

STATE OF MICHIGAN
COURT OF APPEALS

INWOOD TOWNSHIP,

Plaintiff-Appellant,

v

SCHOOLCRAFT ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED

January 31, 1997

No. 184791

Schoolcraft Circuit Court

LC No. 94-002155-AW

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff township sought a writ of mandamus to compel defendant county road commission to perform dust control and maintenance on approximately 2½ miles of lightly traveled rural gravel roads, referred to as “local roads,” within the township. The trial court granted summary disposition for defendant pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right. The Michigan Townships Association has filed an amicus brief aligned with plaintiff’s position, and the County Road Association of Michigan has filed an amicus brief aligned with defendant’s position. We affirm.

This case arises from a number of complaints sent by township supervisor Alan Unger to defendant county road commission stating that certain sections of county roads had become unsafe due to defendant’s “failure to control the escape of contaminants from the unpaved roadway,” in derogation of its statutory duty under MCL 224.21; MSA 9.121. Count I of the township’s complaint sought a writ of mandamus ordering defendant to control the dust levels on local roads. Count II sought a writ of mandamus ordering defendant to repair certain local roads within the township that did not allow water to run off, causing ruts, washouts, potholes, and mud.

With regard to the dust control issue, an affidavit of Joseph A. DeWinter, the road commission’s engineer/manager, stated that it “is the policy of [defendant] that control of dust on local roads in Schoolcraft County is unnecessary in order to keep them reasonably safe and convenient for public travel because of low traffic volumes.” DeWinter stated that dust control was performed on the more heavily traveled gravel roads, and defendant had a program in which townships could obtain dust

control on their lesser-traveled roads. Under the program, townships pay for the dust control materials and defendant applies the palliative to designated road sections at defendant's expense. DeWinter stated that application of dust palliative would cost approximately \$800 per mile for one application. He further stated that the county has 170.24 miles of county roads which would require one to three palliative applications a year. In 1993, funding from the state for Schoolcraft County road maintenance was \$1,350 per mile of local road.

In a second affidavit addressing the road repair claim, DeWinter stated that to completely alleviate the problems complained of by plaintiff, the county would have to reconstruct the 2½ miles of roads at issue. DeWinter estimated the cost at approximately \$150,000 per mile, while reiterating that the county was allotted \$1,350 per mile for local road maintenance by the state. DeWinter also stated that washouts and rutting problems occurred in unpredictable spots, and were repaired as they became known to defendant. Additionally, DeWinter stated that, in light of the extremely low usage of the local roads, they are maintained in a reasonably safe and convenient condition for public travel.

In dismissing Count I of plaintiff's complaint, the trial court found that defendant had a dust control policy and that it was permissibly exercising its discretion in implementing the policy to the exclusion of lesser-traveled roads. In dismissing Count II, the court noted that it would be impossible for plaintiff to establish a fact question concerning defendant's dereliction of duty, and the court declined to substitute its judgment for that of the road commission with regard to the allocation of resources.

A trial court's decision to deny a writ of mandamus will not be reversed absent an abuse of discretion. *Keaton v Beverly Hills*, 202 Mich App 681, 683; 509 NW2d 544 (1993).

Being an extraordinary remedy, "[t]he requirements for issuance of a writ of mandamus are: (1) the plaintiff must have a clear legal right to performance of the specific duty sought to be compelled; (2) the defendant must have the clear legal duty to perform such an act; and (3) the act must be ministerial, "*where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.*"'" [Keaton, supra, p 683; citations omitted; emphasis added.]

Pursuant to MCL 224.21; MSA 9.121, defendant had a broad, general duty to keep local county roads "in reasonable repair, so that they shall be reasonably safe and convenient for public travel." However, the road commission is given considerable discretion in determining the methods to be employed in implementing this duty. *Canton Twp v Wayne Co Rd Comm*, 141 Mich App 322, 328-329; 367 NW2d 385 (1985). Because of the discretionary nature of the road commission's responsibilities, the trial court was without the power to order the implementation of a specific dust control program. *Id.*, p 330. The trial court correctly concluded that it could have done nothing more than enter a general order reiterating defendant's general duties of road maintenance that were already imposed upon defendant by statute. Accordingly, we find no abuse of discretion the court's dismissal of Count I of plaintiff's complaint.

Dismissal of Count II of plaintiff's complaint was proper for the same reason. The record shows that to eliminate the problem of washouts, rutting, and potholes, the 2½ miles of local roads at issue would have to be reconstructed at a cost of \$150,000 per mile, while the county received only \$1,350 per mile for maintenance and repair -- and forty percent of those funds were earmarked for snow removal. The sections of road at issue carried an average of less than two cars per hour. Defendant was aware of washouts and other problems on the local roads, but it had determined that it was more expedient to fix the problems as they arose as opposed to depleting its limited resources to completely reconstruct the roads. The determination of the best way to allocate resources was within the discretion of the road commission. *Canton Twp, supra*, pp 328-329. It was not within the power of the trial court to issue a writ of mandamus ordering defendant to carry out its duties in a particular fashion. *Id.*, p 330. The trial court therefore properly dismissed Count II.

Affirmed.

/s/ Roman S. Gibbs

/s/ Barbara B. MacKenzie

/s/ Richard Allen Griffin