

Court of Appeals, State of Michigan

ORDER

Citizens United Against Corrupt Govt v Wayne Co Bd of Canvassers

Docket No. 320654

LC No. 14-000700-AW

Kurtis T. Wilder
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

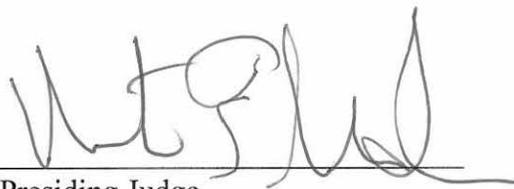
The Court orders that the order of March 5, 2014, is VACATED to the extent that it held the application in abeyance.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(E)(2), that the February 28, 2014, order of the Wayne Circuit Court denying defendant's motion for protective order and for stay of discovery hereby is REVERSED. Defendant is entitled to a protective order and a stay of discovery at least until the circuit court issues a decision on defendant's pending motion for summary disposition, which raised questions of law appropriate for the circuit court to decide pursuant to MCR 2.116(C)(8). Further, to the extent that defendant cited MCR 2.116(C)(10), summary disposition before the close of discovery is not premature if there is "no fair chance that further discovery will allow the party opposing the motion to present sufficient support for its allegations." *CMI Int'l, Inc v Internet Int'l Corp*, 251 Mich App 125, 135; 649 NW2d 808 (2002). Under the totality of the circumstances, and for purposes of judicial economy, the circuit court should decide the motion for summary disposition before ordering the parties to engage in discovery. The case is REMANDED to the circuit court for it to decide defendant's motion for summary disposition. This Court further directs the circuit court to consider whether plaintiff has met the "actual controversy" requirement necessary under *Lansing Schools Education Ass'n v Lansing Bd of Education*, 487 Mich 349; 792 NW2d 686 (2010), to establish standing under MCR 2.605 in support of the instant action for declaratory judgment.

Moreover, we are troubled by the conduct of plaintiff's counsel, Andrew Paterson, which we describe hereafter. In an ex-parte conversation initiated by a commissioner of this Court, Paterson was advised by the commissioner that an application was pending in this matter, and asked whether he would adjourn the pending depositions which appellant challenged in the application in order to give this Court additional time to review the application and plaintiff's answer. Paterson represented that the "depositions were off" and that he would seek to compel the depositions to be heard at a later time. The commissioner asked Paterson to fax a letter to the Court confirming that he would adjourn the depositions. Paterson represented that he was not in his office and would fax the letter to the Court the following morning.

Paterson failed to fax a letter to the Court confirming his agreement to adjourn the depositions pending this Court's review. Rather, this Court was advised by appellant's counsel that Paterson instead filed an emergency motion in the circuit court seeking to immediately compel the taking of those depositions which were at issue in the pending application on the date and time originally scheduled or by 10:00 a.m. the following day. Statements made by counsel to Court personnel must be trustworthy, as this Court relies on such statements, particularly when deciding how to process emergency interlocutory applications, and Paterson's actions in this matter impeded the orderly processing of the instant application. Given these facts, we direct the Clerk of this Court to refer attorney Paterson to the Attorney Grievance Commission for investigation regarding his conduct referenced above. See MCR 7.216(A)(7); MCR 9.104; MRPC 3.3(d).

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



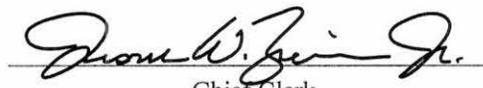
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 03 2014

Date



Chief Clerk