

STATE OF MICHIGAN
COURT OF APPEALS

ERIC WARREN BRIGHT,

Plaintiff-Appellant,

v

CITY OF GRAND RAPIDS,

Defendant-Appellee.

UNPUBLISHED

August 14, 2007

No. 270529

Kent Circuit Court

LC No. 06-002820-AS

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's order dismissing his complaint for a writ of superintending control. We affirm.

The grant or denial of a petition for superintending control is reviewed for an abuse of discretion. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 346; 675 NW2d 271 (2003). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

The process of seeking an order of superintending control is not an appeal. It is an original civil action designed to require a lower court or tribunal to perform a clear legal duty. *Beer v Fraser Civil Service Comm*, 127 Mich App 239, 242; 338 NW2d 197 (1983); MCR 3.302(A). "The superintending control power of a circuit court extends to administrative tribunals of a judicial or quasi-judicial nature." *Stabley v Shelby Twp Supervisor*, 145 Mich App 497, 500; 378 NW2d 524 (1985). An order of superintending control cannot be issued if another adequate remedy is available to the party seeking the order. MCR 3.302(B). Administrative remedies constitute another adequate remedy and such remedies, such as an appeal to an administrative body, must be exhausted unless the appeal would be futile. *Stabley, supra* at 500-501; *Barham v Workers' Compensation Appeal Bd*, 184 Mich App 121, 131; 457 NW2d 349 (1990).

Plaintiff was issued a notice of violation of the city's housing code. Grand Rapids City Code, ch 140. The city has established a housing appeal board "for the purpose of hearing and deciding appeals concerning the application or interpretation of the provisions or the Standards" of the housing code. *Id.*, art 5, § 8.525. Any person who is issued a notice of violation by the city as part of its enforcement of the housing code may appeal the notice within 20 days of

issuance to the housing appeal board. *Id.*, §§ 8.527 and 8.528. Because plaintiff had an adequate remedy in the form of appealing the notice of violation to the housing appeal board and did not allege any facts to show that such an appeal would have been futile, he was not entitled to an order for superintending control. Therefore, the trial court did not abuse its discretion in dismissing the complaint.

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Kirsten Frank Kelly