

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ROBERT L. LADD,

Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

Respondent.

DOCKET NUMBER WD70248

Date: November 24, 2009

Appeal from:
Cole County Circuit Court
The Honorable Jon Edward Beetem, Judge

Appellate Judges:
Division One: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White Hardwick, Judges

Attorneys:
Robert Lee Ladd, Appellant Pro Se, for appellant.
John D. Hoelzer, Esq., Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

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Appellant,

v.

MISSOURI BOARD OF PROBATION AND PAROLE,

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WD70248

COLE COUNTY

Before Division One Judges: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White Hardwick, Judges

Appellant Robert Ladd was convicted of second-degree murder, first-degree robbery, kidnapping, and two counts of armed criminal action in 1984. Ladd came before the Board of Probation and Parole for consideration for parole in May of 2008. The Board denied parole based on its determination that releasing Ladd would improperly minimize the seriousness of his crimes and based on his “[u]se of excessive force and violence” in the commission of the offenses. In July 2008, Ladd filed a “Petition for Trial De Novo” in the Circuit Court of Cole County. He asserted that the circuit court had jurisdiction to entertain his petition under the Missouri Administrative Procedure Act, Chapter 536, RSMo (the “APA”). The trial court dismissed Ladd’s petition, with prejudice, based on its determination that it lacked subject matter jurisdiction to consider his APA claims. Ladd appeals.

AFFIRMED, AS MODIFIED TO REFLECT A DISMISSAL WITHOUT PREJUDICE.

Division One holds:

While the APA provides a baseline or default system for judicial review of administrative agency decisions, it is only applicable where an agency’s organic statutes are silent as to judicial review of its decisions, or where the organic statute fails to address particular procedural issues. Here, § 217.670.3 specifically addresses judicial review of the Board’s parole decisions. It provides: “The orders of the board shall not be reviewable except as to compliance with the terms of sections 217.650 to 217.810 or any rules promulgated pursuant to such section.” Because it specifically addresses the scope of review of decisions of the Board of Probation and Parole, § 217.670.3 renders the APA’s judicial review provisions inapplicable.

Although § 536.140.2 requires judicial review “at least as broad as the scope of judicial review provided for in this subsection” for contested cases, even if they are not otherwise subject to the APA, a parole hearing does not meet the minimum indicia of a contested case. It is not an adversarial but, instead, a supervisory proceeding. In addition, it lacks the “measure of procedural formality” necessary to constitute a contested case.

Section 217.690.12, enacted in 2005, does not render the APA’s judicial review provisions applicable here, either. That subsection applies only to a “rule or portion of a rule.” But the Board’s parole determination in Ladd’s individual case is not a “rule,” because it is not a statement of “general applicability.”

Section 217.670.3 does not violate the “open courts” provision of the Missouri Constitution, article I, § 14, because it defines the scope of Ladd’s right to review of the Board’s parole decisions; it does not erect any arbitrary or unreasonable barrier to his pursuit of an otherwise-recognized cause of action.

Ladd argues, finally, that the circuit court erred in dismissing his petition with prejudice, because dismissals for lack of subject matter jurisdiction are normally done without prejudice. However, under *Webb ex rel. J.C.W. v. Wyciskalla*, 275 S.W.3d 249 (Mo. banc 2009), we question whether the dismissal of Ladd’s petition was actually based on a lack of subject matter jurisdiction. Be that as it may, the Board states in its Brief that it has no objection to modification of the judgment to a dismissal without prejudice, based on its recognition that Ladd may be entitled raise his underlying claims in a declaratory judgment action. We accordingly modify the judgment pursuant to Rule 84.14, to reflect a dismissal without prejudice.

Opinion by: Alok Ahuja, Judge

November 24, 2009

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