

Court of Appeals, State of Michigan

ORDER

Citizens for Mount Clemens Development v City of Mount Clemens

Colleen A. O'Brien
Presiding Judge

Docket No. 354722

Mark J. Cavanagh

LC No. 2020-002944-AW

Kathleen Jansen
Judges

The Court orders, under MCR 7.216(A)(7), that the September 4, 2020 order denying plaintiff's request for a writ of mandamus is AFFIRMED. The extraordinary remedy of a writ of mandamus is properly granted when: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014). Plaintiff did not have a clear legal right for its proposed initiative to appear on the ballot and defendant, the Clerk of the City of Mount Clemens, did not have a clear legal duty to include the proposed initiative on the ballot. Plaintiff's proposed ballot language exceeds the scope of MCL 333.27956(1), which allows individuals to "petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality" Plaintiff's proposed initiative encompasses more than providing for the number of marihuana establishments. In addition, plaintiff did not have a clear legal right to performance because MCL 168.646a(2) required that all ballot language be certified to the Macomb County Clerk at least 82 days before the election, or August 13, 2020. Because plaintiff did not file its complaint and seek a writ of mandamus until August 21, 2020, it did not have a clear legal right to the relief requested. Accordingly, the September 4, 2020 order denying mandamus relief is AFFIRMED.

The Court retains no further jurisdiction.

This order is to have immediate effect. MCR 7.215(F)(2).

Colleen A. O'Brien

Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

September 11, 2020

Date

Jerome W. Zimmer Jr.

Chief Clerk