

STATE OF MICHIGAN
COURT OF APPEALS

JOHN N. FISHER,

Plaintiff-Appellant,

v

52nd DISTRICT COURT JUDGE,

Defendant-Appellee.

UNPUBLISHED
October 21, 1997

No. 196878
Oakland Circuit Court
LC No. 96-513460-AS

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court order denying his petition for superintending control. We affirm.

Plaintiff's petition for superintending control stems from the events that followed his receipt of a traffic citation for violating a city ordinance. The 52nd District Court dismissed the case without prejudice when the officer who issued the ticket failed to appear for jury selection. The court directed that the city could refile if the officer had a valid reason for failing to appear. The prosecutor subsequently charged plaintiff under state law. Plaintiff then filed a petition for superintending control in the circuit court to prevent the prosecution of the state charge. The circuit court dismissed plaintiff's complaint, finding that the 52nd District Court had not failed to perform a clear legal duty.

Plaintiff argues that the circuit court erred in declining to exercise superintending control because the 52nd District Court had a clear legal duty to order specific performance of the agreement pursuant to which it dismissed the ordinance violation and, in furtherance thereof, quash the state prosecution. We disagree. This Court will reverse the lower court's decision whether to grant a petition for superintending control only if the court abused its discretion. *In re Goehring*, 184 Mich App 360, 366; 457 NW2d 375 (1990). The writ of superintending control supersedes the writs of certiorari, mandamus and prohibition, and provides one simplified procedure for reviewing or supervising a lower court or tribunal's actions. MCR 3.302(C). The filing of a complaint for superintending control is not an appeal but rather is an original civil action designed to order a lower court to perform a legal duty. *Barham v Workers' Compensation Appeal Bd*, 184 Mich App 121, 127; 457 NW2d 349 (1990).

Superintending control is an extraordinary power which the court may only invoke when the plaintiff has no legal remedy and demonstrates that the court has failed to perform a clear legal duty. *In re Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993); *Czuprynski v Bay Circuit Judge*, 166 Mich App 118, 121-122; 420 NW2d 141 (1988). Therefore, if a plaintiff has a legal remedy by way of appeal, the court may not exercise superintending control and must dismiss the complaint. *Barham, supra* at 127; MCR 3.302(D).

Here, the circuit court did not abuse its discretion in denying the petition because plaintiff did not establish grounds for issuing the order. See *In re Rupert*, 205 Mich App 474, 478; 517 NW2d 794 (1994). The court properly declined to issue an order of superintending control because plaintiff had an adequate legal remedy. *Barham, supra* at 127; MCR 3.302(D). Plaintiff could have requested that the court enforce the agreement, and then appealed from the adverse decision, if any. Further, plaintiff has not demonstrated that the 52nd District Court violated a clear legal duty. The cases cited by plaintiff concern the binding nature of a plea agreement, not the court's legal duty to enforce an agreement to dismiss ordinance violation proceedings. Plaintiff also cites no authority for his assertion that the prosecutor could not file a state charge after the court dismissed the ordinance violation. This Court will not search for authority to support or reject a party's position. *Hover v Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1995).

Plaintiff additionally argues that the circuit court erred in allowing a judge of the 52nd District Court to be represented by counsel in these proceedings. Again, we disagree. Our state constitution provides: "[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney." 1963 Const, Art I, § 13; see also *Rocky Produce, Inc v Frontera*, 181 Mich App 516, 517; 449 NW2d 916 (1989). Plaintiff nevertheless argues that a judge may only proceed in pro per in response to a petition for superintending control. Plaintiff's reliance on *Frederick v Presque Isle Circuit Judge*, 439 Mich 1; 476 NW2d 142 (1991), for this proposition is misplaced. The judge in that case merely elected to appear in pro per. Further, the Legislature has provided that in some circumstances, a county board of commissioners must employ counsel to represent a judge who is a defendant in a civil matter. MCL 49.73; MSA 5.826. Therefore, the circuit court correctly determined that the district court judge was entitled to defend the suit through counsel.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra