

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

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LAURENCE REUBEN,

Plaintiff,

**OPINION AND ORDER REGARDING**  
**DEFENDANT'S MOTION FOR**  
**SUMMARY DISPOSITION**

v

Case No. 17-000198-MZ

MICHIGAN DEPARTMENT OF LICENSING  
AND REGULATORY AFFAIRS, BUREAU OF  
COMMUNITY & HEALTH SERVICES,

Hon. Christopher M. Murray

Defendant.

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Presently before the Court is Defendant's motion for summary disposition filed pursuant to MCR 2.116(C)(4), (8) and (10), to which plaintiff has responded. The Court dispenses with oral argument, MCR 2.119(E)(3), and for the reasons outlined below, will deny defendant's motion for summary disposition and instead enter judgment in favor of plaintiff. MCR 2.116(I)(2).

**I. FACTS**

Plaintiff Laurence Reuben filed a complaint for declaratory judgment against the Michigan Department of Licensing and Regulatory Affairs, Bureau of Community & Health Services (hereinafter the "Department"), seeking a declaratory ruling that a New York Certificate of Relief From Disabilities<sup>1</sup> (effective in November 2013), is entitled to full recognition in Michigan. Plaintiff seeks this declaratory ruling because the Department determined through a background check that

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<sup>1</sup>The Certificate states that it relieves plaintiff "of all disabilities and bars to employment" that arose from his conviction, and is signed by Judge Charles Apothecker of the Rockland County court.

plaintiff had a 2008 New York conviction of grand larceny 4<sup>th</sup> degree, a felony in New York. Once plaintiff's employer received the background check, it discontinued plaintiff's employment. Although, as noted, the same New York court issued the aforementioned Certificate, the Department was, at least before institution of this lawsuit, uncertain as to the Certificate's effect under Michigan law.

The Department has now moved for summary disposition, arguing that: (1) this Court lacks subject matter jurisdiction over this complaint because it is in essence an appeal of an administrative decision over which the circuit court has jurisdiction; (2) even if this Court does have jurisdiction, the Full Faith and Credit Clause of the United States Constitution does not require that Michigan recognize the Certificate; and (3) the Supremacy Clause of the United States Constitution, Art 6, cl 2, allows the federal government to set conditions for employment for persons working within federally funded medical programs and Michigan must follow the rules for a federally funded medical program in Michigan.

Plaintiff argues that this case is not an appeal from a Department decision, but is an independent declaratory judgment action over which this Court has subject matter jurisdiction, that the Full Faith and Credit Clause requires Michigan to recognize the New York Certificate, and that the Supremacy Clause is simply inapplicable because federal law does not apply to this situation. The Department did not file a reply brief.

## II. ANALYSIS

The Court first turns to the question of subject matter jurisdiction. This Court can only act on a case if the legislature has granted it the authority to do so. Two statutory provisions have been raised. First, plaintiff points the Court to MCL 600.6419(1)(a), which provides that this Court has the

power and jurisdiction “to hear and determine \* \* \* any claim . . . or any demand for monetary, equitable, or declaratory relief . . . against the state or any of its departments . . . notwithstanding another law that confers jurisdiction of the case in the circuit court.” Pursuant to this statutory provision, this Court would have jurisdiction over plaintiff’s complaint because it is a demand for declaratory relief against a state department. Nevertheless, the Department argues that MCL 600.6419(5), which states that nothing within the statute deprives “the circuit court of exclusive jurisdiction over appeals from the district court and administrative agencies as authorized by law,” reinforces the circuit court’s jurisdiction to hear appeals from administrative agencies. See also MCL 600.631.

To prevail on this point, the Department argues that the Court cannot focus on the form of plaintiff’s complaint (which is clearly denoted as a declaratory judgment action) but must instead focus on the substance, and when doing so it is clear that plaintiff is simply appealing a Department decision. Therefore, the argument goes, jurisdiction properly lies with the circuit court under MCL 600.631 and 600.6419(5).

As plaintiff argues, however, there are three possible avenues of relief available to a party seeking judicial review of an administrative agency’s decision:

(1) review pursuant to a procedure specified in a statute applicable to the particular agency, (2) the method of review for contested cases under the Administrative Procedures Act (APA), MCL 24.201 *et seq.*; MSA 3.560(101) *et seq.*, or (3) an appeal pursuant to § 631 of the Revised Judicature Act, MCL 600.631; MSA 27A.631, and Const 1963, art 6, § 28, in conjunction with MCR 7.104(A). [*Hopkins v Parole Bd.*, 237 Mich App 629, 637-638; 604 NW2d 686 (1999).]

Accord: *Pontiac Food Center v Dep’t of Community Health*, 282 Mich App 331, 335; 766 NW2d 42 (2008).

A contested case is defined as “a proceeding, including rate-making, price-fixing, and licensing, 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). Here, prior to this litigation there was no proceeding at all between the parties, and the only reason the Department became involved in plaintiff’s employment situation was through a statutorily required background check. But, unlike *Hopkins*, there exists two different statutory appeal procedures regarding these statutory background checks, one for an “inaccurate” background check and the other for a reported crime that is subject to expungement or being set aside. See MCL 333.20173b(1). If either of those situations exist, the applicant is entitled to appeal the background check to the department and the appeal is to be conducted as a contested case under the APA. *Id.* The director of the Department will then make a final decision. *Id.* Despite this statutory provision, there are several reasons why it does not preclude jurisdiction in this case.

First, the Department does not argue the applicability of MCL 333.20173b(1) in any portion of its argument section of its brief. Although it is cited in the statement of facts, that is not enough to properly raise the issue to the Court. Second, plaintiff never argued that the background report was inaccurate, so the first appeal provision within MCL 333.20173b(1) is inapplicable. Third, the second appeal provision, dealing with convictions that are subject to being expunged or set aside, commences after a court expunges or sets aside the conviction. Here, plaintiff is asking this Court to essentially conclude that the Certificate is enforceable in Michigan, where he can then argue that it has the same effect as being set aside or expunged. Indeed, this course of action is exactly what the Department *told* plaintiff he needed to do before it could determine the effect of the Certificate. For these reasons, the Court concludes that MCL 333.20173b(1) does not interfere with this Court’s jurisdiction. Rather, this is a proper declaratory judgment action whereby two parties have differing

views on the legal effect of an out-of-state Certificate, a matter squarely within this Court's jurisdiction.

The next argument is whether the Department must recognize the Certificate issued by the New York court. Art 4, § 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each state to the . . . judicial Proceedings of every other State." Assuming that the Full Faith and Credit Clause applies to criminal judgments entered by Sister States, and there is a question as to whether it does, see *People v Halim*, 14 Cal App 5<sup>th</sup> 632; \_\_\_ Cal Rptr 3<sup>rd</sup> \_\_\_ (CA App, 2017) and *Nelson v George*, 399 US 224, 229; 90 S Ct 1963; 26 L Ed 2d 578 (1970), the Court must recognize the Certificate's validity. As the Supreme Court has repeatedly recognized, when it comes to enforcing judgments or orders from other states, the Full Faith and Credit Clause is "exacting," *Baker v General Motors Corp*, 522 US 222, 233; 118 S Ct 657; 139 L Ed 2d 580 (1998), meaning that each state *must* recognize judgments entered by courts which had jurisdiction to do so in another state. *VL v EL*, \_\_\_ US \_\_, \_\_; 136 S Ct 1017, 1020; 194 L Ed 2d 92 (2016). There is no "balancing" of both states' public policy concerns, as that form of decision is not applicable to judgments. *Baker*, 522 US at 233-234. Here, there is no dispute that the Certificate was signed and entered by a New York court with jurisdiction to do so. It is therefore entitled to recognition in Michigan.<sup>2</sup>

Finally, the Court is unpersuaded by the Department's Supremacy Clause argument. That Clause, US Const, art VI, cl 2, does not appear to be at issue because the issue is whether the Certificate must be recognized in Michigan, not what powers the state or federal government have to enforce 42 USC § 1320a-7(a).

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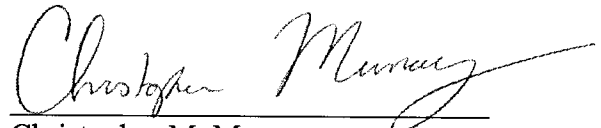
<sup>2</sup> This is consistent with other jurisdictions that "have ruled that the law of comity requires that states recognize the sister states restoration of the convicts civil rights." *Hoffman v State*, 922 SW2d 663, 666-667 (Tx App, 1996).

Accordingly, the Court DENIES the Department's motion for summary disposition, and enters judgment in plaintiff's favor under MCR 2.116(I)(2).

This is a final order that closes this case.

IT IS SO ORDERED.

Dated: October 16, 2017

  
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Christopher M. Murray  
Judge, Court of Claims