STATE OF MICHIGAN

COURT OF APPEALS

CARL BREEDING, TYRONE WILSON, REV. CHARLES HARPOLE, CHENCIKIA HERRON, and MIRIAM BROWN DORSEY,

Plaintiffs-Appellants, Cross-Appellees,

v

JACKSON CITY CLERK,

Defendant-Appellee, Cross-Appellant.

UNPUBLISHED
July 15, 1997

No. 194386
Jackson Circuit Court
LC No. 95072586

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Following a bench trial, plaintiffs were denied a writ of mandamus to compel defendant to certify plaintiffs' petitions and place a referendum issue on the city's election ballot. Plaintiffs appealed as of right from this order. Defendant cross-appealed, raising alternate grounds for affirmance and arguing that the trial court committed error.

The first issue raised by plaintiffs is whether the doctrine of estoppel should apply to preclude defendant from successfully asserting that plaintiffs' petitions were defective because it is undisputed that the petitions lacked an identifying statement as required by a provision of the Home Rule Cities Act, MCL 117.25(1)-(2); MSA 5.2104(1)-(2). *Herp v Lansing City Clerk*, 164 Mich App 150, 160; 416 NW2d 367 (1987). This Court reviews plaintiffs' equitable estoppel argument de novo. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 582; 458 NW2d 659 (1990).

In general, equitable estoppel arises when (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on that belief; and (3) the other party will be prejudiced if the first party is allowed to deny the existence of those facts. *Guise v Robinson*, 219 Mich App 139, 144; 555 NW2d 887 (1996). Estoppel may also specifically arise pursuant to the positive acts of municipal officials that induced a plaintiff to act in a certain manner, and where a plaintiff relied upon the official's actions by incurring a change of position or making expenditures in reliance upon the official's actions. *Parker v West Bloomfield Twp*, 60 Mich App 583, 591; 231 NW2d 424 (1975) (quoting 9 McQuillin, Municipal

Corporations (3d ed), § 27.56, pp 755-757). Although the circumstances of each case will determine whether estoppel is to be applied against a local government, this Court described a plaintiff's required three-part showing in the following manner:

> One adverse to the municipality and seeking application of the doctrine of estoppel must show a good faith reliance upon the municipality's conduct, lack of actual knowledge or lack of the means of obtaining actual knowledge of the facts in question, and plaintiff must show a change in position to the extent that plaintiff would incur a substantial loss were the local government allowed to disaffirm its previous position. [*Id.*, 592 (citations omitted).]

There is no evidence in this record that plaintiffs did not rely in good faith upon defendant's assertions, the first part of the required showing described in *Parker, supra,* 592. However, there is evidence that plaintiffs had means of obtaining actual knowledge of the facts in question. The city clerk testified that the commission advised plaintiffs to seek outside counsel, and there was undisputed testimony that the city clerk gave plaintiffs a copy of the city charter, which outlined the requirements of the referendum procedure and referred the reader to the applicable state statutes, too. Similarly, there is no evidence that plaintiffs would incur a substantial loss were the local government allowed to disaffirm its previous position. *Parker, supra,* 592. Equity, by its very nature, requires the weighing of often competing interests to reach an outcome that is fair and just to all involved. *Public Health Dep't v Rivergate Manor,* 452 Mich 495, 508; 550 NW2d 515 (1996). Although plaintiffs will have to resubmit valid petitions to place this issue before the voters, this result is neither unfair nor unjust because of the comparatively greater injustice in jeopardizing the protections that these petition requirements are meant to afford the citizenry. Thus, plaintiffs have not shown that defendant was equitably estopped from successfully asserting that plaintiffs' petitions were defective. Accordingly, the trial court did not abuse its discretion in denying plaintiffs a writ of mandamus. *Bingo Coalition for Charity – Not Politics v Bd of State Canvassers,* 215 Mich App 405, 413; 546 NW2d 637 (1996).

Plaintiffs also argue that the trial court erred in not ruling on their request for costs pursuant to MCR 2.603(D)(4) after a default judgment against defendant was set aside. We agree. Initially, we note that defendant's argument that this issue is unpreserved because the trial court's order denying mandamus was a final order and disposed of all pending issues, including the issue of costs, is without merit. The court rule governing the dismissal of actions, MCR 2.504(B)(3), does not require that a trial court address the issue of costs in a final order disposing of the claims in a case. *Avery v Demetropoulos,* 209 Mich App 500, 502; 536 NW2d 553 (1995). Instead, because plaintiffs raised this issue below, our review is not precluded. *Peterman v Dep't of Natural Resources,* 446 Mich 177, 183; 521 NW2d 499 (1994).

A trial court's authority to enter a default judgment against a party must fall within the parameters of the authority conferred under the court rules. *Kornak v Auto Club Ins Ass'n,* 211 Mich App 416, 420; 536 NW2d 553 (1995). The court rule governing plaintiffs' request, MCR 2.603(D)(4), states that an order setting aside a default judgment "must be conditioned on the party against whom the default was taken paying the taxable costs incurred by the other party in reliance on

the default." Therefore, the trial court erred in reserving this issue until the conclusion of the litigation because any analysis regarding the prevailing party was neither necessary nor appropriate for an order awarding costs to the party relying on a default. Accordingly, this issue is remanded to the trial court to assess any costs or fees upon defendant that plaintiffs proved they incurred in reliance on the default.

In summary, we affirm the trial court's order denying plaintiffs a writ of mandamus and remand the issue of costs to the trial court. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald