff's complaint for failure to exhaust administrative remedies, observing that plaintiff had failed to appeal the decision of the MDE assistant director to the state superintendent. Plaintiff thereafter appealed the assistant

director's decision to the state superintendent who issued a letter dated January 8, 2020, affirming the assistant director's decision. The superintendent observed that although the time in which to appeal the assistant director's decision had expired, he would consider plaintiff's letter as a request for a declaratory ruling. The superintendent then determined "I concur in [the assistant director's] determination to decline to issue a declaratory ruling." The superintendent explained that "[t]he Department declines to issue a declaratory ruling for the following reasons," including the reason that no relief was available from the department. The superintendent then concluded "I decline to issue a declaratory ruling in this matter."

Rather than seek to appeal the state superintendent's determination to the circuit court, plaintiff instead initiated this action, raising substantially the same claims it raised before the MDE and in the 2011 and 2017 lawsuits. Specifically, plaintiff again sought declaratory and injunctive relief and also damages, asserting that defendant had counted plaintiff's pupils in violation of the SSAA. Defendant moved for summary disposition in part on the basis that plaintiff's complaint was an impermissible collateral attack on the MDE's final decision.

The circuit court granted defendant summary disposition, dismissing the matter under MCR 2.116(C)(4) (lack of subject matter jurisdiction). The circuit court held that plaintiff had exhausted its administrative remedies, but that under MCL 24.301, the final decision of the MDE could be reviewed only by appeal of that decision to the circuit court. The circuit court held that because the action filed by plaintiff was not an appeal of the MDE's final decision, the action was a violation of MCL 24.301 and therefore subject to dismissal. Plaintiff now appeals.

II. DISCUSSION

Plaintiff contends that the circuit court erred by dismissing its claim on the basis that the court lacked subject matter jurisdiction because plaintiff did not appeal the MDE's determination to the circuit court, instead filing an original action. Plaintiff argues, in part, that it was not obligated to appeal the MDE's decision to the circuit court because the proceeding before the MDE was not a contested case.¹ Plaintiff raises this issue for the first time on appeal in its reply brief.

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). We also review jurisdictional issues de novo, *Estes v Titus*, 481 Mich 573, 578; 751 NW2d 493 (2008), including the decision whether a plaintiff has exhausted administrative remedies, which implicates the trial court's jurisdiction to hear a case. *Papas v Mich Gaming Control Bd*, 257 Mich App 647, 656-657; 669 NW2d 326 (2003). Summary disposition under MCR 2.116(C)(4) is warranted when the trial court lacks jurisdiction of the subject matter. *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 714; 909 NW2d 890 (2017). When reviewing a trial court's grant or denial of summary disposition under MCR 2.116(C)(4), we consider whether the pleadings, affidavits, depositions, admissions, and documents in the case demonstrate that the

¹ Because we vacate the order of the circuit court and remand for further proceedings, we decline to reach plaintiff's additional arguments challenging the circuit court's order.

trial court lacked subject matter jurisdiction. *Michigan Head & Spine Institute PC v Auto-Owners Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 354765); slip op at 1.

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Subject matter jurisdiction is the power of a court to act and its authority to hear and determine a case. *McKenzie v Dep't of Corrections*, 332 Mich App 289, 296; 957 NW2d 341 (2020). Subject matter jurisdiction is determined based upon the plaintiff's allegations. *Wayne Co v AFSCME Local 3317*, 325 Mich App 614, 635; 928 NW2d 709 (2018). When a party alleges the denial of rights over which the court has jurisdiction, the court must proceed to determine the truth or falsity of the allegations. *Id.* Lack of subject matter jurisdiction, however, may be raised at any time, *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 51 n 3; 832 NW2d 728 (2013), and a court is continually obliged to question its own jurisdiction. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002).

Michigan's circuit courts are courts of general jurisdiction deriving their power from Michigan's Constitution. Const 1963, art 6, § 13; *McKenzie*, 332 Mich App at 297. The circuit courts have original jurisdiction to hear and decide all civil claims,² except where the constitution or a statute gives exclusive jurisdiction to another court. MCL 600.605; *Michigan Head & Spine Institute PC*, ___ Mich App at ___; slip op at 1. In this case, the sole issue before us for resolution is whether the circuit court correctly determined that it did not have subject matter jurisdiction over plaintiff's claim for declaratory judgment, injunctive relief, and monetary damages because plaintiff filed its claim as an original action rather than appealing the final decision of the MDE to the circuit court.

Generally, the failure to exhaust administrative remedies precludes judicial review of a matter. *Cummins v Robinson Twp*, 283 Mich App 677, 691; 770 NW2d 421 (2009). When an administrative scheme of relief exists, a plaintiff must exhaust those remedies before the circuit court has jurisdiction. *In re Harper*, 302 Mich App 349, 356; 839 NW2d 44 (2013); see also *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 357; 733 NW2d 107 (2007). When a plaintiff has failed to exhaust administrative remedies, summary disposition is proper under MCR 2.116(C)(4), on the basis that the trial court lacks subject matter jurisdiction. *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 50; 620 NW2d 546 (2000).

Here, the circuit court dismissed plaintiff's newly-filed suit under MCR 2.116(C)(4), finding that it lacked subject matter jurisdiction of plaintiff's claim. The circuit court found that although plaintiff had exhausted its administrative remedy, it nonetheless had failed to appeal the final decision of the MDE to the circuit court under MCL 24.301. That section provides, in relevant part:

When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether

² The district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000. MCL 600.8301(1).

such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law. . . . [MCL 24.301.]

The parties do not dispute that the MDE is an administrative agency subject to the APA. In its reply brief, however, plaintiff contends that MCL 24.301 does not apply because the proceeding before the MDE did not involve a “contested case.” We observe that plaintiff raises this issue for the first time on appeal and in a reply brief, which is not sufficient either to preserve an issue or to properly present an issue for appeal. See *In re Conservatorship of Murray*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 349068); slip op at 2 (an issue raised for the first time on appeal generally is unpreserved); *Bronson Methodist Hosp v Michigan Assigned Clams Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012) (issue raised in a reply brief is not properly presented for review). We also observe that plaintiff’s treatment of this issue is cursory and could be deemed waived. See *Badiee v Brighton Area Sch*, 265 Mich App 343, 359-360; 695 NW2d 521 (2005).

This Court has discretion to review an unpreserved issue in a civil case if review would prevent manifest injustice, is necessary for the proper resolution of the case, or if the issue involves a question of law and the necessary facts for determination have been presented. *In re Conservatorship of Murray*, ___ Mich App at ___; slip op at 3. We exercise this discretion sparingly and only when exceptional circumstances warrant review. *Booth v Univ of Mich Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993). In this case, we deem this issue to be of significant importance. The APA “confers a right to appeal, after exhaustion of all administrative remedies, upon a person aggrieved by a final decision or order in a contested case.” *J & P Market, Inc v Liquor Control Comm*, 199 Mich App 646, 649; 502 NW2d 374 (1993) (quotation marks, citation, and emphasis omitted). A “contested case” is a proceeding “in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing.” MCL 24.203(3). If an evidentiary hearing is not required by statute, the proceeding is not a contested case covered by the APA’s appeals procedure. *J & P Market, Inc*, 199 Mich App at 650.

At oral argument before this Court, defendant was permitted to address plaintiff’s belated argument that the process before the MDE did not involve a contested case. Defendant asserted that regardless of whether the process involved a contested case, the superintendent’s decision nonetheless was subject to appellate review by the circuit court in the same manner as a contested case under MCL 24.263³ because it was a declaratory ruling. Our review of the superintendent’s decision, however, reveals that although he considered plaintiff’s letter for review of the assistant director’s determination as a request for a declaratory ruling, the superintendent did not issue a declaratory ruling. The superintendent in fact explicitly stated “I decline to issue a declaratory ruling in this matter.”

³ MCL 24.263 provides in relevant part that “[o]n request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. . . . A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.”

The record in this case suggests that the MDE administrative process under which plaintiff sought review allowed plaintiff an opportunity to present its position before the MDE, but there is no indication that an evidentiary hearing was required by statute, nor is there any indication that the MDE conducted an evidentiary hearing. However, because the question whether the MDE determination was a contested case is raised for the first time on appeal, the circuit court did not have an opportunity to rule upon the issue; nor does this Court have before it the complete record necessary to resolve this issue on appeal. Under these circumstances, remand is appropriate to permit the circuit court to rule on the issue in the first instance⁴ with both parties having an opportunity to present their arguments to the circuit court. See *Jawad A. Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 210; 920 NW2d 148 (2018).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola

⁴ If the circuit court determines that plaintiff's proceedings before the MDE were not a contested case, and thus appeal under MCL 24.301 not warranted, it may wish to reconsider defendant's arguments that it is entitled to summary disposition under MCR 2.116(C)(8) or (10). Plaintiff argued before the circuit court that even if the SSAA does not provide for a private cause of action, plaintiff nonetheless may seek declaratory relief. However, under that guise plaintiff has doggedly pursued a claim against defendant for monetary relief on the basis that defendant allegedly violated the SSAA by improperly counting students. It is not at all certain that the SSAA provides a cause of action by one school district against another school district for the counting of students. It also may be that a school district that believes that the counting of students under the SSAA is being improperly administrated to the financial detriment of that district would do better to seek relief against the MDE.