STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM J. STIERLE and PATRICIA S. STIERLE,

Plaintiffs–Appellants,

v

LIMA TOWNSHIP and ARLENE BAREIS,

Defendants–Appellees,

and

DONALD T. HILLIGOSS and VERONICA J. HILLIGOSS,

Intervening Defendants-Appellees.

UNPUBLISHED
November 22, 1996

No. 180169
LC No. 94-002421-CZ

Before: Murphy, P.J., and O'Connell and M.J. Matuzak,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order that granted summary disposition to defendants pursuant to MCR 2.116(C)(8). We reverse and remand.

The Lima Township board passed a zoning amendment that rezoned a parcel of property owned by plaintiffs. Pursuant to MCL 125.282; MSA 5.2963(12), a petition was circulated, filed, and a referendum election was held which invalidated the zoning amendment. Plaintiffs brought suit, alleging that some, if not all, of the signatures on the petition were fraudulently induced by defendants, and because of that, the petition does not have the requisite number of valid signatures to call for a referendum election. Plaintiffs therefore claimed that the referendum election should be declared null and void. Defendants moved the trial court for summary disposition pursuant to MCR 2.116(C)(8), claiming that plaintiffs had failed to state a claim upon which relief could be granted. The trial court granted defendants' motion.

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

We review the trial court's grant of a motion for summary disposition de novo. *Parcher v Detroit Edison Co*, 209 Mich App 495, 497; 531 NW2d 724 (1995). A motion brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone, *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995), and should only be granted when the claim is so clearly unenforceable as a matter of law that no factual development could justify a recovery, *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

Chateau Estates v Macomb Election Comm'rs, 25 Mich App 351; 181 NW2d 320 (1970), is factually similar to the instant case. In that case, the plaintiffs sought to have a parcel of land rezoned. The township board passed the amendment. *Id*. at 352. Following the amendment, a referendum petition was circulated pursuant to MCL 125.282; MSA 5.2963(12), and 379 signatures were obtained, the exact number required under the statute to call a referendum election. *Id*. at 352-353. A referendum was held and the amendment was invalidated. *Id*. At trial, the testimony showed that three signatures on the petition were forged. *Id*. at 354-355. This Court ruled that because the petitions did not have the requisite number of valid signatures to call for a referendum election, the election should not have been held, was therefore null and void, and the zoning amendment which had been properly enacted by the township board, was valid. *Id*. at 356.

In this case, the trial court ruled that *Chateau Estates* is not on point because there is a distinction between a forged signature and a fraudulently induced signature. We disagree.

In *Burton Twp v Genesee County*, 369 Mich 180, 182; 119 NW2d 548 (1963), a petition was circulated to call an election to determine if an uninhabited portion of Burton Township should be annexed to the city of Flint. The plaintiff sought to enjoin the election on several grounds, one of which was that the signers of the petition were fraudulently induced to sign the petition by misrepresentations of the circulator of the petition. *Id*. at 183. Our Supreme Court held that the testimony failed to disclose fraudulent misrepresentations sufficient enough to vitiate the petition, reasoning that the petition itself revealed its nature and purpose, and that the alleged misrepresentations appeared to be opinions of the circulator, and "did not amount to a concealment of the purpose of presenting to electors the question of annexation of the land in question to the city of Flint." *Id*. at 186-187. The implication of this decision is that fraudulent misrepresentations, which are not merely the circulator's opinion, may be sufficient to vitiate a petition if the purpose of the petition is concealed.

In this case, plaintiffs allege, among other things, that the purpose of the petition was concealed from some signers by misrepresentations made by the circulators, that some signers were asked to sign a blank piece of paper and that through "some trick or device" their signatures appeared on the petition, and that some signers signed a petition with a printed purpose that was changed after they signed the petition. To hold that the type of fraud allegedly perpetrated here is acceptable and cannot be remedied would defeat the purpose of a referendum petition. The purpose of having a particular number of signatures on a petition to call for a referendum election is to prevent trivial matters, in which there is no desire on the part of the general public to be heard, from being presented. 82 CJS, Statutes, §§ 116, 123, pp 194, 217 n 21. When it comes to this purpose, there is essentially no difference between a forged signature and the signature of a person from whom the purpose of the petition has been

concealed; neither signature is a manifestation of the named person's desire to see the real matter at issue voted upon by the general public. To hold otherwise would allow the petition requirement to become a sham.

Therefore, we hold that plaintiffs have stated a claim upon which relief can be granted, and should be given a trial to determine the extent of the fraud allegedly perpetrated by the circulators of the petitions. If the purpose of the petitions was fraudulently concealed from a sufficient number of signers that, without their signatures, the petition does not contain the requisite number of signatures to call for a referendum, the election should be declared null and void, and the zoning amendment properly passed by the township board should be reinstated.

The dissent makes a valid distinction between this case and *Chateau Estates* in that plaintiffs in this case waited until after the election to file suit. However, we feel this distinction is not dispositive, and decline to apply such a bright line rule requiring plaintiffs in every case to bring suit prior to the election. First, we would observe that even if suit is brought before an election, it is not always feasible for a court to resolve the dispute prior to the election. Second, the cases cited by the dissent are unpersuasive. *People v Hall*, 435 Mich 599; 460 NW2d 520 (1990) is a criminal case that is clearly not on point, and only marginally analogous. Contrary to the dissent, our Supreme Court did not adopt the "election-cures-error" doctrine in *Graham v Miller*, 348 Mich 684; 84 NW2d 46 (1957). The dissent cites the concurrence in which Justice Black advocates application of the doctrine. However, although it is unclear, it could be argued that the Supreme Court did adopt the doctrine in either *City of Jackson v Commissioner of Revenue*, 316 Mich 694; 26 NW2d 569 (1947) or *Carman v Secretary of State*, 384 Mich 443, 455; 185 NW2d 1 (1972). In any event, we are not persuaded that the election-cures-error doctrine precludes plaintiffs' suit. The doctrine, which has only been applied in the constitutional amendment context, basically stands for the proposition that courts should not override the results of an election merely because there has not been "meticulous compliance with the procedural requirements" of the constitution, *Graham*, *supra* at 700. There is an implication that the doctrine may not be applicable where the petition is "fatally defective." *Carman*, *supra* at 455; *City of Jackson*, *supra* at 716. We consider fraud in the circulation of a petition to be a fatal defect, not mere noncompliance with a procedural requirement. We decline to apply the election-cures-error doctrine in this case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael J. Matuzak