In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

CHRISTOPHER HEATHERLY,	)	No. ED109559
	)	
Appellant,	)	Appeal from the Circuit Court of Lincoln County
	)	
vs.	)	20L6-CC00066
	)	
MICHAEL WOOD, In His Official Capacity as Prosecutor for Lincoln County, Missouri,	)	Honorable Jason H. Lamb
	)	
Respondent.	)	Filed: December 28, 2021

Michael E. Gardner, P.J., James M. Dowd, J., and Lisa P. Page, J.

OPINION

This is an appeal from the trial court's dismissal of Appellant Christopher Heatherly's amended petition in which he sought injunctive and declaratory relief. Heatherly, a former police officer, asserts that Respondent Michael Wood, the Prosecuting Attorney for Lincoln County, Missouri, exceeded his lawful authority when he wrote a letter informing Heatherly's employer, the Chief of Police of the City of Elsberry, Missouri, that Wood had placed Heatherly on his *Brady* list[1] as a result of information Wood obtained concerning an incident in which

[1] We assume "*Brady* list" refers to the creation or maintenance of a list for disclosure to criminal defendants of police officers which the prosecuting attorney deemed to be required by the dictates of *Brady v. Maryland,* 373 U.S. 83 (1963). "*Brady* holds that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.'" *Merriweather v. State*, 294 S.W.3d 52, 54 (Mo. banc 2009) (quoting *Brady*, 373 U.S. at 87); *see also State v. Goodwin*, 43 S.W.3d 805, 812 (Mo. banc 2001).

Heatherly was alleged to have improperly removed a weapon from an evidence locker during his previous employment as a police officer for the City of Brooklyn, Illinois. Heatherly further claims that since the factual basis for Wood's letter was later contradicted, and Wood's letter was relied upon by the Chief of Police to terminate Heatherly's employment as a police officer for the City of Elsberry, Wood should be ordered to rescind the letter, to remove Heatherly from his *Brady* list, and that he should be enjoined from any further reference to the weapon incident.

We have concluded that we are unable to reach the merits of this appeal because Heatherly has failed to demonstrate that he exhausted the administrative remedies he may have under statute, ordinance, rule, or regulation, including under the Missouri Administrative Procedure Act, Chapter 536, RSMo,[2] as a result of the termination of his employment, or that an exception to the exhaustion doctrine applies.[3] As a result, we lack the authority to adjudicate this matter and the appeal is therefore dismissed.[4]

Background

The summary of events contained herein is based largely on Heatherly's factual allegations. Inasmuch as our dismissal of this appeal precludes our review of the merits of Heatherly's petition, our inclusion of Heatherly's allegations here is to provide context for this opinion, not to declare them to be established matters of fact.

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[2] All statutory references are to the Revised Statutes of Missouri (2020).

[3] *See Kunzie v. City of Olivette*, 184 S.W.3d 570, 573 (Mo. banc 2006).

[4] The Southern District of our Court in *Morelock v. Intercontinental Hotels Group Resources, LLC.*, No. SD 37022, 2021 WL 4145240, (Mo. App. S.D. Sept. 13, 2021) noted that in light of our Supreme Court's opinion in *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253-54 (Mo. banc 2009), in which the Court held that Missouri trial courts have subject matter jurisdiction over all cases, civil and criminal, "the concept of subject matter jurisdiction is no longer applicable to evaluation of the effect of one's failure to exhaust administrative remedies." *Id.* *6 (citing *Coleman v. Mo. Sec'y of State*, 313 S.W.3d 148, 154 (Mo. App. W.D. 2010)). Therefore, "a trial court can no longer be said to lack subject matter jurisdiction over unexhausted claims, but rather should be said to lack authority to review those claims as a result of the statutory exhaustion requirement." *Id.*

Before his employment with the City of Elsberry, Heatherly worked as a police officer for the City of Brooklyn, Illinois which is located in St. Clair County. While working there, Heatherly reportedly removed a weapon from the department's evidence locker and then improperly handled it. After St. Clair County State's Attorney Brendan Kelly, whose jurisdiction included Brooklyn, Illinois, became aware of this incident, and also became aware that Heatherly had left Brooklyn to become a police officer in Elsberry, Kelly wrote a letter to Wood expressing his concern regarding Heatherly's conduct. Heatherly claims Kelly's letter prompted Wood to write his own letter, the one at issue here, to Heatherly's employer.

Wood's letter, dated April 29, 2020 and written in his official capacity as the county's elected prosecuting attorney, advised the City of Elsberry's Chief of Police Randall Davis that he was "concerned with certain conduct that concerned Officer Heatherly," as reported to him by Kelly.

Wood further wrote that he was "concerned about the impact that this will have on the successful prosecution of criminal cases … [and that] ... [t]he evaluation of the strength of a case will not include weighing Officer Heatherly's involvement as a weakness." Wood requested that Chief Davis consider limiting Heatherly's investigatory duties, or alternatively, consider terminating his employment. Subsequently, Chief Davis terminated Heatherly.

According to Heatherly's brief's unsupported factual assertion, prior to his termination, Heatherly had some sort of employment disciplinary hearing in which he was afforded an opportunity to present witnesses and to have counsel present. The parties have failed to include in the record any documents demonstrating the nature of this proceeding or any other administrative action taken with respect to his termination. Nor has either party apprised us of any rule, regulation, ordinance, or statute pursuant to which Heatherly's matter was heard.

Heatherly further claims in his brief, again without citation to anything in our record, that "he has no basis to take an administrative appeal from the City of Elsberry's termination of him" since he was afforded the opportunity to present witnesses and to have counsel present. He also claims the City of Elsberry's decision to terminate him is "not erroneous or reviewable" since the City "could not employ a Detective whose cases would not be prosecuted" because the prosecuting attorney had placed him on a *Brady* list. Nevertheless, in his brief and at oral argument, Heatherly conceded that he did not exhaust his administrative remedies by filing suit under Chapter 536, or under any other authority, to challenge his termination.

On June 3, 2020, Heatherly filed the petition at issue here in which he sought injunctive and declaratory relief including the declaration that Wood had exceeded his lawful authority by placing Heatherly on his *Brady* list, that Wood be required to rescind his April 29, 2020 letter and remove Heatherly from his *Brady* list, and that Wood be enjoined from making any further reference to Heatherly's conduct in St. Clair County, Illinois.

Heatherly claimed that he had a constitutionally-protected liberty interest as a police officer employed in the state of Missouri and that Wood's action deprived him of that interest. Heatherly also complained that Wood's action exceeded his authority and discretion under Fourteenth Amendment due process principles because Heatherly had no opportunity to challenge his placement on the *Brady* list.

Wood filed a motion to dismiss asserting that Heatherly's amended petition failed to state a claim because Heatherly lacked standing and failed to plead a justiciable controversy, and that Heatherly had failed to exhaust his administrative remedies. The trial court heard the matter on August 20, 2020, and on November 12, 2020, entered its order and judgment dismissing Heatherly's amended petition for lack of standing and for the lack of a justiciable controversy to support a claim for declaratory and injunctive relief. This appeal follows.

Standard of Review

"This Court has an obligation, acting *sua sponte* if necessary, to determine its authority to hear the appeals that come before it." *First Nat'l Bank of Dieterich v. Pointe Royale Prop. Owners' Ass'n, Inc.*, 515 S.W.3d 219, 221 (Mo. banc 2017). A party's failure to show that it exhausted its administrative remedies warrants the dismissal of its claim. *Tri-County Counseling Services, Inc. v. Office of Administration*, 595 S.W.3d 555, 569 (Mo. App. W.D. 2020).

Discussion

I. Heatherly's failure to show he exhausted his administrative remedies under Chapter 536 or under any other statutory, administrative, or ordinance-based provision deprives this Court of the authority to consider this appeal.

Missouri follows the doctrine of exhaustion of administrative remedies which provides that where a remedy before an administrative agency is provided, relief must be sought by exhausting that remedy before the courts will act. *Sperry Corp. v. Wiles*, 695 S.W.2d 471, 472 (Mo. banc 1985). This doctrine is well established, is a cardinal principle of practically universal application, and must be borne in mind by the courts in construing a statute providing for review of administrative action. *Id. See also* section 536.100 (A "person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case" may seek judicial review.); *State ex rel. Robison v. Lindley-Myers*, 551 S.W.3d 468, 473 (Mo. banc 2018) (exhaustion doctrine recognized in non-contested cases under section 536.150.1); *Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 352 (Mo. banc 1995) (citing Mo. Const. art. V, § 18) ("The exhaustion of administrative remedies doctrine is rooted in sound policy, as well as in both the state constitution and statutes. Only 'final decisions, findings, rules and orders' of an administrative agency are subject to review as provided by law.")

The purpose of the exhaustion of remedies doctrine is to preserve efficiency in the relationships between agencies and the courts. *Coleman*, 313 S.W.3d at 154. Agencies have a special expertise and a factual record can be more fully developed by pursuing the designated channels for relief with the agency. *Id.* Moreover, a matter may be resolved by the agency, rendering review by the court unnecessary. *Id.*

Turning to the circumstances of this case, and the cryptic record regarding Heatherly's administrative course notwithstanding, we are still able and compelled to reach the conclusion that Heatherly has failed to demonstrate that he exhausted whatever administrative remedies he may have had against the City of Elsberry as a result of his termination.[5]

According to Heatherly, prior to his termination, some sort of administrative hearing took place before the City of Elsberry's Board of Aldermen in which he was afforded an opportunity to present witnesses and to have counsel present. This scenario indicates that Heatherly's termination was treated as a "contested case." A contested case is "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010(4). The "law" requiring a hearing "includes any ordinance, statute, or constitutional provision that mandates a hearing." *McCoy v. Caldwell Cty.*, 145 S.W.3d 427, 428 (Mo. banc 2004).

Unfortunately, other than an unverified copy of a letter from the Elsberry city attorney to Heatherly scheduling a hearing before the board of aldermen and Heatherly's unsupported statement that such hearing occurred and resulted in his termination, we have no other supporting information or documents in our record that the hearing occurred, much less a transcript of the hearing. Moreover, the parties have failed to apprise us of any applicable statute, rule,

[5] In his brief and at oral argument, Heatherly conceded that he did not exhaust his administrative remedies by filing suit under Chapter 536 to challenge his termination.

regulation, or ordinance relating to the nature of a police officer's employment relationship with the City of Elsberry, nor those relating to the administrative action taken against Heatherly and any right of review or appeal he may have had.

Instead, Heatherly takes the position here that whatever administrative remedies he may have had are not relevant to his effort herein to obtain relief arising out of his termination *not* from his employer, but instead from a third party, prosecuting attorney Wood, for causing the termination. In this regard, Heatherly seeks to bypass the exhaustion doctrine.

And Heatherly effectively asks us to take his word for it. First, Heatherly claims in his brief, without citation to anything in our record, that "he has no basis to take an administrative appeal from the City of Elsberry's termination of him" since he was afforded a hearing with the opportunity to present witnesses and to have counsel present. He also claims the City of Elsberry's decision to terminate him is "not erroneous or reviewable" since the City "could not employ a Detective whose cases would not be prosecuted" because the prosecuting attorney had placed him on a *Brady* list. And at oral argument, Heatherly offered to stipulate that his administrative claim would have been unsuccessful.

The exhaustion doctrine does not operate on the word of a litigant. In *State ex rel. Scott v. Scearce*, 303 S.W.2d 175, 180 (Mo. App. 1957), Judge Anderson of this Court wrote that "[t]he exhaustion rule has been held to be applicable, even though the litigant may believe that his petition to the administrative agency will be denied and consequently his attempt would be futile." *Id.*

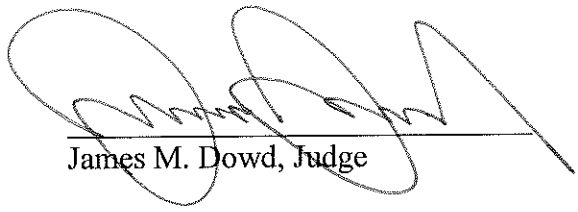
Moreover, Heatherly's attempt to maneuver around the exhaustion doctrine in order to shine the light solely on the conduct of a third party as the cause of his termination is unavailing and misses the point and purpose of the exhaustion doctrine. The record developed at the administrative level regarding Heatherly's termination would likely have established a factual

record demonstrating what led to Heatherly's termination. We are left to speculate as to those facts and instead to accept Heatherly's representations that the City of Elsberry acted properly and justifiably in terminating Heatherly due to Wood's conduct. The exhaustion doctrine simply does not allow us to ignore the role of the City of Elsberry in Heatherly's termination and to focus instead, as Heatherly would have us, solely on the conduct of Wood. Without that record, we simply cannot take the next step to determine the liability implications to the extent there are any of what occurred including the standing and immunity defenses raised by Wood.

Heatherly's argument that he had a constitutionally-protected liberty interest in his employment as a police officer further undermines his position because that principle may potentially be raised against Heatherly's *employer* in connection with the administrative proceedings arising from his termination. *See e.g.*, *Belton v. Board of Police Com'rs of Kansas City*, 708 S.W.2d 131, 136-137 (Mo. banc 1986). Wood was not Heatherly's employer.

Conclusion

For the reasons stated above, the appeal is dismissed.



James M. Dowd, Judge

Michael E. Gardner, P.J., and
Lisa P. Page, J., concur.