STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of Scio Township,

Plaintiff,

v.

SCIO TOWNSHIP BOARD,

Defendant.

Case No. 22-000414-CZ

HON. Timothy P. Connors

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DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10) and (I)(1)

Introduction

Plaintiff, in her Affidavit[1]*:*

> "The Board has usurped certain of my statutory duties as Clerk, not least of which is that I currently do not have sole control over manipulation of the township's financial journals and ledgers."

Plaintiff, arguing at the June 14 Township Board meeting for a contractor to prepare the financial statements[2]*:*

> "I could not speak to the financial statements. **I don't have the right training.**"

[1] Plaintiff's Exhibit A in Support of Motion for Summary Disposition
[2] https://www.youtube.com/watch?v=8uw0wqllTjk&t=13433s (Timestamp: 2:25:20-25)

Plaintiff, the Scio Township Clerk, seeks to wrest control from the seven-member elected Township Board in two respects: (1) she seeks "sole control over manipulation" of the Township's records, including its financial journals and ledgers, despite admitting she is untrained and unqualified to maintain those records; and (2) she seeks to compel the Township Board to hire not just additional staff (which it has already done), but *different* staff who Plaintiff hand-selects.

Plaintiff is not legally entitled to relief on either count, and her Verified First Amended Complaint fails to state a claim for relief for the reasons detailed in the Township Board's Motion for Summary Disposition under MCR 2.116(C)(8), which it filed in lieu of an answer. Despite the legal infirmities of her claims, Plaintiff has filed a motion under MCR 2.116(C)(10).

Whether viewed through the lens of MCR 2.116(C)(8) or (C)(10), Plaintiff's suit must be dismissed. First, Michigan law does not vest in township clerks the *exclusive* power to control and modify a township's records, and Plaintiff's case law does not support her claims. *McKim*[3] is not binding and has been called into question by more recent case law, and *Wayne County Prosecutor*[4] involves entirely different facts. Michigan law (MCL 41.65) gives the Clerk "custody" of all township records, but that does not mean (nor has it ever meant) that the Clerk is the only person in the Township who can interact with those records. The functional operation of a township requires that multiple officials and employees have access to township records on a daily basis.

Plaintiff offers no credible evidence that she has been prevented from performing any of her statutory duties under MCL 41.65. The Township has, however, had to enlist other staff to reconcile the financial records because Plaintiff is either unwilling or unable to prepare the reconciliations unless the Township Board capitulates to her demand to hire specific outside staff. Plaintiff admits that she is not qualified to prepare the financial statements on her own.

[3] *McKim v Green Oak Township Board*, 158 Mich App 200; 404 NW2d 658 (1987).
[4] *Cahalan v Wayne County*, 93 Mich App 114; 286 NW2d 62 (1979).

But Plaintiff cannot have it both ways. Plaintiff cannot demand sole and exclusive access to all township financial records – a level of control to which she is not statutorily entitled – and then insist that the Township hire her desired staff members (who would report solely to her) to complete those statutory tasks on her behalf.

This case ventures beyond legal questions and into nonjusticiable political questions about staffing and public administration that are most appropriately left to the local elected Township Board. Plaintiff has not established that she is entitled to judgment in her favor as a matter of law, and thus the Township requests that this Court deny Plaintiff's motion and instead grant summary disposition to the Township under MCR 2.116(C)(8) and (I)(2).

Counter-Statement of Facts

The Township incorporates by reference the Statement of Facts in its Brief in Support of Motion for Summary Disposition under MCR 2.116(C)(8), which was filed on June 9, 2022. The Township offers the following additional facts in response to Plaintiff's Brief.

I. Facts Relevant to Count I

The material facts are few. As pled, Count I challenges the delegation of certain duties to the Township Supervisor and Township Administrator in Resolution 2021-31 and Resolution 2022-05. (First Amended Complaint, ¶¶ 12-15, 20-23.) Count I further alleges that the Township improperly granted "read/write" access for the general ledger to the Deputy Treasurer. *Id.* at ¶ 24. Plaintiff does not allege that any records were incorrectly or improperly modified but complains that the mere access of Township records by other Township officials and staff is unlawful.

Plaintiff mischaracterizes what occurred. Plaintiff argues that the Township Board "direct[ed] the administrator to grant illegal access to the Deputy Supervisor to manipulate the township's general ledger and revoke certain access of the Clerk to the Township's books, records

and papers in clear and direct violation of MCL 41.65." (Plaintiff's Brief, p. 1; First Amended Complaint ¶ 34.) But as set forth in the Affidavit of the Township Administrator, the Township Board did not direct the current Administrator or any prior administrator to revoke Plaintiff's access to the general ledger, and her access was never revoked. **(Exhibit A, Affidavit of J. Merte, ¶ 5.)** Plaintiff has maintained concurrent read and write access at all times. *Id.*

Plaintiff further claims that the Township wrongfully interfered with her statutory duties by temporarily granting "read/write" privileges for the BS&A software to Sandra Egeler. (Plaintiff's Brief, p. 4.) Ms. Egeler serves as the Township Deputy Treasurer, previously served as the Finance Director, and has been a Township employee for approximately 30 years. (Exhibit A, ¶ 6.) Ms. Egeler was granted temporary access so she could reconcile journal entries in preparation for the audit because the reconciliations had not been performed by Plaintiff or anyone else. *Id. 7.*

The Township has been late in filing its audit with the State since Plaintiff took office. (Exhibit A, ¶ 7.) This is because Plaintiff, by her own admission, lacks the qualifications and training to prepare the appropriate financial records. *Id.* As a result, other Township employees, such as the Deputy Treasurer, must perform those tasks. *Id.* Before Plaintiff became Township Clerk, the Township's audits were performed by the (then-serving) Township Clerk and were timely filed with the State. *Id.* The delays with the audit did not arise until Plaintiff became the Township Clerk. *Id.*

In response to Ms. Egeler's preparation of the required reconciliations, Plaintiff complains that "Egeler entered 155 general journal entries all dated within the prior fiscal year ending March 31st, and Egeler posted 57 of these to the general ledger" and that "Egeler reversed only the 57 general ledger entries." (Plaintiff's Brief, p. 5.) Plaintiff seems to suggest that Deputy Treasurer Egeler should have reversed the 98 entries that were entered into the general journal. Because those

98 entries were never posted to the general ledger, however, there was nothing for Deputy Treasurer Egeler to reverse. (Exhibit A, ¶ 10.) The general ledger was returned to the same condition it was in before Deputy Treasurer Egeler began assisting with the entries. *Id.*

Plaintiff currently has – and has always had – read and write access to the Township's financial journals and ledgers. (Exhibit A, ¶ 8.) Plaintiff also has – and has always had – the ability to view the history of changes to the journals and ledgers. *Id.* The Township Administrator has not "overridden" any of Plaintiff's actions, and Plaintiff has not been deprived of access to the Township's records. (Exhibit A, ¶¶ 10, 11.) Plaintiff's speculation about what other access "may" have occurred is unsupported by any documentary evidence. (Plaintiff's Brief, p. 5.)

II. Facts Relevant to Count II

In Count II, Plaintiff argues that the Township has "refus[ed] to appropriately staff the finance team" (First Amended Complaint, ¶ 72), and she 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[.]" (First Amended Complaint, ¶ 71.)

Contrary to these allegations, the Township has hired additional finance staff. The Township Board hired one new employee to assist with finance functions, and it has offered to expand the roles of existing staff members (including the Deputy Treasurer) to provide further support to Plaintiff. (Exhibit A, ¶ 12.) Plaintiff has rejected these staffing options as insufficient because, as she has stated at public meetings, she would prefer to hire different individuals of her choosing. *Id.* Plaintiff has made clear that she lacks the "right training" to handle the Township's financial statements.[5]

[5] https://www.youtube.com/watch?v=8uw0wqllTjk&t=13433s (Timestamp: 2:25:20-25)

III. Procedural Background

Plaintiff filed this action against the Township Board on April 11, 2022, along with an emergency ex parte motion for a temporary restraining order. This Court denied Plaintiff's TRO motion on April 22, 2022, reasoning in part that "[i]t is not appropriate for any judge to micromanage, step in, become something that we are not elected to do, and that is to run a local township council or board."[6] This Court further noted that "[a] dispute of personalities among people whose obligation is to serve the public is not an emergency." *Id.*

Plaintiff subsequently amended her complaint, and the parties have filed cross motions for summary disposition. For the reasons explained below, the Township requests that this Court deny Plaintiff's motion and instead dismiss Plaintiff's action in its entirety.

Standard for Decision

A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When reviewing a motion brought under MCR 2.116(C)(10), the Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Candle Co v City of Kentwood*, 285 Mich App 240; 776 NW2d 145 (2009).

Argument

I. Plaintiff has failed to state a claim for which relief may be granted, and the Township is entitled to summary disposition under MCR 2.116(C)(8).

Plaintiff is not entitled to summary disposition in her favor because she has failed to state any claim for which relief may be granted. The Township incorporates by reference its Motion for Summary Disposition under MCR 2.116(C)(8) and supporting brief.

[6] https://www.mlive.com/news/ann-arbor/2022/04/judge-rules-against-scio-township-clerk-in-lawsuit-against-her-own-board.html

II. Plaintiff is not entitled to summary disposition on Count I under MCR 2.116(C)(10).

Under Count I, Plaintiff seeks summary disposition on the grounds that the Township Board allegedly "interfered" with her statutory duties through its expansion of the Supervisor's and Administrator's job duties and the temporary access to BS&A software given to the Deputy Treasurer. Plaintiff's arguments are factually unsupported and, regardless, fail as a matter of law.

Plaintiff's argument relies on the premise that she, as Township Clerk, is entitled to complete, exclusive, and unfettered access to and control over all Township records, specifically including anything perceivably related to the Township's finances. (See, e.g., Plaintiff's Brief, pp. 7, 10, alleging that the Township Administrator's duties are "illegal" because they include "control over critical aspects of the township's finances and records.") Plaintiff alleges that she alone is entitled to "administrator" control over the Township's BS&A software, which holds the Township's data.

But Michigan law does not give Plaintiff this sweeping unilateral control over the Township's records. MCL 41.65 provides that the Township Clerk "shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law." The Michigan Court of Appeals has held that "custody" under MCL 41.65 does *not* mean exclusive control. *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 B)**. The *Brinkley* court held that even though a township clerk has "custody" of township mail, that does not mean the clerk is entitled to open all township mail. *Id.* As a result, the Court of Appeals upheld a township resolution instructing a secretary, rather than the township clerk, to open the mail. *Id.*

Plaintiff's reliance on *McKim v Green Oak Township Board*, 158 Mich App 200; 404 NW2d 658 (1987), is misplaced, as set forth in the Township's summary disposition brief. *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 could bar *other* Township officials and staff from accessing public records, which is what Plaintiff claims here. Plaintiff does not allege that the Township Board has prohibited her from accessing any records or books of the Township, and thus *McKim* does not control here.

Even if *McKim* were on point, it is not binding on this Court because it was issued before November 1, 1990. MCR 7.215(J)(1). That is why the *Brinkley* court declined to rely on *McKim* and instead upheld the Royal Oak Charter Township's resolution authorizing township staff *other than the clerk* to open township mail.

To be clear: Plaintiff has not been deprived of access to BS&A, financial ledgers and journals, or other Township records. (See Exhibit A, ¶¶ 5, 8, 10.) She has access to all documents and records necessary for her to perform her statutory duties. Plaintiff's complaint (aside from the fact that she wants the Township to hire more staff of her choosing to perform her statutory duties) is that she does not have *exclusive* access and that other Township employees, such as the Administrator and Deputy Treasurer, have had concurrent access. Nothing in Michigan law vests Plaintiff with the exclusive access and control she seeks.

To the contrary, Michigan law contemplates that other Township officials will have access to the Township's records, including its financial journals and ledgers. 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. If the Township Clerk held exclusive access to those records, then the Township Supervisor would be unable to perform his statutory duties regarding the budget.

Moreover, as a practical matter, the Township has needed to enlist other staff to reconcile the Township's financial records because *Plaintiff failed to do so.* Plaintiff has admitted in public meetings that she lacks the qualifications and training to manage the Township's financial records. (Exhibit A, ¶ 7; see also Footnote 2.) Historically, before Plaintiff was Township Clerk, the Township's audits were timely prepared and filed with the state. *Id.* But since Plaintiff took office, the Township's audits have been late. *Id.* In an effort to timely prepare and file its audits, the Township gave limited BS&A access to Deputy Treasurer Egeler (a well-qualified employee who formerly served as Finance Director) to reconcile journal entries for the audit. *Id.* at ¶ 6. At all times, Plaintiff retained access to all BS&A records *and* retained the ability to view the history of changes to the journals and ledgers. *Id.* at ¶ 8. The Township's temporary and limited delegation of reconciliation tasks to the Deputy Treasurer did not prevent Plaintiff from performing her duty to "prepare and maintain the journals and ledgers." MCL 41.65. Still, Plaintiff is dissatisfied because she wants "administrator" privileges, rather than "read/write" privileges, even though she can complete all of her statutory duties with the privileges she currently has.

The triviality of Plaintiff's claims should not be lost on this Court. The Township is being forced to spend taxpayer dollars to defend this lawsuit and argue about "administrator" versus "read/write" access to software, even though the distinction has no impact on Plaintiff's ability to do her job. As this Court recognized at the TRO hearing, this is ultimately a "dispute of personalities" that is best addressed in Township Hall or at the ballot box, not in the courtroom.

In short, Plaintiff is not legally entitled to exclusive access and control over the Township's records. *See Brinkley, supra.* Moreover, Plaintiff has not established that the Township prevented

her from fulfilling her statutory duties. Plaintiff is therefore not entitled to summary disposition as to Count I.

III. Plaintiff is not entitled to summary disposition on Count II.

After claiming that she must have sole and exclusive power to prepare the Township's financial records, Plaintiff next argues that she needs to hire additional staff to prepare the Township's financial records because she is unqualified to do them alone.

First, the Township Board *has* hired finance staff, but Plaintiff does not like the people the Township Board has selected. Plaintiff derides them as being "the most undertrained group of people I've ever met." (Plaintiff's Affidavit with Attachments, pg. 23.) Plaintiff further admits that the Township Board has hired "part time and full time employees," albeit "over the Clerk's objections." (Plaintiff's Brief, pg. 3.) The Township Board has hired an additional employee to assist with finance matters, and it has offered to expand the roles of existing staff members to provide further support to Plaintiff. (Exhibit A, ¶ 12.) Plaintiff has rejected these staffing options as "insufficient." (Plaintiff's Brief, p. 13.) Plaintiff has admitted that she would prefer to hire different people. (Affidavit, ¶ 12.)

Plaintiff does not have a cognizable legal right to control the Township's hiring decisions or supervise the Township's finance staff. There is no support for her claim that the Township Board *must* hire additional staff. Plaintiff relies solely on *Cahalan v Wayne County*, 93 Mich App 114; 286 NW2d 62 (1979), but the case lends no support to her cause. The *Wayne* 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. The court held that if no statute required an expenditure (i.e., for road patrol), then a court could not compel a county board to allocate funds for that purpose.

Id. at 123, citing *Brownstown Township v Wayne County*, 68 Mich App 244, 248; 242 NW2d 538 (1976).

Here, no statute requires the Township Board to hire additional finance staff. To the contrary, Michigan law prohibits 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).

These claims certainly do not rise to the level of "arbitrary and capricious" conduct by the Township, as Plaintiff alleges. (Plaintiff's Brief, p. 19.) A decision is arbitrary and capricious if it was "determined by whim or caprice, or arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, decisive but unreasoned." *In re Keast*, 278 Mich App 415, 424; 750 NW2d 643 (2008) (internal citations and quotation marks omitted). Plaintiff cannot show that the Township's decisions to hire certain employees and expand the duties of others is a matter of "whim or caprice."

Plaintiff might believe the Township's staffing decisions are "irresponsible" (Plaintiff's Brief, p. 18), but that does not create a cause of action. Nor has Plaintiff established that the Township's hiring decisions have prevented her from performing her statutory duties. (Plaintiff's Brief, p. 19.) Instead, as set forth above, the Township has already had to expand the duties of other Township staff to perform audit-related tasks that Plaintiff has either failed or refused to perform in a timely fashion. (Exhibit A, ¶¶ 6, 12.) Plaintiff had full access to the records necessary to complete those reconciliations, but she failed or refused to do so. Plaintiff is effectively

attempting to hold the Township's records hostage until she is allowed to hire the people she wants to hire. This is not how Township government should operate.

The Township Board has not failed to make any statutorily required appropriations, and its staffing decisions are within the sound discretion of the Township Board. *See Brownstown, supra.* Accordingly, Plaintiff is not entitled to summary disposition as to Count II.

IV. Plaintiff's claims are nonjusticiable political questions.

Not all disputes are fit for judicial consideration. Political questions are among the issue that courts must abstain from hearing to "restrain the Judiciary from inappropriate interference with the business of the other branches of government." *See Wilkins v Gagliardi*, 219 Mich App 260, 266; 556 NW2d 171, 176 (1996), quoting *United States v Munoz–Flores*, 495 US 385 (1990).

Courts use a three-part test to decide whether an issue is a nonjusticiable political question:

(i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of Government?

(ii) Would resolution of the question demand that a court move beyond areas of judicial expertise?

(iii) Do prudential considerations for maintaining respect between the three branches counsel against judicial intervention?

Wilkins, 219 Mich App at 265-66.

These factors weigh against substantive consideration of Plaintiff's claims here. First, this lawsuit asks this Court to decide questions that are committed by the Michigan Constitution to local governments. The Constitution vests townships with the powers and immunities provided by law (Article VII, Sec. 17), specifically including the power to prepare and approve local budgets (Article VII, Sec. 32). Plaintiff's lawsuit requires this Court to answer questions within the administrative authority of the Township: How many finance employees should the Township hire? *Who* should those employees be? Who, in addition to the Clerk, should have access to

township records? Who should reconcile the Township's accounts if the Clerk fails to do so? Who should have "administrator" privileges on the BS&A software? These questions are committed to a "coordinate branch of government" – the local legislative body – and thus are not questions suited for judicial resolution.

If the court orders the Township to hire a certain number of finance employees (or even specific individuals chosen by Plaintiff), the result will be a violation of the separation of powers doctrine under Article III, Section 2 of the Michigan Constitution. *See Ins Institute of Mich v Comm'r*, 486 Mich 370, 415; 785 NW2d 67 (2010) (holding that because of the importance of separation of powers, "courts accord due deference to administrative expertise and [may] not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views").

Second, and for the same reason, the questions raised in this lawsuit "demand that a court move beyond areas of judicial expertise." *Wilkins, supra.* This Court's expertise lies in deciding legal and factual issues, not making local policy decisions. Respectfully, the elected officials of Scio Township are responsible for deciding how to run the day-to-day business of the Township, including its software controls and hiring decisions. It would be beyond the court's judicial role to supplant its wisdom for that of the local Township Board in the manner requested by Plaintiff.

Finally, prudential considerations for maintaining respect between the three branches counsel against judicial intervention. *Wilkins, supra.* The Michigan Constitution provides that "[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art III, § 2. Yet Plaintiff asks this Court to evaluate the Township Board's policy decisions (job descriptions, staffing decisions, and software management) and substitute its judgment for that of the Township Board.

Again, Plaintiff's vocal disagreement with the majority of the Township Board does not make this a dispute fit for the courts. Plaintiff has a myriad of political remedies: she can collaborate with her fellow elected officials to reach a policy compromise, she can initiate a recall of other board members, or she can vote for their opponents when they run for re-election and hope that an election yields a board more in line with her vision for the Township.

But the courtroom is not the place for local policymaking or airing political grievances. Plaintiff's claims are political questions that are not justiciable. For that reason as well as the substantive arguments above, the Township requests that this Court dismiss Plaintiff's complaint.

Conclusion

The Township Board requests that this Court deny Plaintiff's motion for summary disposition, grant summary disposition to the Township Board under MCR 2.116(C)(8) and (I)(2), and award the Township its costs and attorney fees incurred in defending against this meritless action at taxpayer expense.

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

Dated: August 18, 2022

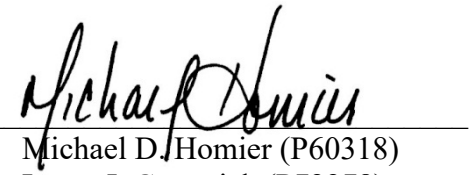
By: 

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EXHIBIT A

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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AFFIDAVIT OF JAMES MERTE

James Merte, being duly sworn, deposes and says as follows:

1. I have personal knowledge of the facts set forth herein. If I am called to testify and am sworn as a witness, I can testify competently to the facts set forth herein.

2. I am the interim Township Administrator of Scio Township in Washtenaw County, Michigan. I previously served as the Scio Township Assessor. I have served as a Township employee for 43 years.

3. I am aware that Plaintiff has served as Township Clerk since June 2019 when she was appointed to fill a vacancy.

4. I have reviewed the Brief in Support of Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(I)(2) and disagree with certain factual representations made by Plaintiff.

5. Plaintiff's Brief states that the Township Board "direct[ed] the administrator to grant illegal access to the Deputy Supervisor to manipulate the township's general ledger and revoke certain access of the Clerk to the Township's books, records and papers in clear and direct violation of MCL 41.65." (Brief, p. 1.) This is incorrect. The Township Board did not direct me or any prior administrator to revoke Plaintiff's access to the Township's general ledger, nor have I revoked her access. As Administrator, I do oversee the Township's software, including the BS&A software, but Plaintiff maintains concurrent read and write access.

6. Plaintiff's Brief further states that I was instructed to give BS&A access to Township Deputy Treasurer Sandra Egeler. (Brief, p. 4.) To be clear, Deputy Treasurer Sandy Egeler (who has served as a Township employee for approximately 30 years, and who previously served as Finance Director) was given access so she could reconcile journal entries in preparation for the audit because the reconciliations had not been performed by Plaintiff or anyone else.

7. The Township has been late in filing its audit with the State since Plaintiff took office. This is because Plaintiff, by her own admission, lacks the qualifications and training to prepare the appropriate financial records. As a result, other Township employees, such as the Deputy Treasurer, must perform those tasks. Before Plaintiff became Township Clerk, the Township's audits were performed by the (then-serving) Township Clerk and were timely filed with the State. The delays with the audit did not arise until Plaintiff became the Township Clerk.

8. Plaintiff's Brief further states that Plaintiff "could not see what changes Mr. Merte or others may have made to the journals and ledgers, or if other unauthorized people had access."

(Brief, pp. 4-5.) This is incorrect. Plaintiff was not deprived of access to the journals and ledgers and retained the ability to view the history of changes to the journals and ledgers.

9. Plaintiff's Brief further states that "Egeler entered 155 general journal entries all dated within the prior fiscal year ending March 31st, and Egeler posted 57 of these to the general ledger" and that "Egeler reversed only the 57 general ledger entries." (Brief, p. 5.) Plaintiff seems to suggest that Deputy Treasurer Egeler should have reversed the 98 entries that were entered into the general journal, but this is incorrect. Because those 98 entries were never posted to the general ledger, there was nothing for Deputy Treasurer Egeler to reverse. The general ledger was returned to the same condition it was in before Deputy Treasurer Egeler began assisting with the entries.

10. Plaintiff's Brief further states that "Plaintiff does not have the necessary permissions to be able to fully verify the integrity or corruption of these Township records" and speculates that "[t]here may be more ongoing and unauthorized access to the eight financial management modules of BS&A, as well as to the Assessing or Tax Rolls that are within other BS&A modules." (Brief, p. 5.) This is incorrect. Plaintiff was not deprived of access to the Township records and retained the ability to view the history of access to the BS&A modules and the Assessing and Tax Rolls.

11. With respect to my "Enterprise Administrator" access to the BS&A software, contrary to Plaintiff's speculation, I have not "overridden" any of Plaintiff's actions without the Board's or Plaintiff's knowledge or consent. (Brief, p. 6.)

12. Plaintiff's Brief claims that the Township Board has refused to hire qualified finance staff. (Brief, p. 15.) This is incorrect. The Township Board hired one additional employee to assist with finance functions, and it has offered to expand the roles of existing staff members (including the Deputy Treasurer) to provide further support to Plaintiff. Plaintiff has rejected these

staffing options as insufficient because, as she has stated at public meetings, she would prefer to hire different individuals.

James Merte

STATE OF MICHIGAN)
) ss.
COUNTY OF Washtenaw)

On this 29 day of June, 2022, before me, a Notary Public, in and for said County, personally appeared the above-named James Merte, and made oath that he has read the foregoing Affidavit, and acknowledged the same to be his free act and deed.

Kristy Aiken
Notary Public State of Michigan
Jackson County
My Commission Expires 5/12/2028
Acting in the County of _____

Kristy Aiken, Notary Public
County of Jackson, State of Michigan
My commission expires: 5-12-2028
Acting in Washtenaw County

19737:00022:6428225-1

EXHIBIT B

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. Almeda 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.

III. CONCLUSION

***6** Defendant failed to show that the trial court's factual findings were clearly erroneous. Accordingly, we affirm the trial court's order denying defendant's motion for costs and attorney fees. [2]

Affirmed.

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).

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STATE OF MICHIGAN MI 22nd Circuit Court - Washtenaw	PROOF OF ELECTRONIC SERVICE	CASE NO. 22-000414-CZ

Case title
Flintoft, Jessica vs Scio Township Board

1. MiFILE served the following documents on the following persons in accordance with MCR 1.109(G)(6).

Type of document	Title of document
Answer/Reply/Response (Counterclaim/Cross-Claim, etc.)	Defendant's Brief Opposing Plaintiff's MSD
CONNECTED FILING	Defendant's EX A - Affidavit of James Merte
CONNECTED FILING	Defendant's EX B - Charter Township of Royal Oak v Brinkley

Person served	E-mail address of service	Date and time of service
Mark J. Magyar	mmagyar@dykema.com	08/18/2022 3:37:11 PM
Michael D. Homier	mhomier@fosterswift.com	08/18/2022 3:37:11 PM
Thomas R. Meagher	tmeagher@fosterswift.com	08/18/2022 3:37:11 PM
Robert A. Boonin	rboonin@dykema.com	08/18/2022 3:37:11 PM

2. I, Michael Homier, initiated the above MiFILE service transmission.

This proof of electronic service was automatically created, submitted, and signed on my behalf by MiFILE. I declare under the penalties of perjury that this proof of electronic service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

08/18/2022
Date

/s/Michael Homier
Signature

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