

STATE OF MICHIGAN
COURT OF APPEALS

In re PATRICK MOORE.

PATRICK MOORE,

Plaintiff-Appellant,

UNPUBLISHED
September 16, 2010

v

37TH DISTRICT COURT, 37TH DISTRICT
COURT JUDGE, ROBERT J. CURTIS, and CITY
OF WARREN,

No. 292933
Macomb Circuit Court
LC No. 09-002417-AS

Defendants-Appellees.

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, Warren Police Officer Patrick Moore, appeals as of right from a circuit court order denying his request for an order of superintending control. We have decided this appeal without oral argument.¹ We affirm.

I. BASIC FACTS

Officer Moore brought this action in Macomb Circuit Court for an order of superintending control on behalf of himself and other similarly situated Warren police officers. Officer Moore challenged the authority of defendants, the 37th District Court; the 37th District Court Chief Judge, John M. Chmura; and the district court administrator, Robert J. Curtis to implement a new procedure to resolve traffic citations.² Under the new procedure, a person who receives a citation can elect to participate in a Civil Infraction Conference (CIC) to negotiate a plea agreement. The circuit court summarized the key points of the civil infraction conference process as follows:

¹ MCR 7.214(E).

² The City of Warren later intervened as a defendant.

A CIC gives individuals who receive a citation an opportunity to negotiate a plea and pay the citation. The CIC takes place with a representative from the Warren Police Department and a court clerk[,] *and the officer who issued the citation is not required to be present at the CIC.* If a plea agreement is not reached during the a [sic] CIC, the individual who received a citation will still have the opportunity to deny responsibility and proceed to either an informal or formal hearing. If an individual who received a citation does not appear at his or her CIC, that individual will be defaulted in the same manner as if the individual failed to appear at a hearing.

It is important to note in this case that individuals who receive civil infractions are not required to participate in a CIC. Clerks have been instructed to inform individuals calling to schedule a hearing for their civil infraction citations regarding all available methods of resolving the citation and to specifically inquire into what the individual is seeking to accomplish when she or he resolves his or her citation. If the individual is interested in avoiding points on his or her driving record, then the clerk has been instructed to encourage the individual to schedule a CIC so that he or she may enter into a plea for a lesser or zero-point offense.^[3]

A memorandum from the 37th District Court explaining the new CIC procedure noted that “[i]n most cases, a defendant’s motivation for scheduling a hearing is to plea to a no point [sic] offense.” Therefore, according to the district court, the CIC procedure would essentially simplify the procedure by giving such defendants “an opportunity to negotiate a plea and pay the ticket at the window.” The district court distinguished that type of situation from those in which a defendant wishes to contest his or her responsibility and get “his/her day in court”; then, an informal hearing would be the “best choice.”

In the complaint for a writ of superintending control, Officer Moore alleged that the CIC procedure conflicted with MCL 257.741 through .748 and MCR 4.101, which, he asserted, required the issuing officer to be involved in plea negotiations. According to Officer Moore, the current laws governing civil infractions provide that the court must offer a traffic violator a hearing and that an officer’s attendance at that hearing cannot be waived. Officer Moore contended that, under the law, only the prosecuting official or the issuing police officer could amend a violation. Officer Moore alleged that defendants had “a clear legal duty to refrain and desist from unilaterally implementing procedures for civil infraction conferences as an ‘option’ to traffic offenders and to otherwise comply with existing civil infraction statutes and applicable court rules.” Officer Moore contended that officers’ “appearances and duties at civil infraction informal hearings . . . are being unlawfully compromised” by the new procedure. He further alleged, “The elimination of the police officer who issued the citation from attendance at a Civil Infraction Conference compromises the exercise of police officer duties contrary to established law and such could result in the improper dismissal or amendment of legitimate citations.”

³ Emphasis added.

During a show cause hearing, the circuit court ruled that Officer Moore lacked standing because he has

not alleged any particularized injury or harm. Instead he claims violation of due process and notice and potential detriment to his job performance. The alleged violation of due process rights and notice are not relevant to the plaintiff. The concepts of due process and notice are designed to protect the plaintiff and the defendant in a suit so that his or her Constitutional rights are not abridged. Officer Moore's Constitutional rights are never at risk of being abridged because he is not a respondent in a civil infraction pending in the 37th District Court, nor is he the plaintiff in a civil infraction suits [sic]. The City of Warren is the plaintiff and Officer Moore is merely a witness for the City of Warren.

The circuit court also found it noteworthy that "no citations issued by Officer Moore have been scheduled for a CIC."

The circuit court then turned to Officer Moore's substantive claim and ruled that Officer Moore had not shown that the civil infraction conference procedure was improper. The circuit court first noted that the district court must comply with the civil infraction procedures set forth by statute and court rule. And, in the circuit court's opinion, the law did not support Officer Moore's argument that the issuing officer must be present during all plea negotiations. The circuit court pointed out that MCR 4.101(C) did not require the issuing officer to be present at *all* hearings, the court rule only required the issuing officer's presence at an MCR 4.101(C) informal hearing. The circuit court then noted that the Michigan State Court Administrative Office's (SCAO) opinion on the issue, while nonbinding, was "enlightening and persuasive[.]" The circuit court explained that the SCAO recognized a "number[] of events" at which the issuing officer's presence was not required, including, a defendant's:

(1) pleading responsible to the original charge by paying the fine and costs without appearing at court, . . .

(2) pleading responsible to the original charge by appearing before a magistrate, . . .

(3) pleading responsible with explanation to the original charge by submitting a letter to the magistrate which may result in mitigation of the sanction but not the reduction or dismissal of the charge, . . .

. . . (4), pleading responsible with explanation to the original charge by appearing before a magistrate which may result in mitigation of the sanction but not reduction or dismissal of the charge, . . . [and]

(5) pleading responsible to a charge amended by the plaintiff's representative,

The circuit court then explained that MCR 4.101(A)(2) did not support Officer Moore's argument that only the issuing officer or the prosecuting official could amend the violation. The circuit court explained that MCR 4.101(A)(2) actually stated that "[a] violation alleged on a

citation may not be amended except by the prosecuting official or *a police officer for the plaintiff.*”⁴ According to the circuit court, “There is no statutory language that supports plaintiffs’ proposition that the police officer for the plaintiff must be the issuing officer. The language of MCR 4.101 supports defendant’s [sic] position that the issuing officer is not the only police representative legally able to amend the civil complaint.”

The circuit court then added that there was also no statutory language to support that the issuing officer must be present during all plea negotiations. The circuit court explained that:

MCR 4.101 does require a court to notify the police officer who issued the citation to appear at an informal hearing and that the officer’s attendance at the informal hearing may not be waived, but statutory language does not require the issuing officer be notified of an informal hearing or to appear at a formal hearing.

The circuit court found it significant that a traffic violator’s election of a civil infraction conference was not mandatory. And the circuit court noted that since the program’s commencement, there had actually been more informal hearings than civil infraction conferences.

Accordingly, the circuit court denied Officer Moore’s request for an order of superintending control. Officer Moore now appeals.

II. STANDING

A. STANDARD OF REVIEW

Officer Moore argues that police officers who issue civil infractions in the City of Warren have a substantial interest in the litigation, such that they have standing to pursue a complaint for a writ of superintending control. Whether a party has standing is a question of law, which this Court reviews de novo.⁵

B. LEGAL STANDARDS

The Michigan Supreme Court recently overruled *Lee v Macomb Co Bd of Comm’rs*,⁶ under which, the “irreducible constitutional minimum” of standing contained three elements. Those elements were: (1) an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical, (2) a causal connection

⁴ Emphasis added.

⁵ *Michigan Citizens for Water Conservation v Nestle Waters North America, Inc*, 479 Mich 280, 291; 737 NW2d 447 (2007).

⁶ *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726; 629 NW2d 900 (2001), overruled by *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, ___ Mich ___ (Docket No. 138401, decided July 31, 2010).

between the injury and the conduct complained of such that the injury is fairly traceable to the conduct, and (3) likelihood and not merely speculation that the injury will be redressed by a favorable decision.

However, in *Lansing Sch Ed Ass'n v Lansing Bd of Ed*,⁷ the Supreme Court recently held that the *Lee* test “lacks a basis in the Michigan Constitution and is inconsistent with Michigan’s historical approach to standing.” According to *Lansing Sch Ed Ass'n*, “Michigan standing jurisprudence should be restored to a limited, prudential approach that is consistent with Michigan’s long-standing historical approach to standing.”⁸ Therefore, under the *Lansing Sch Ed Ass'n* approach,

a litigant has standing whenever there is a legal cause of action. . . . Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.^[9]

It is undisputed that this Court must follow the precedents that the Michigan Supreme Court establishes,¹⁰ even when those precedents reverse previously well-established law. It is with this requirement in minds that we apply the legal standards in this case.

C. APPLYING THE STANDARDS

Here, Officer Moore does not contend that he has a cause of action provided at law, and we are not aware of any such cause of action that would grant Officer Moore standing in this case.

In the absence of a cause of action provided at law, we next need to determine whether Officer Moore “has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.”¹¹

We first conclude that the statutory scheme does not imply that the Legislature intended to confer standing on issuing officers of civil infractions. MCL 257.741 through .748 set forth

⁷ *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, ___ Mich ___ (Docket No. 138401, decided July 31, 2010), slip op 2.

⁸ *Id.* at slip op 2, 22.

⁹ *Id.* at slip op 22.

¹⁰ *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993).

¹¹ *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, ___ Mich at slip op 22.

the statutory law regarding the issuance of civil infractions. Of those provisions, only MCL 257.745 through MCL 257.747 address the procedures for a traffic violator to respond to a civil infraction citation, including the procedures for informal and formal hearings. However, none of these statutory provisions even mentions a police officer's involvement, nor do they imply that the Legislature intended to confer standing on issuing officers for a court's failure to adhere to the statutory requirements.

We are next to determine whether Officer Moore “has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large[.]”¹² Officer Moore does not claim that he has a special injury or right. Instead, Officer Moore claims that he has substantial interest because of the importance of a “police officer's role in the prosecution of citations in a manner entirely different from some mere civilian witness or the citizenry at large.” According to Officer Moore, the court rules recognize that an officer's “special expertise in traffic matters” and his or her observation of the violation require that the officer be present during plea negotiations. Officer Moore contends that, “An individual officer clearly has a substantial interest in the performance of duties legally compelled by the court rules.”

Contrary to Officer Moore's claims, however, we conclude that a police officer who issues citations does not have a substantial interest in being involved in plea negotiations with traffic violators. First, the court rules do not require that the issuing officer be involved in a civil infraction conference, which we will explain *infra*. Second, the issuing officer's presence is not necessary during a civil infraction conference, the goal of which is merely to afford the traffic violator an opportunity to negotiate a plea to a reduced, and possibly no-point, infraction. During this conference, a senior officer of the Warren Police Department or a city attorney considers the citation at issue and the traffic violator's driving record before amending the citation. If an agreement cannot be reached, then the traffic violator may still request a hearing, at which the issuing officer's presence would then be required. Importantly, during the civil infraction conference, unlike during a hearing, the traffic violator is not contesting responsibility. Therefore, unlike the situation during a hearing, the issuing officer's “special expertise in traffic matters” and his or her observations of the violation are not essential. That is, where a traffic violator merely seeks to plead to a reduced charge, the issuing officer's testimony is not necessary to support the issuance of the citation and refute the traffic violator's denials. Therefore, an issuing officer has no substantial interest in attending a civil infraction conference.

In sum, we conclude that the circuit court did not err in ruling that Officer Moore did not have standing to pursue a writ for superintending control.¹³

¹² *Id.*

¹³ *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005) (stating that this Court should not reverse a lower court when it reaches the correct result, albeit for the wrong reason).

III. SUPERINTENDING CONTROL

A. STANDARD OF REVIEW

Officer Moore argues that the circuit court should have granted his writ for superintending control because the 37th District Court superimposed the civil infraction conference procedure onto the court-rule-governed hearing procedure and violated the requirement that the issuing officer be present during plea negotiations. This Court reviews for an abuse of discretion a circuit court's decision to grant or deny an order of superintending control.¹⁴

B. LEGAL STANDARDS

A circuit court has authority to issue orders of superintending control, which is the proper avenue for a party to challenge an inferior court's practices and proceedings.¹⁵ "Whether an order of superintending control should issue depends upon the circumstances in the specific case."¹⁶ "For superintending control to lie, the plaintiff must establish that the defendant has failed to perform a clear legal duty and that [the] plaintiff is otherwise without an adequate legal remedy."¹⁷

"[A] court has inherent powers to manage its own affairs so as to achieve the orderly and expeditious disposition of cases."¹⁸ However, "exercise of these inherent powers must be 'subject to or not in conflict with valid existing laws[.]'"¹⁹ The Michigan Supreme Court's rulemaking power is "constitutionally supreme in matters of practice and procedure."²⁰

C. APPLYING THE STANDARDS

MCR 4.101 states:

¹⁴ *Shepherd Montessori Ctr Milan v Ann Arbor Twp*, 259 Mich App 315, 346; 675 NW2d 271 (2003).

¹⁵ Const 1963, art 6, § 13; MCL 600.615; MCR 3.302; *Public Health Dep't v Rivergate Manor*, 452 Mich 495, 500; 550 NW2d 515 (1996); *In re Lafayette Towers*, 200 Mich App 269, 272; 503 NW2d 740 (1993).

¹⁶ *Public Health Dep't*, 452 Mich at 503, quoting *People v Burton*, 429 Mich 133, 142; 413 NW2d 413 (1987).

¹⁷ *In re Credit Acceptance Corp*, 273 Mich App 594, 598; 733 NW2d 65 (2007), aff'd 481 Mich 883 (2008), see also MCR 3.302(B).

¹⁸ *In re Credit Acceptance Corp*, 273 Mich App at 601.

¹⁹ *Id.*, quoting 20 Am Jur 2d Courts, § 39, p 430.

²⁰ *In re Lafayette Towers*, 200 Mich App at 275.

(A) Citation; Complaint; Summons; Warrant.

(1) Except as otherwise provided by court rule or statute, a civil infraction action may be initiated by a law enforcement officer serving a written citation on the alleged violator, and filing the citation in the district court.

* * *

(2) *A violation alleged on a citation may not be amended except by the prosecuting official or a police officer for the plaintiff.*^[21]

(3) The citation serves as a summons to command

(a) the initial appearance of the defendant; and

(b) a response from the defendant as to his or her responsibility for the alleged violation.

* * *

(C) Appearance by Police Officer at Informal Hearing.

(1) If a defendant requests an informal hearing, the court shall schedule an informal hearing and notify the police officer who issued the citation to appear at the informal hearing.

(2) The attendance of the officer at the hearing may not be waived.

Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice.

We conclude that the circuit court did not abuse its discretion by denying Officer Moore's request for an order of superintending control because defendants did not violate a clear legal duty by implementing the civil infraction conference procedure. The civil infraction conference procedure is not inconsistent with the court rules, which clearly allow amendment of a violation alleged on a citation by "the prosecuting official or a police officer for the plaintiff."²² Officer Moore contends that plea negotiations are an integral part of informal hearings, at which

²¹ Emphasis added.

²² MCR 4.101(A)(2) (emphasis added).

the issuing officer's presence is required.²³ Therefore, he asserts, the phrase "a police officer for the plaintiff" in MCR 4.101(A)(2) must refer to *the* issuing officer.

However, we note that the court rules do not indicate that amendment of a violation alleged in a citation must occur at an informal hearing. As we explained above, there is a fundamental distinction between a plea negotiation where the traffic violator merely seeks a reduced charge and a hearing where the traffic offender is denying responsibility for the citation. In the former, the violator does not directly challenge the citation. In the latter, the issuing officer's presence is necessary to respond to the violator's direct challenge to the citation.

Officer Moore also contends that the district court has no authority to impose an additional procedure for handling civil infractions. However, the Michigan Supreme Court has rejected the view "that a chief judge is unable to take measures not specifically authorized by court rule[, reasoning that we] instead have invested chief judges with the authority to take measures not *prohibited* by the letter or spirit of the court rules."²⁴ Because Officer Moore has not established that the procedure is "*prohibited* by the letter or spirit of the court rules," the absence of a court rule authorizing the civil infraction conference procedure does not mean that it is inherently invalid.

In sum, Officer Moore did not show that by implementing the new procedure, defendants failed to perform a clear legal duty. Accordingly, we conclude that the circuit court did not err in denying Officer Moore's request for an order of superintending control.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen Fort Hood

²³ MCR 4.101(C).

²⁴ *Schell v Baker Furniture Co*, 461 Mich 502, 513; 607 NW2d 358 (2000) (citation omitted).