

STATE OF MICHIGAN
COURT OF APPEALS

ARACELI GARCIA HERNANDEZ,

Claimant-Appellee,

v

DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY/UNEMPLOYMENT
INSURANCE AGENCY,

Appellant,

and

MGM GRAND DETROIT, LLC,

Respondent-Appellee.

UNPUBLISHED

July 27, 2023

No. 360899

Wayne Circuit Court

LC No. 21-015825-AA

Before: CAMERON, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

The Department of Labor and Economic Opportunity/Unemployment Insurance Agency (UIA) appeals by leave granted¹ the circuit court's order on appeal from a decision of the Unemployment Insurance Appeals Commission. The circuit court held that claimant did not have to repay unemployment benefits she received but for which she was subsequently disqualified by the UIA. For the reasons set forth in this opinion, we reverse the circuit court.

I. BACKGROUND

The general underlying facts in this case do not appear to be in dispute. In late February 2020, claimant left her job as a facilities cleaner at MGM Grand Detroit because she was concerned

¹ *Hernandez v Dep't of Labor & Economic Opportunity*, unpublished order of the Court of Appeals, entered August 17, 2022 (Docket No. 360899).

about the rising number of COVID-19 cases and her risk of contracting the virus at work and transmitting it to her mother, who had various other health issues and assisted in caring for claimant's children while claimant was at work. In March 2020, MGM shut down pursuant to executive orders issued by the Governor. Claimant apparently filed for, and received, regular unemployment benefits from the UIA under the Michigan Employment Security (MES) Act, MCL 421.1 *et seq.*, as well as pandemic unemployment assistance (PUA) under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 15 USC 9001 *et seq.* In November 2020, claimant obtained a new job and reported her new employment to the UIA. Claimant then ceased collecting unemployment benefits.

In January 2021, the UIA sent claimant a notice of determination indicating that she was disqualified from benefits under the MES Act pursuant to MCL 421.29(1)(a) because “[e]vidence has not been provided to show your doctor advised you to quit due to a risk to your health, safety and/or morals[,]” and “[y]our leaving was without good cause attributable to the employer.” In response to plaintiff's protest of this determination, the UIA issued a February 16, 2021 notice of redetermination affirming the prior determination that claimant was disqualified from benefits. The notice of redetermination stated that “[n]o new or additional evidence has been provided to warrant a reversal in the prior determination.”

Claimant appealed the UIA's decision, and the matter was referred for a hearing before an administrative law judge (ALJ). Claimant testified at the hearing. Following the hearing, the ALJ issued an order stating in relevant part that “the claimant's evidence failed to establish that her resignation was with good cause attributable to the employer” and that “the claimant is disqualified for benefits under the voluntary leaving provision of the [MES] Act.” The ALJ's order further stated that “Claimant may be eligible for an overpayment waiver if approved by the Agency.”

Claimant appealed to the Unemployment Insurance Appeals Commission, which issued a decision affirming the ALJ's decision. The Commission's decision stated in relevant part as follows:

After reviewing the record, we find the ALJ's findings of fact accurately reflect the evidence introduced during the hearing. The ALJ properly applied the law to those facts. It is our opinion that the ALJ's decision should be affirmed.

In accordance with MCL 421.34, we conclude that no modification or alteration of the ALJ's decision is necessary.

Although the above result is adverse to the claimant, we point out that this decision affects only the claimant's regular claim for benefits (benefit year beginning date March 29, 2020). Regular benefit claims have different criteria than claims for Pandemic Unemployment Assistance (PUA) benefits created under the CARES Act. Congress enacted the CARES Act to protect the income of individuals who, although not eligible for traditional unemployment benefits, nonetheless lost income due to the coronavirus pandemic.

We note that during the hearing in this matter, the claimant testified that she had initially established a PUA claim for benefits and was paid on that claim. She

indicated that thereafter, she filed the regular claim for benefits associated with the instant case and was paid on that claim.

Thus, we are compelled to also refer this matter to the Unemployment Insurance Agency (Agency) for the purpose of completing any transfers between the regular claim and PUA claim related to the restitution/benefit payments which may be appropriate and contacting the claimant to explain those transfers. Determinations regarding such transfers are left to the Agency.

The Commission subsequently denied claimant's application for rehearing, and claimant appealed to the circuit court.

The circuit court held a hearing and then issued a written opinion and order. The court began its analysis by stating that the "issue in this case revolves around whether Appellee agency may use the equitable remedy of restitution to claw back payments made to Appellant considering the undisputed facts." The circuit court cited MCL 421.62(a) as the source of the UIA's authority to order "restitution" from an individual determined to have obtained benefits to which the individual was not entitled. Focusing on the term "restitution" in the statute, the circuit court determined that the matter presented a cause of action for unjust enrichment that sought a remedy of restitution. The circuit court thus concluded that the matter was within its "equitable jurisdiction." On the basis of this foundational premise, the circuit court reasoned as follows:

From this perspective, the Court is not seeking to overturn Appellee's legal conclusion on qualification for benefits, but considers whether Appellee has the right to return of funds paid to Appellant, who in effect is arguing in equity that keeping the unemployment benefits payments would not constitute unjust enrichment. Weighing the equities and acting in good conscience, the Court finds that Appellant would not be unjustly enriched by keeping the benefits paid.

* * *

... In addition, the review statutes at issue do not specifically deny the courts any ability to exercise their equitable jurisdiction. Nothing but the recognition of a waiver in the case of Appellant would constitute "complete justice" amid all of the vicissitudes and intricacies of life. The Court now considers the issue from an equitable perspective.

Next, the circuit court proceeded to weigh the equities, stating that the UIA had failed to follow through on the Commission's order related to transfers between claimant's regular unemployment claim and PUA claim and that claimant only received unemployment benefits beginning from a date after MGM had shut down pursuant to the Governor's executive orders. The court then concluded:

In broad strokes, Appellant took action approximately two weeks before a pandemic response was officially established, but for exactly the same reasons that were officially and definitively initiated by Governor Whitmer. Additionally, Appellant received benefits only for that period when she would have qualified for pandemic-related unemployment benefits but for the resignation. The grant of

benefits in this case was by determination on March 29, 2020, which was approximately two weeks after Governor Whitmer's executive orders relevant to this controversy. Appellant did everything right including the recount of her factual situation when applying for benefits.

MCL 421.62[a] provides for a remedy that is equitable in nature. Reviewing the rulings below *de novo*, . . . the Court finds that Appellee erred as a matter of law in concluding that Appellant would be unjustly enriched. Appellant was not unjustly enriched because at the time she accepted payments she was entitled to those benefits because of the Governor's order.

The circuit court thus reversed the Commission's order and ruled that the "decision for claw back" was "stricken."

II. ANALYSIS

On appeal, the UIA argues that the circuit court exceeded the scope of its authority and failed to apply the correct legal principles, thereby committing reversible error, in ruling that claimant was not required to repay unemployment benefits that she was ineligible to have received.

"This Court reviews a lower court's review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings, which is essentially a clear-error standard of review." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 431; 906 NW2d 482 (2017) (quotation marks and citation omitted). "[T]he circuit court's legal conclusions are reviewed *de novo* and its factual findings are reviewed for clear error." *Braska v Challenge Mfg Co*, 307 Mich App 340, 352; 861 NW2d 289 (2014). "A finding is clearly erroneous where, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made." *Vanzandt v State Employees Retirement Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005). "Great deference is accorded to the circuit court's review of the [administrative] agency's factual findings; however, substantially less deference, if any, is accorded to the circuit court's determinations on matters of law." *Lawrence*, 320 Mich App at 432 (quotation marks and citation omitted; alteration in original).

In turn, the standard of review the circuit court is to apply when reviewing an agency decision is governed by the Michigan Constitution, as well as statute. The Michigan Constitution provides in relevant part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law. [Const 1963, art 6, § 28.]

Additionally, “the Michigan Employment Security Act, MCL 421.1 *et seq.*, expressly provides for the direct review of unemployment benefit claims. *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193; 859 NW2d 683 (2015). Specifically, MCL 421.38(1) provides in relevant part as follows:

The circuit court . . . may review questions of fact and law on the record made before the administrative law judge and the Michigan compensation appellate commission involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record.

Our Supreme Court explained in *Hodge*, 497 Mich at 193, that under the above standard, the circuit court “must affirm a decision of the ALJ and the MCAC if it conforms to the law, and if competent, material, and substantial evidence supports it.”² “A reviewing court is not at liberty to substitute its own judgment for a decision of the MCAC that is supported with substantial evidence.” *Id.* at 193-194.

Here, the circuit court treated the matter before it as though the UIA were seeking restitution based on a cause of action for unjust enrichment. However, the matter was before the circuit court on claimant’s appeal from the Unemployment Insurance Appeals Commission’s decision affirming the ALJ’s decision that claimant was disqualified from benefits under MCL 421.29(1)(a). Pursuant to MCL 421.62(a), the UIA is authorized to seek restitution if “the unemployment agency determines that an individual has obtained benefits to which the individual is not entitled, or a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits.” See also *Dep’t of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 221; 973 NW2d 90 (2021) (stating that “[s]ometimes a claimant is paid a benefit they were not entitled to receive” and that “[t]he MESA directs the Agency to recover these overpayments”).

Thus, the restitution remedy at issue in this case is entirely statutory. Unjust enrichment, in contrast, is an independent common-law theory of liability that may also support the remedy of restitution. *Wright v Genesee Co*, 504 Mich 410, 420; 934 NW2d 805 (2019). Statutory restitution and restitution predicated on the doctrine of unjust enrichment present distinct legal avenues for relief. See *id.* at 418 n 3 (noting the distinction between remedial statutes providing for restitution and a cause of action seeking restitution on the basis of unjust enrichment). In the instant case, the circuit court did not apply correct legal principles when it incorrectly conflated these two distinct forms of restitution to support its legal conclusion, and we therefore reverse the circuit court’s order. *Lawrence*, 320 Mich App at 431. The circuit court erroneously recast the appeal as an

² “The MCAC has since been replaced, in relevant part, by the Unemployment Insurance Appeals Commission.” *Dep’t of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 226 n 7; 973 NW2d 90 (2021).

action for unjust enrichment when it was, in actuality, a purely statutory appeal of an administrative decision.³

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron

/s/ Stephen L. Borrello

/s/ Colleen A. O'Brien

³ We note that the UIA concedes on appeal that claimant may still seek a waiver of restitution from the UIA by following the proper procedures for requesting a waiver.