

STATE OF MICHIGAN
COURT OF APPEALS

PAUL E. WABEKE,

Plaintiff-Appellant,

v

FIFTY-EIGHTH DISTRICT JUDGES,

Defendants-Appellees.

UNPUBLISHED

April 25, 2000

No. 215489

Ingham Circuit Court

LC No. 97-087422-AW

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's entry of an order granting defendants summary disposition pursuant to MCR 2.116(I) based on the court's lack of jurisdiction over plaintiff's petition for a writ of mandamus. We affirm.

Plaintiff attempted to file in Ottawa County's 58th District Court a citizen's complaint against three current or former Holland city officials pursuant to MCR 6.101(C). Following a probable cause hearing, the district court refused to allow the filing of the criminal complaint. Plaintiff then brought this action for mandamus in Ingham Circuit Court. The court eventually ruled that it had no jurisdiction to direct the 58th District Court to docket plaintiff's criminal complaint.

Initially, plaintiff argues that the trial court erred in summarily disposing of his action based on a lack of jurisdiction. Whether the trial court had subject-matter jurisdiction is a question of law that we review de novo. *Specht v Citizens Ins Co of America*, 234 Mich App 292, 294; 593 NW2d 670 (1999). A trial court's decision to grant summary disposition pursuant to MCR 2.116(I) is reviewed de novo. *Asher v Exxon Co, USA*, 200 Mich App 635, 638; 504 NW2d 728 (1993). We conclude that the trial court did not err in summarily disposing of this action.

The mandamus statute on which plaintiff relies, MCL 600.4401; MSA 27A.4401, has been superseded by the court rule governing superintending control. MCR 3.302; *In re Gosnell*, 234 Mich

App 326, 341; 594 NW2d 90 (1999). Superintending control is an extraordinary power that may be invoked when the plaintiff demonstrates that a court has failed to perform a clear legal duty and that he has no adequate legal remedy. *In re Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110, 134; 503 NW2d 885 (1993). Article 6, § 13 of the Michigan Constitution provides that circuit courts shall have supervisory and general control over inferior courts "within their respective jurisdictions." A lower court is not obligated to obey an order of superintending control if the circuit court did not have jurisdiction to order such a writ. *Matter of Hague*, 412 Mich 532, 544-545; 315 NW2d 524 (1982). Jurisdiction over the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it. *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992). The circuit court is a court of general jurisdiction; therefore, subject-matter jurisdiction is presumed unless expressly prohibited or given exclusively to another court by constitution or statute. *Id.* at 38. In this instance, Ingham Circuit Court has jurisdiction to hear superintending control matters; however, the Constitution provides that the circuit court may exercise this supervision only in inferior court within its jurisdiction. Here, Ingham Circuit Court has no superintending control over the 58th District Court of Ottawa County because the 58th District Court is not within its respective jurisdiction. Therefore, the trial court did not err in ruling that it was without jurisdiction.

Plaintiff next argues that the trial court violated judicial canons by determining, one year after the action was filed, that it lacked jurisdiction. However, plaintiff did not raise this issue in the trial court and it was not addressed by that court; therefore, it is not preserved for our review. *In re Lang*, 236 Mich App 129, 135; 600 NW2d 646 (1999). In any event, a challenge to subject matter jurisdiction may be raised at any time, even for the first time on appeal. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997). Neither the court rules nor state statutes place a restriction on the period in which the court must determine its own jurisdiction. Such a concept is antithetical to the rule that subject matter jurisdiction may be raised at any time. Further, the Judicial Tenure Commission and the Supreme Court have exclusive jurisdiction over violations of the Code of Judicial Conduct. Const 1963, art 6, § 30; *Treasurer of the Committee to Elect Gerald D Lostracco v Fox*, 150 Mich App 617, 620; 389 NW2d 446 (1986).

In light of the trial court's lack of jurisdiction, plaintiff's remaining arguments are moot.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Helene N. White