

STATE OF MICHIGAN
COURT OF APPEALS

GARY L. GILLETTE, DVM,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF COMSTOCK,

Defendant-Appellee,

and

CRYSTAL RADIO GROUP, INC.,

Intervening Party-Appellee.

UNPUBLISHED

January 21, 2000

No. 213606

Kalamazoo Circuit Court

LC No. 98-000231 AW

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff filed a complaint for a writ of mandamus after Crystal Radio Group, Inc.'s¹ property was rezoned by defendant's board of trustees and a special exception use permit was issued to Crystal by defendant's planning commission. After allowing Crystal to intervene in the mandamus action, the trial court held a hearing on the complaint for mandamus. It thereafter ruled that plaintiff did not have standing to pursue his complaint and that plaintiff's claims were otherwise untimely or had no merit. Plaintiff appeals by right from the judgment denying a writ of mandamus. We affirm.

Plaintiff first argues that the trial court abused its discretion by allowing Crystal to intervene in this action. The trial court granted Crystal's motion pursuant to MCR 2.209(A)(3), which provides:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

* * *

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

On appeal, plaintiff argues that Crystal failed to meet the above standard because it could not prove that defendant was inadequately representing its interests. We disagree.

MCR 2.209 should be liberally construed to "allow intervention where the applicant's interests *may be* inadequately represented." *Black v Dep't of Social Services*, 212 Mich App 203, 204; 537 NW2d 456 (1995) (emphasis added). The burden with regard to the element of inadequate representation is minimal. *D'Agostini v Roseville*, 396 Mich 185, 188-189; 240 NW2d 252 (1976); *Karrip v Cannon Twp*, 115 Mich App 726, 731; 321 NW2d 690 (1982). Claiming a more narrow interest than that of the other party is sufficient to meet the minimal burden. *Id.* at 732. Here, Crystal's interest in protecting its radio stations from being the subject of a subsequent lawsuit was a much more narrow interest than defendant's interest in protecting the procedures that it utilizes when granting special exception use permits. We find that this distinction in interests was sufficient to support Crystal's right to intervene.

Plaintiff also argues that the trial court abused its discretion by failing to issue a writ of mandamus pursuant to his complaint.

Issuance of a writ of mandamus is proper where "(1) the plaintiff has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has the clear legal duty to perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment." [*McKeighan v Grass Lake Twp Supervisor*, 234 Mich App 194, 211-212; 593 NW2d 605 (1999), quoting *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994).]

Because plaintiff did not have standing to sue, he did not have a clear legal right to performance of the duties that he was seeking to compel. The trial court's failure to grant the relief requested was therefore not an abuse of discretion.

"Standing is a legal term used to denote the existence of a party's interest in the outcome of litigation that will ensure sincere and vigorous advocacy." *House Speaker v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993). Traditionally, a private citizen has no standing to vindicate a public wrong or enforce a public right where he is not hurt in any manner differently than the citizenry at large. *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633-634, 643-644, 662-663, 669; 537 NW2d 436 (1995) (a majority of the Court agreeing, in separate opinions, that the plaintiffs had standing and on this proposition). [*Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 332; 597 NW2d 545 (1999).]

In *Inglis v Public School Employment Retirement Bd*, 374 Mich 10, 13; 131 NW2d 54 (1964), quoting *Wilson v Cleveland*, 157 Mich 510, 511; 122 NW 284 (1909), the Court stated:

It has become the settled policy of this Court to deny the writ of mandamus to compel the performance of public duties by public officers, *except where a specific right is involved not possessed by citizens generally*. [Emphasis added.]

In order to have standing, plaintiff had to show that he was or would be injured in a manner different from that of the rest of the citizenry. *Lee, supra*. Plaintiff failed to do this. In fact, his reliance on general language in the zoning ordinance demonstrates that he believes he has standing simply because he is an interested citizen, and because he has incurred legal expenses in another pending case. He also argues that his incurring these expenses and undertaking these lawsuits have hurt him in a manner different from the rest of the citizenry. Plaintiff seriously misapprehends the premise of standing. His attempts to elevate his position from that of a general citizen to one with standing to sue must fail. In addition, the mere fact that plaintiff was involved in a prior action against both his neighbor and defendant over a perceived zoning violation does not confer standing in this case. The prior litigation does not support a finding that plaintiff is or will suffer a unique harm because of defendant's actions in this case. Because plaintiff did not and could not demonstrate that he was or would be injured in any legally cognizable manner distinct from that suffered by any other citizen, he did not have standing. Based on that factor alone, the trial court properly exercised its discretion in denying the writ of mandamus.

Because plaintiff did not have standing to sue, and the trial court concluded that defendant's numerous claims lacked merit, the trial court properly awarded defendant costs and attorney fees in this case. See MCR 2.114(D) and (E).

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

¹ Crystal Radio Group, Inc. will be referred to as Crystal in this opinion.