Court of Appeals, State of Michigan

ORDER

Mayor of Detroit v Governor of Michigan

Docket No. 287462

LC No. 08-122051 CZ

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

The Court orders that the motion to waive the requirements of MCR 7.209 is GRANTED.

The Court orders that motion for stay is DENIED.

In this expedited appeal, plaintiff Mayor of the City of Detroit challenges the trial court's order denying plaintiff's emergency motion for a temporary restraining order and preliminary injunction, dismissing plaintiff's complaint, and denying defendant's request for attorney fees and sanctions. On appeal, plaintiff posits three arguments: (1) that the removal statute, MCL 168.327, is impermissibly vague and therefore violates the "fair and just treatment" requirement within art. 1, § 17 of the Michigan Constitution of 1963, (2) that the removal hearing procedures deny him the opportunity to properly defend himself, and (3) the defendant Governor cannot be an unbiased fact finder.

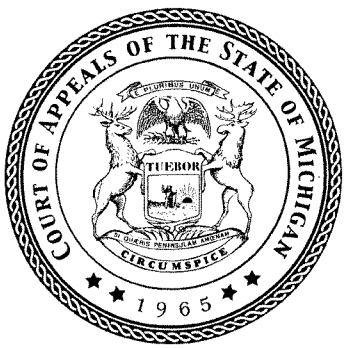
In determining whether to grant a temporary restraining order or preliminary injunction, a court must consider the following four well-established prerequisites: "(1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits, and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted...." *Thermatool Corp v Borzym,* 227 Mich App 366, 376; 575 NW2d 334 (1998). Here, the trial court did not abuse its discretion in denying the injunctive relief because plaintiff has not shown a likelihood of success on the merits. *Higgins Lake Property Owners Ass'n v Gerrish Twp,* 255 Mich App 83, 105-106; 662 NW2d 387 (2003).

MCL 168.327 is not impermissibly vague and does not deny plaintiff the right to fair and just treatment at the executive hearing. Although the statute does not define "official misconduct," under a vagueness challenge "the meaning of a term must be 'fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meaning of words.'" *People v Hrlic,* 277 Mich App 260, 263; 744 NW2d 221 (2007), quoting *People v Sands,* 261 Mich App 158, 161; 680 NW2d 500 (2004). Here, the term "official misconduct" has a well-established meaning in Michigan law, under both analogous statutes and in the legal dictionary. See, eg., *Krajewski v Royal Oak,* 126 Mich App 695, 697-698; 337 NW2d 635 (1983) and *People v Coutu,* 235 Mich App 695, 706; 599 NW2d 556 (1999). Likewise, "sufficient evidence," though a general term, is not impermissibly vague for purposes of this executive hearing because its meaning can be ascertained by resort to a legal dictionary. *Hrlic, supra.* Additionally, the Governor has provided plaintiff with a working definition of that term, thus granting plaintiff notice of the applicable standard for that issue.

Finally, plaintiff has not presented sufficient evidence to call into question the ability of the Governor to preside over the executive hearing in a fair, impartial and unbiased manner. See, eg., *Cain v Dep't of Corrections,* 451 Mich 470, 495-500; 548 NW2d 210 (1996).

The trial court order is AFFIRMED.

Presiding Judge



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 02 2008
Date

Sandra Schultz Mengel
Chief Clerk