

NICHOLAS A. GLADU

v.

MAINE HUMAN RIGHTS COMMISSION

Submitted on Briefs January 17, 2019

Decided January 24, 2019

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Nicholas A. Gladu appeals from a judgment of the Superior Court (Kennebec County, *Stokes, J.*) dismissing his M.R. Civ. P. 80C appeal of a decision of the Maine Human Rights Commission that had dismissed his complaint of disability discrimination against a contracted prison health care provider.¹ Gladu argues, among other things, that the court erred by dismissing his appeal after concluding that it lacked subject matter jurisdiction. We affirm the judgment of dismissal.

As we have previously explained in *Tomer v. Maine Human Rights Commission*, 2008 ME 190, ¶¶ 5-16, 962 A.2d 335, because Gladu has the option to pursue his claim against the health care provider to the full extent allowable by law by filing a civil action, his legal rights, duties, or privileges were not affected in a way that renders the Commission's dismissal of his complaint a final agency action as defined in the Administrative Procedures Act. *See* 5 M.R.S. § 8002(4) (2017). There being no final agency action, the Superior Court did not have subject matter jurisdiction to hear Gladu's appeal. 5 M.R.S. § 11001(1)

¹ Gladu is currently incarcerated at the Maine State Prison in Warren.

(2017); *Tomer*, 2008 ME 190, ¶ 14, 962 A.2d 335. The court was therefore obligated to dismiss Gladu’s Rule 80C action. *Id.*; *see also* M.R. Civ. P. 12(h)(3) (“Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”); *State v. Dhuy*, 2003 ME 75, ¶ 8, 825 A.2d 336 (“If the trial court lacks jurisdiction, the absence of jurisdiction is noticed, and the case proceeds no further.”).²

The entry is:

Judgment affirmed.

Nicholas A. Gladu, appellant pro se

Janet T. Mills, Attorney General, and Jonathan R. Bolton, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellee Maine Human Rights Commission

Kennebec County Superior Court docket number AP-2017-65
FOR CLERK REFERENCE ONLY

² In his appeal to us, Gladu also briefly argues that the Commission’s dismissal impinged on his constitutional rights of due process and equal protection. He has not, however, presented a constitutional argument to us that is meaningfully developed, and he did not raise the issue at all before the Superior Court. As we have previously held, a party waives an issue on appeal by failing to raise it in the trial court, even where the issue relates to a constitutional protection. *See Teele v. West-Harper*, 2017 ME 196, ¶ 11 n.4, 170 A.3d 803; *Me. Real Estate Comm’n v. Kelby*, 360 A.2d 528, 530-31 (Me. 1976); *see also Dep’t of Environmental Protection v. Woodman*, 1997 ME 164, ¶ 3 n.3, 697 A.2d 1295 (stating that “[i]t is well established that pro se litigants are held to the same standards as represented parties”).