

STATE OF MICHIGAN
COURT OF APPEALS

HARRY R. JAVENS,

Plaintiff-Appellant,

V

CITY OF HAZEL PARK,

Defendant-Appellee.

UNPUBLISHED

May 22, 2003

No. 236725

Oakland Circuit Court

LC No. 01-033676-AW

Before: Whitbeck, C.J., and White and Donofrio, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order dismissing his complaint for a writ of mandamus. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Mandamus is a writ issued by a court of superior jurisdiction to compel a public body or public officer to perform a clear legal duty. *Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999), rev'd on other grounds 464 Mich 726 (2001). Mandamus is an extraordinary remedy that may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner. *North Oakland Co Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 57; 572 NW2d 240 (1997). Such a writ may be issued where (1) the plaintiff has a clear legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). The party seeking the writ has the burden of proving entitlement to such relief. *Keaton v Beverly Hills*, 202 Mich App 681, 684; 509 NW2d 544 (1993). The trial court's decision regarding an order of mandamus is reviewed for an abuse of discretion. *Baraga Co v State Tax Comm*, 466 Mich 264, 268-269; 645 NW2d 13 (2002).

While a court speaks through its written judgments and orders, *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977), a city council speaks only through minutes and records kept at duly organized meetings. 4 McQuillan, *Municipal Corporations* (3rd ed rev 2002), § 13.07, p 822. The minutes of a meeting as certified serve as an order which may be appealed. *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 404-405; 534 NW2d 143 (1995). Therefore, plaintiff failed to establish that defendant had a duty to issue a separate order reflecting the action taking at the council meeting. Thus, the trial court did not

abuse its discretion in denying relief. While plaintiff contends that he is entitled to a writ compelling the city to certify the minutes of the meeting, that issue was not raised or addressed below and thus is not preserved for appeal. *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000).

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio