

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK J. FISHER,

Plaintiff-Appellant,

v

FIFTY SECOND DISTRICT JUDGE,

Defendant-Appellee.

UNPUBLISHED

June 25, 1996

No. 176821

LC No. 94-472402

Before: Murphy, P.J., and Reilly and C.W. Simon, Jr.,* JJ.

PER CURIAM.

Plaintiff appeals as of right a trial court order dismissing with prejudice plaintiff's petition for mandamus or superintending control. We affirm.

Plaintiff argues that the trial court erred in dismissing plaintiff's petition for mandamus or superintending control when defendant failed to arraign plaintiff on the misdemeanor charge of larceny under \$100 and when defendant presided over plaintiff's criminal jury trial after presiding over the preliminary examination. We reject plaintiff's argument that the trial court erred in dismissing plaintiff's petition for mandamus. The trial court properly dismissed plaintiff's petition for mandamus because mandamus was not an available remedy pursuant to MCR 3.302(C).

This Court reviews the grant or denial of a petition for superintending control for an abuse of discretion. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). We conclude that the trial court did not abuse its discretion in dismissing plaintiff's petition for superintending control. MCR 3.302(B) provides that a complaint for superintending control may not be filed if another adequate remedy is available to the party. Here, there were adequate remedies for plaintiff regarding both the arraignment issue and the disqualification issue.

There was an adequate remedy for plaintiff to address defendant's failure to arraign plaintiff on the charge of larceny under \$100. Plaintiff could have filed a motion to dismiss on the basis of

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

defendant's failure to arraign him and, if the trial court denied the motion for dismissal, plaintiff could have pursued an interlocutory appeal. *People v Yarema*, 208 Mich App 54; 527 NW2d 27 (1994). Because there was an adequate remedy for plaintiff to address defendant's failure to arraign him, the trial court did not abuse its discretion in dismissing plaintiff's petition for superintending control.

Plaintiff also had an adequate remedy to address his concern with defendant presiding over both the preliminary examination and plaintiff's jury trial. If plaintiff sought to remove defendant from presiding over plaintiff's jury trial because he had presided over the preliminary examination, plaintiff should have moved to disqualify defendant. MCR 2.003(C) sets forth the procedure for disqualifying a judge. Generally, this procedure is exclusive and must be followed. *Czuprynski v Bay Circuit Judge*, 166 Mich App 118, 124; 420 NW2d 141 (1988). Plaintiff failed to follow the procedure outlined in MCR 2.003(C). Because moving to disqualify plaintiff pursuant to the procedure established in MCR 2.003(C) was an adequate remedy available to plaintiff, the trial court did not abuse its discretion in dismissing plaintiff's petition for superintending control.

Plaintiff also argues that the trial court erred in imposing costs on plaintiff in the amount of \$200. This Court will uphold a trial court's grant or denial of costs or attorney fees absent an abuse of discretion. *Quatrine v Mackinaw City Public Schools*, 204 Mich App 342, 343; 514 NW2d 254 (1994). We conclude that the trial court did not abuse its discretion in imposing costs on plaintiff. Plaintiff's petition for mandamus or superintending control was frivolous in that it was devoid of arguable legal merit. MCL 600.2591(3)(a)(iii); MSA 27A.2591(3)(a)(iii). Moreover, plaintiff's counsel signed both the petition and amended petition, but failed to conduct a reasonable inquiry into the applicable court rules as required by MCR 2.114(D)(2). Had plaintiff's counsel conducted such an inquiry, he would have become aware that the petition was frivolous because mandamus was not an available remedy pursuant to MCR 3.302(C) and MCR 3.302(B) provides that a complaint for superintending control may not be filed if another adequate remedy is available to the party. Accordingly, it was proper for the trial court to impose sanctions pursuant to MCR 2.114(E), (F), MCR 2.625(A)(2), and MCL 600.2591; MSA 27A.2591.

Plaintiff finally argues that defense counsel was unauthorized to represent defendant. According to plaintiff, defendant, as a state officer, could only be represented by another state officer. Because defense counsel was a county officer, plaintiff argues that defense counsel was unauthorized to represent defendant. We disagree. Defense counsel was corporation counsel for Oakland County. Defense counsel's representation of defendant is authorized by MCL 49.73; MSA 5.826. Accordingly, plaintiff's argument is without merit.

Affirmed.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.