

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHIGAN’S PROMISE,

Plaintiff-Appellant,

v

DEPARTMENT OF MANAGEMENT &  
BUDGET and STATE ADMINISTRATIVE  
BOARD,

Defendants-Appellees,

and

REIS-NORTHVILLE, LLC.,

Intervening Defendant-Appellee.

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UNPUBLISHED

March 29, 2007

No. 270719

Ingham Circuit Court

LC No. 05-001294-CZ

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Plaintiff appeals an order of the trial court that granted summary disposition to defendants. We affirm.

Plaintiff objects to the manner and terms of a sale of what is commonly called the Northville Hospital Property (the “Property”). Plaintiff argues that the trial court erred when it failed to find that plaintiff had standing to bring the action under MCR 2.201(B)(4) and MCL 600.2041(3), though plaintiff concedes it cannot assert constitutional standing because it lacks a distinct injury. MCR 2.201(B)(4)(a) provides in pertinent part that “[a]n action to prevent illegal expenditure of state funds or to test the constitutionality of a statute relating to such an expenditure may be brought: (a) in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes.” (Paragraph structure omitted.) Plaintiff contends that the court rule applies to the exclusion of other standing requirements, particularly the “distinct injury” requirement. The language of MCL 600.2041(3) is similar, and states in relevant part as follows:

[A]n action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto may be brought in the name of a

domestic nonprofit corporation organized for civic, protective, or improvement purposes, or in the names of at least 5 residents of this state who own property assessed for direct taxation by the county wherein they reside.

The goal of the standing doctrine is to assure that the named plaintiff will vigorously and fully litigate the issues raised in an action. See *Baker v Carr*, 369 US 186, 204; 82 S Ct 691; 7 L Ed 2d 663 (1962) (observing that standing is the requirement that the named plaintiff have “such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends”); *House Speaker v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993) (“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.”). In *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726, 735-741; 629 NW2d 900 (2001), our Supreme Court clearly indicated that the standing doctrine is firmly grounded in constitutional concerns. Specifically, *Lee* observed that the doctrine is rooted in the “Cases and Controversies” clause of the federal constitution,<sup>1</sup> and the related separation of powers doctrine.<sup>2</sup> *Id.* at 735-736.

In *Michigan Ed Ass’n v Superintendent of Pub Instruction*, 272 Mich App 1; 724 NW2d 478 (2006), this Court analyzed whether a non-profit organization that cannot establish the elements of constitutional standing may assert “statutory” standing under the court rule and statute. The plaintiff in that case claimed standing under MCL 600.2041(3) and MCR 2.201(B)(4), but did not assert constitutional standing because, it argued, its statutory privilege exempted it from the constitutional requirement. *Id.* at 4, 11-12. This Court denied the plaintiff’s claim and ruled that “[a]ny alleged ‘injury’ to plaintiff is based on conjecture and speculation.” *Id.* at 6. The Court also cited precedent holding that the Legislature may not “expand the powers of the judiciary by conferring standing on a party that does not otherwise meet the constitutional test [because to do so would] violate[] the separation of powers” doctrine due to its modification of the “historical definition of judicial power.” *Id.* at 9. For the same reasons, plaintiff lacks standing to pursue this action.

Citing *Detroit Firefighters Ass’n v City Of Detroit*, 449 Mich 629; 537 NW2d 436 (1995), plaintiff also claims that even if it did not have standing to pursue the action, the trial court should have issued an opinion on the substantive issues of the claim due to its likelihood to reoccur. We disagree.

Plaintiff contends that *Detroit Firefighters* stands for the proposition that in certain cases, even if a plaintiff lacks standing to bring the action, the court may reach the merits of the case. *Id.* at 638. In that case, the plaintiff firefighters alleged that they would suffer increased risk of death and serious physical injury if Detroit’s mayoral office was allowed to reallocate monies

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<sup>1</sup> US Const, art III, § 2.

<sup>2</sup> “[T]he law of . . . standing is built on a single basic idea—the idea of separation of powers.” *Raines v Byrd*, 521 US 811, 820; 117 S Ct 2312; 138 L Ed 2d 849 (1997).

designated for the fire department by the city council. *Id.* at 632, 638. A majority of the justices in *Detroit Firefighters* concluded that the plaintiffs had standing to pursue the claim. *Id.* at 652, (Cavanagh, J. and Boyle, J., dissenting in part and concurring in part), 662 (Mallett, J. and Levin, J., concurring in result only). Thus, *Detroit Firefighters* differs from this case.

Though they phrased it somewhat differently, the plurality of the justices in *Detroit Firefighters* who chose to address the substantive issue despite their conclusion that the plaintiffs lacked standing did so because they determined that the issue was significant, likely to reoccur, and yet evade review. *Id.* at 638 (Weaver, J.), 643 (Riley J. and Brickley, C.J., concurring). Justice Weaver concluded the Court should look at the issue “because it is significant to the public and likely to reoccur.” *Id.* at 638, citing *In re Ford*, 187 Mich App 452, 454; 468 NW2d 260 (1991) (concluding to decide a moot issue “because it is of public significance and is likely to recur in the future, yet evade review”). Justices Riley and Brickley concluded that they would “reluctantly . . . reach the substantive issue because it is capable of repetition, yet evading review.” *Id.* at 643.

While the issue here is one of public significance, there is nothing to indicate that it is likely to evade review if it arises again. Under *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d 800 (2004), a non-profit organization may bring suit as long as its claim alleges a specific harm to its affected members. *Id.* at 629. Similarly, MCR 2.201 and MCL 600.2041 authorize groups of 5 or more plaintiffs to bring suit in the event they have been directly affected by the state's expenditure. Therefore, the trial court did not err when it decided not to reach the substantive issues of plaintiff's claim.<sup>3</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad

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<sup>3</sup> Plaintiff further asserts that the trial court erred when it failed to grant its motion for summary disposition. Because we conclude that plaintiff lacks standing and that the trial court did not err when it declined to address the merits of the claim, we need not address this final assertion of error.