

STATE OF MICHIGAN
COURT OF APPEALS

DOROTHY R. DUNNE and HAROLD DUNNE,

Plaintiffs-Appellants,

v

CITY OF LIVONIA,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 214871
Wayne Circuit Court
LC No. 98-828250-AW

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order dismissing their complaint for mandamus. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs drafted an initiative petition seeking to amend the Livonia zoning ordinance to regulate day care homes in the city. Plaintiffs obtained sufficient valid signatures to place the petition on the ballot. Defendant's city council declined to submit the matter to the voters in the November 1998 election. Plaintiffs brought this action for mandamus seeking to direct defendant to place the matter on the ballot. After a hearing, the trial court dismissed the complaint.

In *Korash v Livonia*, 388 Mich 737; 202 NW2d 803 (1972), the Supreme Court held that the Legislature did not intend to authorize home-rule cities to enact zoning ordinances by initiative. The Court found that the exercise of the charter-authorized right to initiative is not compatible with the city authority to zone, particularly where the city has set up a zoning authority. *Id* at 744. An initiative makes no provision for reports to and from the planning commission, publication and hearings, and an opportunity for affected property owners to file objections. Initiative law and zoning law are hopelessly inconsistent and in conflict. *Id.* at 745.

None of the cases cited by plaintiffs have affected the Supreme Court's clear pronouncement in *Korash* that initiatives are inappropriate in zoning matters. The trial court properly dismissed the complaint for mandamus.

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh

/s/ Hilda R. Gage