

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF MAYFIELD,

Plaintiff-Appellant

and

UNPUBLISHED

March 7, 2000

JERRY E. TATE, BEVERLY A. TATE, RUSSELL
E. DARBEE, LINDA M. DARBEE and PATRICIA
LAND,

Plaintiffs,

v

No. 212714

Lapeer Circuit Court

LC No. 96-022677 CK

CITY OF LAPEER,

Defendant-Appellee.

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff, the Township of Mayfield, appeals as of right from the trial court's orders granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) and (10) in this declaratory judgment action arising out of defendant's sale of water and sewer services to certain residents of Mayfield Township. We affirm.

Plaintiffs¹ alleged that the rates and fees defendant charges nonresidents of the City of Lapeer for water and sewer services is unreasonable, arbitrary, or capricious. The trial court granted defendant partial summary disposition of plaintiffs' action pursuant to MCR 2.116(C)(8), ruling that the Township of Mayfield had no standing to bring suit. Subsequently, the court summarily disposed of the remaining individual plaintiffs' claims pursuant to MCR 2.116(C)(10), ruling that they failed to establish a genuine issue of material fact with respect to whether the water and sewer rates were unreasonable, arbitrary, or capricious.

First, the Township of Mayfield argues that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(8) after ruling that the township did not have standing to file suit.² We disagree. A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A motion for summary disposition pursuant to MCR 2.116(C)(8) should be granted if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). The motion is tested on the pleadings alone, and all factual allegations contained in the complaint must be accepted as true. *Id.*

The concept of standing denotes the existence of a party's interest in the outcome of the litigation. *House Speaker v State Administrative Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993); *Kuhn v Secretary of State*, 228 Mich App 319, 333; 579 NW2d 101 (1998). To have standing, a plaintiff must show a legally protected interest that is in jeopardy of being adversely affected and must allege a sufficient personal stake in the outcome of the dispute to insure that the controversy sought to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution. *Donaldson v Alcona County Bd of County Rd Comm'rs*, 219 Mich App 718, 722; 558 NW2d 232 (1996). A court does not have jurisdiction to offer relief in an action for declaratory judgment unless the parties have standing. *Shavers v Attorney General*, 402 Mich 554, 588-592; 267 NW2d 72 (1978); *J F Cavanaugh & Co v City of Detroit*, 126 Mich App 627, 632; 337 NW2d 605 (1983).

Here, the township has not shown "a legally protected interest that is in jeopardy of being adversely affected." *Donaldson, supra*. While plaintiffs cite *Oakland Co v City of Detroit*, 866 F2d 839 (CA 6, 1989), as authority for its standing, that case is factually distinguishable. Unlike the municipality in *Oakland Co, supra*, the township of Mayfield did not contract to purchase sewer and water services from the city of Lapeer, nor does it utilize the city's sewer or water. The township was not a party to the 1958 easement, the 1971 contract, or any of the individual sewer or water contracts signed by the individual plaintiffs. The 1971 agreement included a provision allowing the township to become a party to that contract on the condition that the township assume ownership and responsibility for the sewer line; however, that condition has not been met. While the township assesses and collects the fees in lieu of taxes paid by its residents who receive city water and sewer services and transmits that sum to defendant, it does not allege that it has the responsibility to pay defendant if township residents are delinquent in paying the fee in lieu of taxes. Unlike the situation in *Oakland Co, supra*, the Township of Mayfield is a mere conduit of payments, and the individual residents were the direct purchasers of the sewer and water services.

The township argues that the 1967 franchise allowing the city to sell its sewer and water services to its residents of the township conveys standing to the township. A franchise tendered to a public utility and accepted by the utility constitutes a contract between the body and the utility. *Constantine v Michigan Gas & Electricity Co*, 296 Mich 719, 728; 296 NW 847 (1941), citing *City of Lansing v Michigan Power Co*, 183 Mich 400, 410; 150 NW 250 (1914). However, the township does not allege a breach of the franchise agreement. Plaintiffs' complaint does not allege damages to the township itself, but seeks relief for certain residents of the township. While the township

claims on appeal that it has standing because it loses potential residents when they learn of the high sewer and water rates, plaintiffs did not allege that injury in their complaint. Furthermore, the complaint indicates that defendant sells water and sewer services only to one residential development in the township. We therefore conclude that the trial court properly granted summary disposition of the township's complaint on the basis of its ruling that the township did not have standing.

Next, the township argues that the trial court erred in granting summary disposition of the individual plaintiffs' claims pursuant to MCR 2.116(C)(10). However, the individual plaintiffs did not file a claim of appeal and are not parties to this appeal. Therefore, this issue is not properly before this Court and we will not address it.

Affirmed

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

¹ Plaintiffs Tate, Darbee, and Land are residents of Mayfield Township and purchase water and sewer services from defendant.

² A motion for summary disposition on the basis that a party lacks standing is more properly brought under MCR 2.116(C)(5), which allows the submission of documentary evidence. MCR 2.116(G)(2) and (5); *Kuhn v Secretary of State*, 228 Mich App 319, 332; 579 NW2d 101 (1998). However, because none of the parties objected to the consideration of the standing issue under MCR 2.116(C)(8) and the trial court decided the motion on that basis, we will consider the issue under MCR 2.116(C)(8).