A.D. No. B93-11864-127766W
S.S. No. [redacted]
B.O. No. 43

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

FLORENCE DICKERSON,

Appellant,

v

Case No. 95-1806-AE

NORRELL HEALTH CARE, INC., et al.,

OPINION

Appellees.
_____/

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OPINION/ORDER

S T A T E O F M I C H I G A N

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * * * * *

FLORENCE DICKERSON,

Claimant-Appellant,

vs

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Appellees.
_____/

CASE NO. 95-1806-AE

OPINION

From December, 1992, until April, 1993, appellant worked two jobs. She worked full-time at the Luther Home here in Grand Rapids, a nursing home. She also worked part-time for Norrell Health Care, Inc., as a home health care aide. When both jobs got to be too much -- she was working 80-90 hours per week and caring for a son while he underwent chemotherapy for leukemia -- plaintiff quit the part-time job. About a month later, she lost her full-time job. The application for unemployment compensation which she then filed was denied. Nothing about the loss of the full-time job worked a disqualification, but plaintiff's quitting her part-time job was ruled to disqualify her from the benefits to which she would otherwise have been entitled as a result of losing the full-time job.

The referee and the Board of Review found Section 29(1)(a) of the Michigan Employment Security Act to be dispositive. It says that "[a]n individual is disqualified for benefits if he or she: ... [l]eft work voluntarily without good cause attributable to the employer ...," MCLA 421.29(1)(a); MSA 17.531(1)(a), until that individual requalifies for benefits by earning specified amounts after quitting, MCLA 421.29(3); MSA 17.531(3). The referee found that appellant had "left work" because she had voluntarily left her part-time job; there is no dispute that, from the time she quit her part-time job until she lost her full-time job, she did not earn enough at the latter to requalify -- if she had to qualify. The Board of Review affirmed. Member Millender concurred specially, however, noting that the result "is unconscionable." This appeal followed.

Appellant argues that she did not leave work and, alternatively, that she did not leave voluntarily. This Court agrees with the former contention, making it unnecessary to resolve the latter. This Court agrees with Ms. Millender that the denying appellant benefits is unconscionable. That does not

justify a reversal, however. The courts cannot disregard a statute out of sympathy for a particular litigant, Majurin v DSS, 164 Mich App 701, 708 (1987). This Court is reversing because the decisions below are contrary to law. They were based on an incorrect interpretation of the applicable statute. While the courts must give deference to administrative decisions, "'[n]othing ... limits the judiciary's power to review administrative determinations of issues of law as distinguished from issues of fact,'" Regents v Employment Relations Commission, 389 Mich 96, 102 (1973), quoting Wickey v Employment Security Commission, 369 Mich 487, 490 (1963). The citizens who drafted this State's current constitution were adamant that administrative decisions be subject to judicial review, MERC v Detroit Symphony Orchestra, 393 Mich 116, 122-124 (1974), and that such review include, "as a minimum," a determination whether the administrative decision was "authorized by law," Const, 1963, Art 6, §28. It necessarily follows the courts "'are not bound by the decisions of administrative agencies on questions of law,'" Macenas v Michiana, 433 Mich 380, 395 (1989), and that a reversal must occur if a decision does not follow the law.

Construing statutes is a matter of law, not a matter of fact, Macenas v Michiana, 433 Mich 380, 397 (1989). While a long-standing, agency interpretation of an ambiguous statute is to be accorded great weight in determining the meaning of that statute, a court may disagree with the agencey's interpretation if it appears to the court that another construction is more reasonably in accord with the Legislature's intent as revealed by the traditional rules of statutory construction, Id., at 398. Deference is not subservience. Absent an established history of a consistent construction over an extended period of time, a reviewing court can disagree with an agency's interpretation if "there are 'cogent reasons' for overturning the [agency's] decision," Id., at 402. Just as in Macenas, supra, there is nothing in the record before this Court which establishes the requisite long-standing interpretation. Accordingly, satisfied that the pertinent statute was misinterpreted, this Court has, not only the right, but the duty, to reverse that decision.*

Suprisingly, the question presented by this case is a question of first impression in this State. It is a question which has been resolved elsewhere, however. See, for example, McCarthy v Iowa Employment Security Commission, 76 NW2d 201

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* There is an alternative ground upon which this Court can determine the questions of law here involved. The facts are undisputed. Both counsel said so at oral argument, and that is apparent from the parties' briefs. The Supreme Court has long recognized that conclusions drawn from undisputed facts are questions of law, Regents v Employment Relations Commission, supra, at 103, fn 3.

(Iowa, 1956); Brown v Labor & Industrial Relations Commission, 577 SW2d 90 (Mo App, 1979); Gilbert v Hanlon, 214 Neb 676; 335 NW2d 548 (1983); and Merkel v HIP of New Jersey, 240 NJ Super 436; 573 A2d 517 (1990). Each of those cases is identical to this case. In each, an individual who held both a part-time job and a full-time job quit the part-time job, soon thereafter lost the full-time job, and was found disqualified from benefits by virtue of statutory disqualifications identical to or indistinguishable from the one at issue in this case. In each of those cases, an appeal resulted in a reversal. Uniformly, the reviewing courts held that an employee can be said to have "left work" only if quitting resulted in total unemployment, not one less job.

This Court realizes that decisions from other states are not precedentially binding on it, even when they are factually and legally identical to the case before it. This Court is following the cases cited above because it finds their reasoning, rationale and analysis persuasive and fully applicable to the Michigan Employment Security Act; as previously noted, the statutes at issue in those cases are indistinguishable from the Michigan statute. The analysis in those cases will not be stated here, however, because "[n]othing would be gained by restating here what has been persuasively stated there," Upjohn Co v New Hampshire Insurance Co, 438 Mich 197, 207, fn 7 (1991). Suffice to say that the interpretation of Section 29(1)(a) by the referee and by the Board of Review undermine the core premise of the Michigan Employment Security Act without accomplishing anything other than providing an unearned windfall to employers at the expense of employees. Necessarily, therefore, the contrary interpretation advanced by appellant, and adopted elsewhere, is more reasonably in accord with the Legislature's intent because common sense, as well as the rules of construction -- actually, using common sense is the lodestar principle of construction -- says that the Legislature intended the former, not the latter. Cf., Richards v American Fellowship Ins Co, 84 Mich App 629, 634 (1978), lv app den 406 Mich 862 (1979).

Reversed.

SEP 21 1995
Date

DENNIS C. KOLENDA
Dennis C. Kolenda, Circuit Judge

Attest A True Copy:
K. Mueller

Examined, Countersigned & Entered:
NADINE MUELLER

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

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Appellees.

Case No. 95-1806-AE

ORDER

At a session of said Court, held in the Hall of Justice in the City of Grand Rapids, in said county on SEP 21 1995.

Present: HON. DENNIS C. KOLENDA, Circuit Judge

For the reasons stated by this Court in the written opinion filed by it in this case simultaneously herewith:

IT IS HEREBY ORDERED AND ADJUDGED that the decision by the Michigan Employment Security Commission finding appellant herein disqualified for benefits be, and the same hereby is, REVERSED. This case is remanded for the payment to appellant of the benefits to which she is entitled.

DENNIS C. KOLENDA

Dennis C. Kolenda, Circuit Judge

Attest A True Copy:

K. Mueller

Examined, Countersigned & Entered:

NADINE MUELLER