

STATE OF MICHIGAN
COURT OF APPEALS

PAUL WABEKE and LEWIS R. SEXTON,
individually, and as a derivative
action on behalf of all MEMBERS OF THE
HOLLAND CITY MISSION, a Michigan non-
profit corporation,

Plaintiffs-Appellants,

v

BERNARD TIMMERMAN, DARRYL BARTLETT,
DAVID D. DAGWELL, ALTON KOOYERS, JR.,
JAY E. HOP, ROBERT SHOTTS, CARLTON
BROUWER, CLARENCE REYNEVELD,
individually and as DIRECTORS OF THE HOLLAND
CITY MISSION, a Michigan non-profit corporation,

Defendants-Appellees.

UNPUBLISHED
May 24, 1996

No. 174189
LC No. 93-018238-AZ

Before: White, P.J., and Sawyer and R.M. Pajtas,* JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court which dismissed their shareholders' derivative action which alleged that defendants, the individual members of the board of directors of the Holland City Mission (HCM), had failed to properly discharge their corporate duties. On November 19, 1993, the Ottawa Circuit Court granted defendants' motion for summary disposition on the grounds that plaintiffs had neither claimed an injury in fact nor stated a claim upon which relief could be granted. We affirm.

We first consider plaintiffs' argument that the trial court erred in finding that plaintiffs lacked standing. Defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(1), (2), and (8). The trial court reviewed the articles of incorporation, assessed plaintiffs' factual claims that

* Circuit judge, sitting on the Court of Appeals by assignment.

they were members of the HCM corporation, and made factual decisions regarding whether the HCM corporation was a properly filed ecclesiastical corporation. Such factual conclusions were inappropriate for a motion brought pursuant to MCR 2.116(C)(8) and, therefore, the issue was addressed as if it was brought pursuant to MCR 2.116(C)(10). We conclude that although the court erred in premising its decision to grant defendants' motion for summary disposition pursuant to MCR 2.116(C)(8), the error was harmless because all the parties were prepared to proceed, and did proceed, as if the motion were brought pursuant to MCR 2.116(C)(10). This was evidenced by the fact that each plaintiff submitted an affidavit in support of the factual grounds upon which their standing allegations were based and argued the issue by referencing the various articles of incorporation that were submitted to the trial court.

To ensure that only those with a substantial interest in a dispute are allowed to complain in court, Michigan law requires that a plaintiff have "standing." *Michigan State AFL-CIO v Civil Service Comm*, 191 Mich App 535, 544; 478 NW2d 722 (1991). Standing requires that plaintiffs demonstrate a legally protected interest that is in jeopardy of being adversely affected, and show that they have a sufficient personal stake in the outcome of the controversy. *Trout Unlimited, Muskegon-White River Chapter v White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992). To demonstrate such a personal stake, a plaintiff must show that "he has been injured or represents someone who has been injured." *Id.*; *Fieger v Comm'r of Ins*, 174 Mich App 467, 472; 437 NW2d 271 (1988).

The trial court found that the HCM's original articles of incorporation and its recently enacted bylaws state that "the entire business management of the Mission shall be entrusted to a Board of Directors, consisting of seven members" The trial court then cited MCL 450.2108(1); MSA 21.197(108) for the proposition that a person is a "member" of a corporation only if his status as such is articulated in either a corporation's bylaws or articles of incorporation. The court then noted that neither instrument provided any indication that the HCM had any members other than the seven-member board of directors. The trial court went on to conclude that it lacked the authority to effectively amend the articles of incorporation by declaring that, because they had donated their money and time, plaintiffs were members of the HCM. Therefore, the trial court concluded, and we agree, that the HCM had no members others than the board of directors, and that this conclusion applied regardless whether the HCM was an ecclesiastical or a nonprofit corporation. Therefore, we conclude that the trial court did not err in determining that plaintiffs could not have developed facts which would have established their standing to sue.

MCL 450.2491(2)(a); MSA 21.197(491)(2)(a) provides clear authority that only a shareholder or a member of a corporation may sue that corporation. Here the attempts by plaintiffs to establish that they were members of the HCM is without merit. Plaintiffs have provided no authority for their position that their participation in HCM's activities makes them members of the corporation. We find that this issue therefore has been abandoned. *Samonek v Norvell Twp*, 208 Mich App 80, 86; 527 NW2d 24 (1994); *Hodgeson v Bd of Ed of the Buena Vista School Dist*, 175 Mich App 405, 410; 438 NW2d 295 (1989). We further note that MCL 450.2305(1); MSA 21.197(305)(1)

provides that a directorship basis corporation need not have members. Therefore, when the trial court concluded that the articles failed to provide for any members other than the corporation's directors, it was forced to find that plaintiffs lacked standing to pursue a derivative action on behalf of the HCM corporation.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard M. Pajtas