

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk
of Scio Township,

Case No. 22-000414-CZ

Plaintiff,

Hon. Timothy P. Connors

v.

SCIO TOWNSHIP BOARD,

Defendant.

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**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(8) RE: PLAINTIFF'S FIRST AMENDED COMPLAINT**

Introduction

Plaintiff, the Scio Township Clerk, has filed suit against the Scio Township Board based on a political dispute with a majority of the Township Board. This matter was previously before the Court on Plaintiff's motion for a temporary restraining order, which this Court denied. The Township then filed a motion for summary disposition under MCR 2.116(C)(4) and (C)(8). Before the Township's motion could be heard, Plaintiff filed a First Amended Complaint, which abandons her claims concerning the now-terminated payroll service contract with Rehmann Robson.

Instead, Plaintiff's First Amended Complaint argues that the Township Board violated the law by adopting policy resolutions to delegate certain financial and administrative tasks to Township staff. Plaintiff believes that she – as Clerk – is entitled to exclusive statutory control over finance staff, the Township's finances, and all of the Township's software and data.

In lieu of filing an Answer to the First Amended Complaint, the Township Board requests summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim for which relief may be granted. Plaintiff's claims related to her alleged power to control the Township's finance employees fails as a matter of law; Michigan law simply does not vest in Plaintiff the broad power that she seeks, and the Township's decision to hire (or not hire) employees to handle certain tasks is a policy decision that is not subject to judicial review. The Township has no statutory duty to hire Plaintiff's desired number of finance employees. To the contrary, Michigan law prohibits minimum staffing requirements for townships. Because Plaintiff's claims lack merit, she is not entitled to recover her attorney fees.

Ultimately, this case is nothing more than a policy dispute between Plaintiff and a majority of the members of the Township Board. Plaintiff has narrowed her claims following this Court's denial of her TRO motion, but the point of her lawsuit remains the same: Plaintiff is attempting to wrest control of the Township's finances and staffing because she disagrees with the Township Board's policy decisions. But her differing policy views are not legally actionable, and Plaintiff's remedy lies at the ballot box, not in Court.

For these reasons, the Township Board requests that this Court grant summary disposition in its favor and dismiss Plaintiff's action.

Statement of Facts

Plaintiff Jessica Flintoft, the Township Clerk of Scio Township, filed this action against the Scio Township Board, of which she is an elected member. Plaintiff's First Amended Complaint has dropped some of the inflammatory accusations of her original Complaint (which described members of the Board as "inexperienced Board rookies [who] have shown an unabashed and cavalier willingness and insistence to vote together as a block with no critical thinking," Original Complaint, ¶ 33). Plaintiff also no longer challenges the Township Board's authority to terminate the contract with Rehmann Robson for payroll services. Plaintiff's two substantive counts in her First Amended Complaint relate to Plaintiff's disagreement with the Township's finance and staffing decisions, particularly with respect to the job description of the Township Administrator and the number of finance employees hired by the Township.

A. Job Descriptions

In Count I, Plaintiff complains that the Township, "spearheaded by the Supervisor with the support of his band of three trustees, has endeavored to whittle away the Clerk's authority and oversight over finance matters and invade her access and control over the Township's records and general ledger to the point that she cannot perform her statutory duties." (Complaint 59.)

Although it is difficult to cut through Plaintiff's hyperbole, Count I appears to take aim at policy resolutions that define the job description of the Township Administrator. Plaintiff's primary complaint is that the Township Administrator has administrative authority over the Township's BS&A software, which is a program that manages the Township's data. Plaintiff claims that "the Clerk must have custody and control of the journals and ledgers," which Plaintiff construes to mean broad control over the Township's finances, records, and financial staff. Plaintiff also complains about the Township Supervisor's job description, which authorizes him to

supervise the budget. Notably, Plaintiff does not allege that she has actually been prevented from performing any specific statutory duty. Plaintiff's allegations are discussed in greater detail in Argument I below.

B. Staffing Decisions

In Count II, Plaintiff argues that she “must, as a matter of law, have all direct supervisory authority of any finance staff hired by the Township and must have the authority to make finance staffing decisions, including hiring[.]” (Complaint 71.) Plaintiff claims the Township Board has engaged in a “dereliction of its duties” because it has not hired the number of finance employees that Plaintiff feels is appropriate, which might be 2.5 full time equivalent employees (Complaint 78) or 4.0 full time equivalent employees (Complaint 79.) Plaintiff's allegations are discussed in greater detail in Argument II below.

In addition to these substantive claims, Plaintiff requests attorney fees in Count III.

The Township Board now files this Motion for Summary Disposition in lieu of an Answer pursuant to MCR 2.116(C)(8) and requests that this Court dismiss Plaintiff's case.

Standard for Decision

Summary disposition under MCR 2.116(C)(8) is proper when a plaintiff has failed to state a claim for which relief can be granted. A party is entitled to summary disposition under MCR 2.116(C)(8) when a claim is clearly unenforceable as a matter of law, even if the plaintiff's well-pled factual allegations are accepted as true. *Otero v Warnick*, 241 Mich App 143, 146; 614 NW2d 177 (2000). When deciding a motion under this rule, the court considers only the parties' pleadings. MCR 2.116(G)(5).

Argument

The Township Board disputes many of Plaintiff's (erroneous) factual assertions and false characterizations of Township actions. But for purposes of this MCR 2.116(C)(8) motion, *even if*

Plaintiff's well-pled allegations are taken as true, Plaintiff's claims are unenforceable as a matter of law, and the Township Board is entitled to summary disposition. *See Oterio*, 241 Mich App at 146 (summary disposition appropriate where a claim is clearly unenforceable as a matter of law, even if the plaintiff's well-pled factual allegations are accepted as true).

I. Count I fails to state a claim for which relief may be granted.

In Count I, Plaintiff demands broad and exclusive control over the Township's finances, records, and staffing decisions, and she insists on direct supervisory authority of any finance staff hired by the Township. (Complaint, pg. 22.) As explained below, Michigan law does not vest Plaintiff with the sweeping power she seeks, and thus her claim fails as a matter of law.

A. Overview of Clerk's Statutory Duties

A township clerk's powers are defined by law. *See* Const 1963 art 7, § 18; *see also* Revised Statutes of 1846, MCL 41.1 *et seq.* The Township Clerk has the following statutory duties and powers:

1. **Appoint a deputy clerk.** The township clerk shall appoint a deputy, who shall serve at the pleasure of the clerk. MCL 41.69.
2. **Custody of records.** The Clerk has "custody of all the records, books, and papers of the township, when no other provision for custody is made by law." MCL 41.65. The Clerk must "file and safely keep all certificates of oaths and other papers required by law to be filed in his or her office and shall record those items required by law to be recorded." *Id.*
3. **Maintenance of certain accounts.** The Clerk must open and keep an account with the treasurer of the township and shall charge the treasurer with all funds that come into the treasurer's hands by virtue of his or her office and shall credit him or her with all money paid out by the treasurer on the order of the proper authorities of the township and shall enter the date and amount of all vouchers in a book kept by the township clerk in the office. MCL 41.65.
4. **Maintain accounting records.** The township clerk shall be responsible for the detailed accounting records of the township utilizing the uniform chart of accounts prescribed by the state treasurer. The township clerk shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township. MCL 41.65.

5. **Authorize accounts.** Accounts approved by the township board shall be filed and preserved by the township clerk. The payments authorized shall be paid by the treasurer, on the order of the township board, signed by the township clerk. MCL 41.75.
6. **Warrants for special assessments.** When a special assessment roll is confirmed, the township clerk shall deliver to the township treasurer the special assessment roll, with his warrant commanding the township treasurer to collect the assessments in accordance with the directions of the township board. MCL 41.729.
7. **Delivers tax certificates.** The township clerk shall make and deliver to the supervisor of the township and to the county clerk, a certified copy of all statements and certificates on file and of all records of any vote or resolution in the clerk's office authorizing or directing money to be raised in the township by taxation together with a statement of the aggregate amount to be raised. The clerk shall present the copies to the county board of commissioners at its annual meeting and file the copies in the clerk's office. MCL 211.36.
8. **Provide notice of meetings.**
 - a. Annual meeting of electors: MCL 41.8
 - b. Special meetings: MCL 41.72a.
9. **Transcribe and maintain meeting minutes.** The township clerk shall transcribe, in the book of records of the township, the minutes of the proceedings of each township meeting held in the township, and shall enter in the book, each order, direction, or rule made by the township meeting. MCL 41.66.
10. **Prepare synopsis of proceedings for publication.** If the Township has a taxable value of \$50,000,000 or more (as adjusted for inflation), the Clerk must prepare and publish a synopsis of the proceedings of each meeting in a newspaper of general circulation, subject to the approval of the Supervisor. MCL 41.72a(5).
11. **Accept filings:**
 - a. Petitions to reestablish annual meeting. MCL 41.8.
 - b. Resignations of officers. MCL 41.56.
 - c. Written oaths of deputy supervisor. MCL 41.61.
12. **Submit officer information.** The township clerk shall, immediately after the qualifying of officers elected or appointed in their township, return to the clerks of their county the names, and addresses of such officers. MCL 41.67.
13. **Post surety bond.** Each township clerk, within the time limited for filing the oath of office and before entering upon the duties of the office, shall give a bond to the township in the sum and with sureties that the township board requires and approves, conditioned for the faithful discharge of the duties of the office according to law. MCL 41.69.

14. Keep voter registration file and conduct elections.

- a. **Notice of Registration:** Provide notice of time and designated place for receiving voter registration applications. MCL 168.498.
- b. **Notice of Election:** Provide notice of election (including time, date, proposals and offices on the ballot). MCL 168.653a.
- c. **Report Hours:** Provide notice to the secretary of state providing the hours that the clerk will be available to issue and receive absentee ballots for the election. MCL 168.761b.
- d. **Registration:** Prepare, accept, and process voter registration forms. MCL 168.499e; MCL 168.500b; MCL 168.500d; MCL 168.500e
- e. **Pre-Process Absentee Ballots:** Organize and verify absentee ballots. MCL 168.765.

Nothing in the applicable statutes gives the Township Clerk the power to hire, fire, or supervise Township employees, except for the Deputy Clerk. MCL 41.69. Likewise, nothing vests in the Township Clerk control over the Township's finances.

B. Plaintiff is not entitled to any of her 13 requests for declaratory relief in Count I.

Plaintiff seeks **13** "declarations" related to her duties. In each request, Plaintiff is legally incorrect and is not entitled to relief, and Plaintiff has not alleged any *actual* interference with her statutory duties. Plaintiff's requests are considered and rebutted in turn below.

- a. "The Clerk must, as a matter of law, have all direct supervisory authority of any finance staff hired by the Township and must have the authority to make financing staffing, including hiring decisions, as the financing functions directly implicate and affect the Clerk's ability to perform the statutory duties of the Clerk's office."

As noted above, nothing in Michigan law gives the Township Clerk "direct supervisory authority" of any Township employees other than the Deputy Clerk. MCL 41.69. In support of her Complaint, Plaintiff cites MCL 41.75a and MCL 141.421(1). Neither supports her position.

MCL 41.75a provides that "[t]he **township board** may employ a township manager **and other employees as are necessary. They shall serve at the pleasure of the township board** and

shall perform duties lawfully directed by the township board, except those duties that are delegated by law to another township official, unless consent has been granted.” (Emphasis added.) Thus, the Township Board has explicit statutory authority over employees and may direct its employees to perform any duties except those specifically delegated by law to other officials.

The Township Clerk does not identify any statute that delegates to her “direct supervisory authority of any finance staff” or the power to “make financing staffing, including hiring, decisions,” which is the power she seeks from the Court in this case. The Township Clerk’s statutory duty to maintain books and records does not include “direct supervisory authority” over financing staff. Quite simply, no law supports her position.

MCL 141.421(1) is even further off point. That section of the Uniform Budgeting and Accounting Act states as follows:

The state treasurer shall prescribe uniform charts of accounts for all local units of similar size, function, or service designed to fulfill the requirements of good accounting practices relating to general government. Such chart of accounts shall conform as nearly as practicable to the uniform standards as set forth by the governmental accounting standards board or by a successor organization that establishes national generally accepted accounting standards and is determined acceptable to the state treasurer. **The official who by law or charter is charged with the responsibility for the financial affairs of the local unit shall insure that the local unit accounts are maintained and kept in accordance with the chart of accounts.** The state treasurer may also publish standard operating procedures and forms for the guidance of local units in establishing and maintaining uniform accounting.

Plaintiff relies on the emphasized sentence above. (Complaint, 27.) But nothing in that language affords the Clerk supervisory power over the Township’s finance staff or control over the Township’s finances. “Maintaining accounts” does not include or even imply the sweeping supervisory power that Plaintiff seeks.

Further, to the extent Plaintiff alleges that the Township has not provided adequate finance staff, Michigan law prohibits a Township from imposing minimum staff requirements. MCL 41.3a

(“a township board shall not adopt an ordinance that includes any minimum staffing requirement for township employees”). Plaintiff’s allegations about the Township being “understaffed” do not state any legal cause of action because the Township *cannot* mandate minimum staffing. Plaintiff’s position is legally unsustainable. This is discussed further below under Count II.

- b. “The Clerk must, as a matter of law, hold ultimate authority over who may be permitted to manipulate the journals and ledgers, including the accounts and accounting records of the Township, as enumerated in MCL 41.65 including those that are the BS&A modules of the General Ledger, Fixed Assets, Payroll, Accounts Payable, Purchase Orders, Utility Billing, Miscellaneous Receipts, and Cash Receipts.”

In this request, Plaintiff suggests that her duty to “prepare and maintain the journals and ledgers” means that she should also have “ultimate authority” over the Township’s electronic data software (BS&A). To be clear, Plaintiff does not allege that she has been denied access to the software; Plaintiff does, in fact, have full access. Rather, Plaintiff claims that she must have *exclusive access* to every component of the Township’s records, including its digital records and all software. The law does not require this. The duty to “prepare and maintain the journals and ledgers” does not necessitate sole, exclusive access to BS&A. As a practical matter, no township clerk maintains *exclusive* possession and control over every township record at all times. That would, as a practical matter, render a township unable to function.

Plaintiff cites the need for strong internal controls, which she notes would require limiting “read/write” access. This, however, is a question of internal controls for audit purposes; it is not an independent cause of action, nor does MCL 41.65 require that the Clerk have exclusive access.

Moreover, the Township Supervisor (not the Clerk) is the “chief assessor” of the Township (MCL 41.61) and has the duty to “preserve and keep the books, **assessment rolls**, and other papers belonging to the supervisor’s office (MCL 41.62). The assessment records in the BS&A software

are therefore a type of record for which “other provision for custody is made by law” (MCL 41.65), and the Township Clerk is not entitled to *exclusive* access to the software.

- c. “The Clerk must, as a matter of law, have custody of the journals and ledgers, including the accounts and accounting records, and all other records of the Township when no other explicit provision by law has been made, including those that exist in BS&A or other enterprise management software.”

This request is similar to (b) above, except that Plaintiff demands “custody” of the journals and ledgers. Again, the Clerk’s duty under MCL 41.65 is to “prepare and maintain” the journals and ledgers. This does not mean that she is the only person entitled to have “read/write” access to the Township’s BS&A software, which houses far more data than simply the journals and ledgers. Among other things, the BS&A software manages utility billing, property tax assessment, special assessments, and other records that will often be within the statutory purview of others, such as the Supervisor (MCL 41.62).

- d. “[P]ortions of the August 17, 2021 Resolution 2021-31 to Delegate Authority and Set Jobs for Supervisor and Administrator violate the Clerk’s statutory duties and shall be vacated.”

Plaintiff appears to be challenging the portion of the August 17, 2021 Township Board policy resolution that directs the Township Administrator to assist the Supervisor in preparing and administering the annual budget and related financial report. (Complaint, ¶ 13.) Plaintiff’s challenge is baseless. The Township Supervisor, as Chief Administrative Officer of the Township, is vested with “final responsibility for budget preparation, presentation of the budget to the legislative body, and the control of expenditures under the budget and the general appropriations act[.]” MCL 141.434. The Township Clerk, by contrast, is charged with *maintaining* records but is not responsible for preparing or administering the budget. MCL 41.65. Plaintiff cites no legal authority vesting her with control over the Township’s budget because no such authority exists. Although MCL 41.65 vests the Clerk with authority to “prepare and maintain the journals and

ledgers,” this does not prohibit the Township Supervisor or Township Administrator from preparing other informational financial reports for use by the Township that are not the “journals and ledgers.” Those are in fact related to budget preparation, which is expressly delegated by statute to the Supervisor, not the Clerk.

- e. “[I]n the Supervisor job description of August 17, 2021, the provision that the Supervisor ‘Supervise the budget function ...’ is illegal and shall be vacated because the Budget and Finance Director position does not exist and should not exist because it would be an illegal subordination of one office by another.”

Plaintiff’s Complaint does not elaborate on or substantiate this request, but Plaintiff seems to argue that the Township Clerk should supervise the budget. This is plainly not within the Township Clerk’s statutory duties. Again, the Township Supervisor is responsible for preparing and presenting the budget and for controlling expenditures under the budget. MCL 141.434. The Township Treasurer is responsible for maintaining the Township’s financial accounts, including an accounting of receipts and expenditures. MCL 41.78. The Township Clerk has no statutory authority over the budget and has thus failed to state a claim for which relief may be granted.

- f. “[I]n the Supervisor job description of August 17, 2021, the provision under ‘Financial Reporting and Audit Function ...’ is overbroad and illegal and shall be vacated because, although the Supervisor is the chief administrative officer under MCL141.434, his statutory role is only to request an extension of the audit, and to submit the annual financial report to the state, which is a simple report that is based on the audit which is the responsibility of the Board.”

This request is nonsensical. The Township Supervisor’s statutory role, as noted above, includes having “final responsibility for budget preparation, presentation of the budget to the legislative body, and the control of expenditures under the budget and the general appropriations act.” MCL 141.434(1). The Supervisor’s role is not limited to requesting an extension of the audit, as Plaintiff alleges. Moreover, the Township Clerk has no authority over the audit or the Township’s budget, and she has not cited any legal support for her position.

- g. “The portions of the February 22, 2022 Resolution 2022-05 to Amend Administrator's Job Description and Amended Job Description that violate the Clerk’s statutory duties set forth above are illegal and shall be vacated.”

This request is premised on the legally unsustainable allegations discussed above. The Township Board’s policy decision to assign certain tasks to the Township Administrator does not take away the Township Clerk’s statutory power. Plaintiff has not alleged that Resolution 2022-05 prevented her from performing any of her statutory duties. Contrary to her mistaken belief, the Township Clerk is not in charge of the Township’s finances, nor does she have oversight of finance staff, except as the Township Board may delegate that function.

- h. “The portion of the February 22, 2022 Resolution 2022-05 providing in the Administrator job description that ‘All Township employees ... report upward to the Township Administrator’ is overbroad, illegal and shall be vacated because the Clerk must have supervision over the work of finance staff who prepare and maintain the journals and ledgers of the Township to perform who statutory duties as Clerk for which she is personally responsible.”

Again, Michigan law does *not* give the Township Clerk “supervision over the work of finance staff.” The Township Board is responsible for hiring and assigning duties to Township employees. MCL 41.75a. The only employee over which the Township Clerk has statutory authority is the Deputy Clerk. MCL 41.69. The fact that the Township Clerk is charged with maintaining the Township’s records does not make her “personally responsible” for every employee who interacts with the Township’s records. As a matter of law, this claim fails.

- i. “The portion of the February 22, 2022 Resolution 2022-05 providing in the Administrator job description to ‘Oversee and prioritize the allocation of Finance staff work time to accomplish tasks’ is overbroad, illegal and shall be vacated because the Clerk must be able to supervise the work of finance staff performing the Clerk’s statutory duties for which she is personally responsible.”

For the same reason, Plaintiff is not legally entitled to this declaration. The Township Clerk does not have a statutory duty to supervise Township employees.

- j. “The portion of the February 22, 2022 Resolution 2022-05 providing in the Administrator job description to ‘Hold ultimate authority over BS&A administration and accessibility’ is overbroad, illegal and shall be vacated because the Clerk must have control and custody over who has access to manipulate the journals and ledgers of the Township, as well as maintenance of the accounts of the Township, to perform the Clerk's statutory duties for which she is personally responsible.”

This request is duplicative of requests (b) and (c) above and fails to state a claim for the same reasons.

- k. “The portion of the February 22, 2022 Resolution 2022-05 providing in the Administrator job description to “Hold ultimate authority over administration of all software including assignment of access,” insofar as this relates to access to Township records, is overbroad, illegal and shall be vacated because the Clerk must have control over access to Township records to perform the Clerk's statutory duties for which she is personally responsible.”

In an even broader request for declaratory relief, Plaintiff asserts that she should have “ultimate authority over administration of **all** software including assignment of access” – meaning that Plaintiff should decide who has access to all of the Township’s software, including e-mail records. Once again, Plaintiff reaches too far. Her statutory duty to have custody of the Township’s “records, books, and papers” does not require that the Township Clerk serve as the gatekeeper for access to all Township software.

- l. “The Board’s May 10, 2022 motion to hire James Merte as Interim Township Administrator and authorize the Supervisor to sign the employment agreement prepared by the Township’s Labor and Employment Attorney, is void, as it purports to pass these same authorities along to a new Interim Administrator as set forth in the illegal February 22, 2022 Resolution, and purports to effect such authority while David Rowley was still Administrator through May 15, 2022.”

In this request, Plaintiff claims that the Township Board lacked the authority to hire an Interim Township Administrator because Plaintiff disagrees with the Administrator’s job description. The Township Board’s delegation of duties to the Administrator (and now Interim

Administrator) is lawful for the reasons explained above, and in any event, an alleged deficiency in the job description would not render the hiring of an employee “void.”

- m. “The Supervisor’s May 10, 2022 appointment of Deputy Treasurer Sandra Egeler as additionally Deputy Supervisor is void as such action creates a violation of MCL 15.182, restriction on a public employee holding two or more incompatible offices at the same time.”

Plaintiff concedes that there is no private cause of action based on incompatible offices (Complaint ¶ 1(iii)) yet seeks declaratory relief based on an alleged incompatible office issue. Regardless, the positions of Deputy Supervisor and Deputy Treasurer are not incompatible. The offices are not subordinate to one another; one office does not supervise the other; and holding both does not result in any breach of duty of public office. MCL 15.181(b). Moreover, the Township is exempt from the incompatible provisions of MCL 15.182. Specifically, MCL 15.183(4) clearly explains that “Section 2 does not do any of the following: . . . (c) Limit the authority of the governing body of a city, village, township, or county having a population of less than 40,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government.” The population of the Township is well under 40,000¹, so MCL 15.182 does not apply.

Thus, even if the offices were incompatible, (1) the Township is exempt pursuant to MCL 15.183(4), and (ii) the remedy would be for the individual to resign from one position; it would not render the appointment “void” as Plaintiff alleges.

In sum, Plaintiff’s requests for declaratory relief are legally unsustainable on their face and must be dismissed under MCR 2.116(C)(8).

¹ <https://www.census.gov/quickfacts/sciotownshipwashtenawcountymichigan>

b. McKim does not support Plaintiff's claims.

Plaintiff repeatedly cites *McKim v Green Oak Township Board*, 158 Mich App 200; 404 NW2d 658 (1987), for the proposition that she has a remedy in the circuit court for the Township Board's alleged "interference" with her ability to perform her statutory duties. But *McKim* is inapplicable for at least two reasons.

First, *McKim* involved a township board that **prohibited** the clerk from accessing township records, including the township's mail. *McKim*, 158 Mich at 202. The issue was not whether the Township Clerk can bar other Township officials and staff from accessing public records or whether the Township Clerk can control hiring and employment decisions, which is what Plaintiff claims here. Plaintiff does not allege that the Township Board has prevented her from accessing any records or books of the Township, and thus *McKim* does not control here.

Moreover, the Court of Appeals has called *McKim*'s precedential value into question in *Charter Twp of Royal Oak v Brinkley*, unpublished opinion of the Court of Appeals, issued May 18, 2017 (Docket No. 331317), 2017 WL 2200609 (May 18, 2017) (**Exhibit A**). The *Brinkley* court noted that "the decision in *McKim* could be considered nonbinding because it was issued before November 1, 1990. See MCR 7.215(J)(1)." *Id.* at *5. Further, the *Brinkley* court limited *McKim*'s holding, reasoning that "neither *McKim* nor MCL 41.65 expressly gives a township clerk authority to open all mail that is delivered to the township. Rather, the authorities give a clerk 'custody' over the mail. It is not apparent that 'custody' means a clerk can open mail addressed to anyone, regardless of the subject of the mail." *Id.* Thus, under *Brinkley*, "custody" does not mean exclusive control over Township records.

For these reasons, Count I fails to state a claim for which relief may be granted.

II. Count II fails to state a claim for which relief may be granted.

In Count II, Plaintiff challenges the Township's "appropriations decisions in the finance department." (Complaint, pg. 24.) As in Count II, Plaintiff asserts that she "must, as a matter of law, have all direct supervisory authority of any finance staff hired by the Township and must have the authority to make finance staffing decisions, including hiring[.]" (Complaint ¶ 71.)

Yet again, Plaintiff fails to cite any authority for the proposition that she is statutorily vested with control over the finance staff and hiring decisions. Plaintiff cites *Cahalan v Wayne County*, 93 Mich App 114; 286 NW2d 62 (1979), to argue that "the Board must as a matter of law exercise its discretionary appropriations decision in a manner which is not arbitrary or capricious and which permits the Board and its officers to meet their statutory duties." (Complaint ¶ 75.)

But *Cahalan v Wayne County* does not hold that a township official can compel a township board to hire additional staff. The *Cahalan* court held that "[t]he judiciary will not involve itself with the truly discretionary appropriations decisions of a county board, unless the action taken is so capricious or arbitrary as to evidence a total failure to exercise discretion." *Id.* at 122-23. For example, the Court of Appeals has refused to order a county board to allocate funds to operate a road patrol because no statute required it. *Id.* at 123, citing *Brownstown Township v Wayne County*, 68 Mich App 244, 248; 242 NW2d 538 (1976). The *Brownstown* court concluded that it would violate the separation of powers doctrine of the Michigan Constitution, Article 3, section 2, to interfere with the county board's administrative decisions. *Id.* at 251.

Here, as in *Brownstown*, no statute requires the Township to provide Plaintiff's preferred number of finance staff. To the contrary, as discussed above, in 2011 the legislature amended the Revised Statutes of 1846 dealing with the powers and duties of townships to specifically prohibit any minimum staffing requirements for townships. MCL 41.3a ("a township board shall not adopt

an ordinance that includes any minimum staffing requirement for township employees”). Plaintiff claims she is not calling for minimum staffing (Complaint ¶ 75) and then proceeds to outline the minimum number of employees she believes the finance department requires (Complaint ¶ 78, suggesting “a total of 2.5 full time equivalent in finance staffing,” and Complaint ¶ 79, suggesting 4.0 full time equivalent employees).

Michigan law does not (1) require a minimum number of finance employees, (2) allow the township to mandate a minimum number of finance employees, or (3) authorize a township clerk to dictate the number of finance employees. The Township Board has not failed to make statutorily required appropriations, and its staffing decisions are within the sound discretion of the Township Board. *See Brownstown, supra*. Count II therefore fails to state a cognizable claim.

III. Count III fails to state a claim for which relief may be granted.

In Count III, Plaintiff requests that the Township Board pay her attorney fees. This claim fails as a matter of law because Plaintiff’s substantive claims in Counts I and II are meritless.

Under the “American rule,” “attorney fees generally are not recoverable from the losing party as costs in the absence of an exception set forth in a statute or court rule expressly authorizing such an award.” *Haliw v City of Sterling Hts*, 471 Mich 700, 707; 691 NW2d 753, 756 (2005); *see also* MCL 600.2405. No statute or court rule expressly authorizes Plaintiff to recover attorney fees in this case, even if she were to prevail.

Plaintiff cites *McKim, supra*, as her “authority” for recovering attorney fees. As discussed above, *McKim* is of questionable precedential value under *Brinkley*. With regard to attorney fees, *McKim* states the general rule that a trial court may award attorney fees in its discretion “when a public official incurs attorney fees in connection with asserting or defending the performance of his or her legal duties.” *Id.* at 207. The court in *McKim* did not determine whether attorney fees

were appropriate in the case before it because the defendants had abandoned the issue on appeal. *Id.* at 208. *McKim* relies on *City of Warren v Dannis*, 136 Mich App 651; 357 NW2d 731 (1984), in which the Court of Appeals held that the public official’s “good faith and reasonableness” are “proper elements to consider in determining whether the official should be indemnified for attorney fees incurred to assist in the performance of official duties.” *Id.* at 662.

Here, Plaintiff’s action is not reasonable and was not necessary for the performance of her duties. As discussed above, this lawsuit is a policy dispute, and Plaintiff’s claims are based more on disappointment rather than legal merit. This ill-conceived litigation is simply a political maneuver to enlarge the Township Clerk’s control over the Township’s operations and finances because the Township Clerk disagrees with the policy decisions made by the Township Board. Plaintiff does not allege that she has been prevented from carrying out her statutory duties; she only takes issues with the Township Board’s staffing decisions, which are not within the Township Clerk’s authority. This is not a case in which attorney fees are appropriate.

Notably, *McKim* offered scathing criticism of cases precisely like Plaintiff’s action:

[W]e wish to register our dismay that as a result of what can best be characterized as a squabble between township officers, the parties have expended approximately \$15,000 for legal representation before appeal and have no doubt burdened the resources of the trial court. **We view this as an affront to the legal system and the township’s taxpayers and an embarrassment to the parties.** We hope that in the future such divisive conduct can be set aside in favor of more productive behavior.

Id. at 208 (emphasis added).

The Township Board has no desire to be a part of this “affront to the legal system.” *See id.* The Township Board wishes to do its job for its residents and reserve policy disagreements for public debate and the ballot box – not the courtroom. Plaintiff’s lawsuit, at taxpayers’ expense, is

without merit, and the Township Board requests that this Court dismiss the case and deny Plaintiff's request for fees.

IV. Exhibits 1 and 7 to Plaintiff's Complaint should be stricken.

Finally, the Township Board requests that this Court strike Exhibit 1 and 7 to Plaintiff's Complaint because they are comprised of attorney-client privileged legal opinions provided to the Township by the Township's attorneys, and Plaintiff does not hold and cannot waive the privilege.

The attorney-client privilege is "personal to the client, who alone can waive it." *Ravary v Reed*, 163 Mich App 447, 453; 415 NW2d 240 (1987). The Township Board is the representative of the Township, which is the client of its attorneys. Only the Township Board can waive the attorney-client privilege. *See Ravary, supra*.

Here, Plaintiff attached privileged e-mails with legal advice from Township Attorney James Fink (Exhibit 1) and Michael Homier (Exhibit 7). The Township Board has not waived the privilege attached to these written opinions, and Plaintiff lacks authority to disclose them. The Township Board therefore requests that Exhibits 1 and 7 be stricken, removed from the public court file, and given no consideration by the Court.

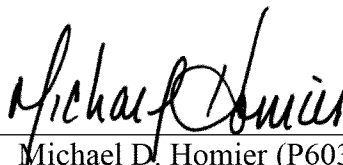
Conclusion

For these reasons, the Township Board requests that this Court grant summary disposition to the Township Board under MCR 2.116(C)(8) and dismiss Plaintiff's action in its entirety.

FOSTER SWIFT COLLINS & SMITH PC
Attorneys for Defendant Scio Township Board

Dated: June 9, 2022

By: _____



Michael D. Homier (P60318)
Laura J. Genovich (P72278)

EXHIBIT A

2017 WL 2200609

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

CHARTER TOWNSHIP OF
ROYAL OAK, Plaintiff–Appellee,
v.
Janice BRINKLEY, Defendant–Appellant,
and
Charter Township of Royal Oak Clerk, Defendant.

No. 331317
|
May 18, 2017

Oakland Circuit Court, LC No. 2013–136281–AW

Before: Riordan, P.J., and Ronayne Krause and Swartzle, JJ.

Opinion

Per Curiam.

*1 Defendant Janice Brinkley, the former Royal Oak Township Clerk, appeals as of right the trial court's order denying her motion for costs and attorney fees under MCR 2.114(D) and (E). Because we conclude that the trial court's findings were not clearly erroneous, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This matter is before this Court following remand to the trial court by a prior panel. Defendant originally sought costs and attorney fees following an entry of summary disposition in her favor. Defendant's motion contended that plaintiff's complaint was frivolous and that certain identified documents were signed in bad faith. The trial court ruled on the motion but only with regard to whether the complaint was frivolous. On appeal to this Court, the panel affirmed the trial court's order with regard to whether the complaint was frivolous, but it remanded for the trial court to address “the fact-specific inquiry concerning whether the identified documents were signed in bad faith.” *Charter Twp. of Royal Oak v. Brinkley*,

unpublished opinion per curiam of the Court of Appeals, issued December 3, 2015 (Docket No. 324197), p 3 (*Brinkley I*). The instant case concerns the trial court's denial of defendant's motion on remand.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews the trial court's factual findings on a motion for sanctions for clear error. *Kaeb v. Kaeb*, 309 Mich. App. 556, 564; 873 N.W.2d 319 (2015); *Edge v. Edge*, 299 Mich. App. 121, 127; 829 N.W.2d 276 (2012). “A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Kitchen v. Kitchen*, 465 Mich. 654, 661–662; 641 N.W.2d 245 (2002).

B. MCR 2.114

Defendant argues that she was entitled to sanctions under MCR 2.114(D) and (E). MCR 2.114(D) provides that a party's or attorney's signature on an affidavit, pleading, motion, or other document certifies:

- (1) he or she has read the document;
- (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
- (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 2.114 imposes “an affirmative duty to conduct a reasonable inquiry into the factual and legal viability” of documents before they are signed. *LaRose Market, Inc. v. Sylvan Ctr., Inc.*, 209 Mich. App. 201, 210; 530 N.W.2d 505 (1995). “The reasonableness of the inquiry is determined by an objective standard and depends on the particular facts and circumstances of the case.” *Id.*

In this case, defendant's allegations implicate MCR 2.114(D)(2) because, although defendant argues that certain identified documents were signed in "bad faith," the crux of her allegations is that those documents were not well grounded in fact and/or were not warranted by existing law. "The filing of a signed document that is not well grounded in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E)." *Guerrero v. Smith*, 280 Mich. App. 647, 678; 761 N.W.2d 723 (2008). The imposition of sanctions for a violation of MCR 2.114(D) is mandatory. *Kaeb*, 309 Mich. App. at 565.

*2 This case originally arose out of plaintiff's complaint alleging that defendant, in her role as township clerk, failed to perform a number of her duties and/or willfully ignored some of her duties. Defendant's claims implicate a number of documents filed by plaintiff, including: (1) claims related to statements made in Township Supervisor Donna Squalls's September 7, 2013 affidavit attached to the complaint; (2) claims related to plaintiff's complaint; (3) claims related to plaintiff's April 16, 2014 Motion to Show Cause; and (4) claims related to plaintiff's response to defendant's motion for summary disposition. In addition, defendant argues for the first time on appeal that plaintiff should have been sanctioned for failing to dismiss the action.

C. CLAIMS PERTAINING TO SQUALLS'S AFFIDAVIT

1. EVIP FUNDING AND REPORTS TO TREASURY

Defendant first argues that Squalls's affidavit was signed in bad faith because of false allegations contained therein concerning an application that defendant made to the Department of Treasury for \$50,000 in Economic Vitality Incentive Program (EVIP) funding in February 2013. Defendant identified ¶¶ 3–4 of the affidavit as the allegedly false statements. Those paragraphs provide:

3. The Michigan Department of Treasury requires monthly financial reports to be submitted and failure to do so accurately and timely results in loss of revenue funds and causes the Township to face emergency financial management.

4. As part of her statutory duties, the Township Clerk was to properly submit these monthly reports in accordance with the State EVIP guidelines and has to date failed to do so.

Defendant argues that Squalls falsely asserted that defendant's late filing of financial reports with the Department of Treasury was the cause of plaintiff's loss of \$50,000 in EVIP funding. According to defendant, the EVIP application was due on February 1, 2013, and Squalls knew that the Department of Treasury did not require the submission of monthly reports until April 2013. Hence, according to defendant, any assertion by Squalls that the failure to submit monthly reports to the Department of Treasury caused plaintiff to lose EVIP funding was false.

We decline to find clear error on this claim. Defendant admitted that she failed to timely attach certain unidentified documents to the EVIP application at issue, thereby resulting in the loss of \$50,000 in funds. At most, defendant is arguing that plaintiff potentially misidentified the documents she failed to submit in her application for EVIP funding. This does not demonstrate clear error by the trial court.

2. SHREDDING PUBLIC DOCUMENTS

Next, defendant takes issue with Squalls's statement in ¶ 7 of her affidavit that defendant was "shredding public records without the knowledge of the Board." According to defendant, this statement was false because the Township Board knew, by way of a resolution it passed, that defendant would be shredding documents. And defendant notes that Squalls admitted in her deposition that she did not know whether the documents were required to be kept by law. According to defendant, this admission shows that ¶ 7 was not well grounded in fact and was made in bad faith.

We decline to find clear error on the record before us. Throughout the trial court proceedings, defendant freely admitted that she shredded township documents. She only disputed whether she was required by law to keep the documents. Squalls's affidavit, meanwhile, merely states that, instead of attending a township meeting, "it was discovered the Township Clerk was at the Township shredding public records without the knowledge of the Board." Squalls did not allege that defendant shredded documents that were required to be kept. She merely asserted that defendant shredded documents without the knowledge of the Township Board. In her deposition, Squalls testified that she knew

defendant shredded township documents, but she testified that she did not know the substance of the documents or whether defendant shredded anything she should have kept pursuant to record retention policies. In other words, Squalls testified that she knew defendant shredded documents, but Squalls, who was a Board member, did not know what those documents were. In light of this testimony, we are not left with a definite and firm conviction that the trial court made a mistake. Indeed, this testimony supports the notion that defendant shredded at least *some* documents without the Board's knowledge.

3. ACCESS TO THE FUND BALANCE SOFTWARE PROGRAM

*3 Next, defendant argues that Squalls made false assertions in her affidavit with regard to the issue of “read access” and “write access” to the township's “Fund Balance” software program. Defendant argues that Squalls's affidavit falsely claimed that defendant “failed to give [Squalls] read and write access to all of Fund Balance contrary to her authority and a resolution passed by the Township Board allowing such access.” However, Squalls's affidavit does *not* state that defendant acted contrary to the resolution. Rather, Squalls's affidavit simply states that defendant denied Squalls access *and* that the Township Board passed a resolution regarding Fund Balance access. There does not appear to be any dispute that defendant blocked *some* access to Fund Balance before the resolution was passed. Thus, the record before this Court does not support the conclusion that the trial court clearly erred.

4. DIRECTIONS TO THE TOWNSHIP DEPUTY CLERK

Defendant next argues that Squalls falsely asserted in ¶ 10 of her affidavit that defendant directed the deputy clerk not to act in her absence. Paragraph 10 of the affidavit provides that “the Township Clerk's deputy has been directed not to comply with her statutory duties to act in the stead of the Township Clerk” Defendant cites an affidavit from a former deputy clerk, Ida Reynolds, who averred that defendant never instructed her not to act. Citing Reynolds's affidavit, defendant argues that Squalls's assertions to the contrary were false and that they were made in bad faith. Defendant also argues that Squalls admitted she could not recall any instance when the deputy clerk refused to act.

On the record before this Court, defendant cannot show clear error. When asked about ¶ 10 of her affidavit, Squalls testified at her deposition that:

There was one time—and I can't recall what it was now—but [the deputy clerk] said, “[defendant] told me not to do”—I can't recall what it was, but [the deputy clerk] did tell me to my face that [defendant] told her not to do something that I asked her. I asked for information and “[defendant] told me not to give it to”—or something.

Squalls also testified that she could not recall the specific subject matter of the refusal. Contrary to defendant's suggestions on appeal, Squalls did not testify in her deposition that she did not know whether the averment was true; rather, she testified that she could not recall the subject of the refusal to act. In sum, other than Reynolds's denial, defendant has not presented any evidence suggesting that Squalls knew her averment in ¶ 10 was false. The conflicting accounts of Squalls and Reynolds do not demonstrate a clearly erroneous factual finding by the trial court.

5. APPOINTMENT OF TRUSTEE AS ACTING CLERK

The final statement with which defendant takes issue from Squalls's affidavit is the averment in ¶ 11 in which Squalls stated that “unless Plaintiff is permitted to appoint a Trustee to act as the Township Clerk in the interim, the Township will be unable to function and operate.” Defendant argues that there is no evidence that she failed to perform her duties as clerk. Moreover, she argues that there is no evidence that the deputy clerk refused to act; thus, according to defendant, even if she failed to perform her duties as clerk, the township could still function without the appointment of a trustee as an interim clerk.

The record before this Court does not demonstrate clear error. As it concerns defendant and her refusal to take certain actions, the record reveals that defendant admittedly failed to sign certain township resolutions that she deemed were not ready for implementation for one reason or another. Squalls's affidavit expressly mentioned defendant's failure to sign resolutions as one of the reasons why plaintiff requested the appointment of an interim clerk. Moreover, defendant admittedly failed to attach documentation to an application for EVIP funding, and, as noted above, Squalls testified that she had at least some reason to believe that defendant had instructed the deputy clerk not to act.

D. CLAIMS PERTAINING TO PLAINTIFF'S COMPLAINT

*4 According to defendant, plaintiff's complaint was not well grounded in fact because "[t]he record is clearly contrary" to certain allegations set forth in the complaint. Defendant lists six allegations, without expressly citing the complaint, and concludes, in cursory fashion, that plaintiff knew or should have known that the allegations were false. Given defendant's cursory treatment of her claims, we consider the claims to be abandoned. See *Peterson Novelties, Inc. v. City of Berkley*, 259 Mich. App. 1, 14; 672 N.W.2d 351 (2003) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue."). Moreover, on our review of the record, we are not left with a definite and firm conviction that the trial court's factual finding was mistaken.

E. CLAIMS PERTAINING TO PLAINTIFF'S APRIL 16, 2014 SHOW-CAUSE MOTION

Defendant next argues that plaintiff's April 16, 2014 show-cause motion was signed in bad faith because it advocated a position that was not warranted by existing law. This motion concerned defendant's alleged failure to call two special meetings that Squalls had requested. Squalls requested the first special meeting with approximately 22 hours' notice, rather than the 24 hours required by MCL 42.7. Squalls requested the second special meeting via text message, which the trial court in this case found did not satisfy MCL 42.7's requirement that such requests be made "in writing." According to defendant, had plaintiff's attorney reviewed MCL 42.7 before filing the show-cause motion, he would have realized that the claims made therein were not warranted by existing law.

As it concerns special meetings of a township board, MCL 42.7(2)–(3) provide:

(2) A special meeting of the township board shall be called by the township clerk pursuant to subsection (3) on the *written request of the supervisor* or of 2 members of the township board and *on at least 24 hours' written notice to each member of the township board*. The notice shall designate the time, place, and purpose of the meeting and shall be served personally or left at the member's

usual place of residence by the township clerk or someone designated by the township clerk.

(3) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. [Emphasis added.]

Defendant is correct that a township meeting "shall" be called on 24 hours' notice to the township board members, though the provision is silent on whether a member can waive the requirement that advanced notice be given to him or her. That waiver may be permitted is suggested by the fact that public notice of a special meeting under the open meetings act must be posted only "at least 18 hours before the meeting." MCL 15.265(4). Given this shorter requirement for public notice, it is arguable that the 24-hour requirement could be waived, and that a valid meeting could be held as long as the 18-hour public notice requirement of the open meetings act was met. Here, the 22-hour notice given by Squalls fits within that timeframe. That a legal position does not prevail does not mean that the argument was not warranted by existing law.¹ *Sprenger v. Bickle*, 307 Mich. App. 411, 424; 861 N.W.2d 52 (2014).

As it concerns the special meeting that Squalls requested by text message, MCL 42.7(2) provides that a meeting request must be "in writing," without defining the phrase "in writing." Neither party has directed this Court's attention to binding authority on the interpretation of the phrase "in writing" as it is used in this statute. Thus, there could be an argument made that a text message would qualify as written notice. In fact, the prior panel in this case, in addressing arguments raised by plaintiff's cross-appeal, expressly declined to resolve the question of whether a text message constituted written notice under MCL 42.7(2). *Brinkley I*, unpub. op. at 7–8. In doing so, the panel noted that there was a "lack of clarity concerning where emerging technology such as text messages fits into existing statutory definitions concerning 'written requests' or 'writings.'" *Id.* The concern identified by the prior panel highlights that there is arguable merit to the claim that a text message would satisfy the "in writing" requirement of MCL 42.7(2). That the trial court denied plaintiff's motion to hold defendant in contempt for failing to call a meeting pursuant to a text message request does not mean that plaintiff's motion

was not warranted by existing law. See *Sprenger*, 307 Mich. App. at 424.

F. CLAIM PERTAINING TO PLAINTIFF'S RESPONSE TO SUMMARY DISPOSITION

*5 Defendant next argues that plaintiff's assertion concerning defendant's adherence to a township resolution regarding mail protocol in its response to her motion for summary disposition was made in bad faith. As context for this claim, trial counsel for plaintiff, who also served as plaintiff's general counsel, had previously provided an opinion to Squalls and other board members in March 2013 regarding "the Township Clerk's legal duties as they relate to the receiving and opening of mail addressed to the Charter Township of Royal Oak and mail addressed to individuals at the Township's business address." After reviewing pertinent authorities, counsel opined that the township clerk was "legally authorized to accept and open all mail addressed to the Charter Township of Royal Oak and any mail addressed to individuals at the Township's business address." Shortly after receiving counsel's letter, the Township Board passed a resolution requiring defendant to refrain from opening mail addressed "to a specific person or office other than the Township." In an October 30, 2013 deposition, defendant testified that she was aware of the resolution, but she nevertheless opened all mail she received "because it's my statutory duty." She testified that she would open all mail that was delivered to the township offices, regardless of whether it was addressed to another individual and regardless of whether it was marked personal or confidential. She testified that she would not follow the resolution regarding mail protocol.

As it concerns defendant's instant claims, she argues that, given counsel's opinion, as well as MCL 41.65 and this Court's decision in *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200; 404 N.W.2d 658 (1987), it "was bad faith" for plaintiff to allege that defendant breached her duties by violating the township resolution that was "clearly contrary" to the March 2013 letter from counsel.

In pertinent part, MCL 41.65 provides that "[t]he township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law." In *McKim*, 158 Mich. App. at 205, this Court held that the term "papers" as used in that section includes mail delivered to the township. "Hence, it

seems clear that MCL 41.65 ... bestows a township clerk with the responsibility to exercise control over all township papers, including mail and bills, unless otherwise provided for by law." *Id.* At issue in *McKim* was whether a township could enact a resolution permitting the township secretary, rather than the clerk, to receive all incoming mail. *Id.* at 201–202. This Court held that a resolution bypassing the township clerk entirely deprived the clerk of his or her duty under MCL 41.65 to have "custody of all ... papers of the township" *Id.* at 205.

Turning to the instant case, the trial court did not clearly err in finding that the accusation made in plaintiff's response regarding defendant's lack of compliance with the mail protocol ordinance was not made in bad faith. At the outset, regardless of any opinion given by the township's general counsel, the Township Board passed a resolution requiring defendant not to open mail she received if it was addressed to someone else, and defendant openly defied that resolution. As plaintiff argues, the township has an interest in seeing that resolutions passed by its board are followed. Moreover, the law cited by defendant is not as clear as defendant represents it to be. As it concerns the instant case, neither *McKim* nor MCL 41.65 expressly gives a township clerk authority to open all mail that is delivered to the township. Rather, the authorities give a clerk "custody" over the mail. It is not apparent that "custody" means a clerk can open mail addressed to anyone, regardless of the subject of the mail. Furthermore, there is little caselaw interpreting MCL 41.65, and the decision in *McKim* could be considered nonbinding because it was issued before November 1, 1990. See MCR 7.215(J)(1). Contrary to defendant's assertions, plaintiff's position regarding mail protocol was at least arguably warranted by existing law, and defendant fails to establish clear error.

G. CLAIM PERTAINING TO AN ALLEGED "FAILURE TO DISMISS"

For her final claim, defendant argues that plaintiff should be sanctioned "pursuant to MCR 2.114 for failing to dismiss" when it knew it had no case against defendant. Defendant failed to preserve this claim for appellate review because she did not raise it before the trial court. See *Hines v. Volkswagen of America, Inc.*, 265 Mich. App. 432, 443; 695 N.W.2d 84 (2005). We decline to address this issue raised for the first time on appeal. *City of Fraser v. Alameda Univ.*, 314 Mich.

App. 79, 104; 886 N.W.2d 730 (2016). Moreover, we have reviewed the claim and found it to be without merit.

trial court's order denying defendant's motion for costs and attorney fees.²

Affirmed.

III. CONCLUSION

*6 Defendant failed to show that the trial court's factual findings were clearly erroneous. Accordingly, we affirm the

All Citations

Not Reported in N.W.2d, 2017 WL 2200609

Footnotes

- 1 Because the question of whether a member can waive the right to 24-hour advanced notice need not be answered for proper resolution of this appeal, we will decline to address it further.
- 2 We note that, in passing, plaintiff appears to argue that defendant should be sanctioned for filing a vexatious appeal. Given the cursory attention plaintiff gives to this matter, we find it to be abandoned. See *Peterson Novelties*, 259 Mich. App. at 14. Moreover, because this cursory request is made in plaintiff's brief, rather than in a separate motion, "the request is ineffectual" and should not be considered at this time. *Fette v. Peters Constr. Co.*, 310 Mich. App. 535, 553; 871 N.W.2d 877 (2015).