

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARGARET LAVELLE and LEEMYRTHIA  
LONG, On Behalf of Themselves and All Others  
Similarly Situated,

UNPUBLISHED  
February 19, 2002

Plaintiffs-Appellees,

v

BOARD OF COMMISSIONERS FOR  
SAGINAW COUNTY and SAGINAW COUNTY  
SOCIAL SERVICES BOARD,

No. 225515  
Saginaw Circuit Court  
LC No. 98-023230-AW

Defendants-Appellants.

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Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendants appeal by delayed leave granted the trial court's order granting partial summary disposition in favor of plaintiffs. We reverse.

In this class action lawsuit filed in 1998 by indigent Saginaw County residents, plaintiffs alleged, among other things,<sup>1</sup> that they had suffered harm because defendants had breached their duty under the Social Welfare Act (SWA), MCL 400.1 *et seq.*, to operate and to provide funding necessary to operate the Resident County Hospitalization ("RCH") program in Saginaw County. It is undisputed in this case that from 1990 forward, defendants stopped funding and operating the RCH program altogether.<sup>2</sup> Under the RCH program in existence before 1990, indigent residents of Saginaw County who had no other insurance to pay for their inpatient hospitalization and related medical expenses could obtain payment for their medical care through the RCH program.

In a motion for summary disposition, plaintiffs requested, among other things, that the trial court issue a writ of mandamus requiring defendant Board of Commissioners for Saginaw County to comply with MCL 400.70 by (1) appropriating adequate funding for the RCH program

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<sup>1</sup> Although the trial court addressed plaintiffs' other allegations, we will not do so because defendants do not raise plaintiffs' other complaints in this interlocutory appeal.

<sup>2</sup> The Board of Commissioners for Saginaw County funded the program at \$1.00 per year.

to operate in Saginaw County in the future and requiring that such prospective funding be no less than the \$275,000 appropriated in 1989 unless defendants submitted satisfactory proof that less funds were required, and (2) appropriating sufficient funds to provide RCH benefits to all class members who apply for them for bills incurred at any time from April 1994<sup>3</sup> to the date this program begins to run prospectively. Although the trial court denied plaintiffs' motion for summary disposition with regard to these issues because it found that questions of fact existed regarding the monetary amount necessary to fund the RCH program, the court did determine that it had the authority to enter a writ of mandamus compelling defendant Board of Commissioners to appropriate certain funds for the RCH program, both prospectively and for purposes of providing retroactive RCH benefits to class members.<sup>4</sup> The court stated that it had the power to order an amount to be paid into the RCH program fund, but that a question of fact existed regarding what the "minimum amount necessary to maintain the program" should be. The court indicated that it would enter an appropriate mandamus order following discovery and trial on the amount of the past debt and the minimum cost of the future RCH program.

On appeal, defendants assert that the trial court erred when it determined that it had the authority to issue a writ of mandamus regarding both prospective and retroactive funding for the RCH program because (1) the Legislature has provided discretion to defendant Board of Commissioners in determining what, if any, eligibility requirements shall exist and what, if any, level of benefit shall be provided to fund the RCH program, and (2) the court lacks jurisdiction to issue a writ of mandamus for an award of retroactive damages. Specifically, defendants assert that the trial court does not have the authority to assess and order specific monetary amounts to be funded, either prospectively or retroactively, into the RCH program.

The instant appeal requires us to interpret statutory provisions of the SWA concerning the RCH program to determine if mandamus relief is available. Generally, we review a trial court's decision regarding a writ of mandamus for abuse of discretion, but where a central issue of a mandamus action involves an issue of statutory interpretation, it presents an issue of law that we review de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 443; 596 NW2d 164 (1999). When construing a statute, this Court must look first to the language of the statute and if the language is unambiguous, judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

Before analyzing the statute, we also need to have in mind the nature of an action for mandamus and its proper legal application. By writ of mandamus a court may direct a public officer or body to perform any duty required by law. MCL 600.4411; see *Kosiba v Wayne Co Bd of Auditors*, 320 Mich 322, 326; 31 NW2d 68 (1948). Damages and costs may be awarded in mandamus actions, but damages are not allowed against "a public officer who, in good faith, acted erroneously." MCL 600.4431. "Mandamus is an extraordinary remedy and an inappropriate tool to control a public official's or an administrative body's exercise of discretion." *Genesis Center, PLC v Commissioner of Financial & Ins Services*, 246 Mich App

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<sup>3</sup> On appeal, plaintiffs state that the date is actually April 1995.

<sup>4</sup> In addition, the trial court granted declaratory, injunctive and mandamus relief to plaintiffs, including ordering defendants to establish and operate an RCH program in conformity with MCL 440.66a. Defendants did not request leave to challenge those aspects of the trial court's decision.

531, 546; 633 NW2d 834 (2001). To obtain a writ of mandamus, a plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, and the defendant must have a clear legal duty to perform the same. *In re MCI, supra* at 442-443; *Musselman v Governor*, 448 Mich 503, 521; 533 NW2d 237 (1995). Further, mandamus may lie to compel the exercise of discretion, but it may not be used to compel its exercise in a particular manner. *Musselman, supra*; *North Oakland County Bd of Realtors v Realcomp, Inc*, 226 Mich App 54, 57; 572 NW2d 240 (1997).

The issue in this case, placed in the context of the applicable law, is whether the trial court erred when it held that it had the power to employ the extraordinary writ of mandamus to order defendants to fund the RCH program with a specific amount of money and to award benefits from that fund retroactively to individuals who the trial court deems to qualify for them. Because the statutory scheme provides defendants with the discretion regarding who qualifies for compensation and what amount of funding is necessary to operate the RCH program, we hold that an action for mandamus is not available as a remedy to plaintiffs.

The statutes primarily at issue in this case are MCL 400.70 and MCL 400.66a. MCL 400.70 pertains to defendant Board of Commissioners' duty to fund the RCH program and provides in relevant part:

The county board of supervisors shall, within its discretion, make such appropriations as are necessary to maintain the various welfare services within the county, as provided in this act, and to defray the cost of administration of these services.

MCL 400.66a, which relates to defendant Social Services Board's duty to operate the RCH program, states in pertinent part:

The county social welfare boards shall make provision for hospitalization which is necessary and not more advantageously provided to the recipient under other law or provided under other sections of this act for every person found in their respective counties under rules of financial eligibility established by the boards . . . .

From the plain language of these statutes, *Sun Valley, supra*, it is clear that defendants are required to operate and fund an RCH program. Thus, the trial court properly ordered, and defendants have not challenged on appeal, that defendants resume operation of an RCH program. Equally clear to us from these statutes is that the level of funding of this program and the eligibility of any individual for benefits from it are discretionary. Defendant Saginaw County Social Services Board is mandated the responsibility to make rules that govern financial eligibility, even to the extent of entering into agreements with hospitals as to the charges and fees for services. MCL 400.66a. Necessarily, this process of creating eligibility rules and entering into contracts with third parties involves making decisions from a wide range of options. Likewise, defendant Board of Commissioners of Saginaw County must fund the various welfare services programs of the county including the RCH program. MCL 400.70. However, the level of funding is not subject to some formula. The trial court recognized as much when it concluded that summary disposition was not appropriate because factual issues regarding funding remained to be determined. Even though the program must be funded, the decision regarding the

appropriate amount of funding, as the statute plainly states, is discretionary. In the context of these circumstances, we believe that the discretionary and extraordinary remedy of a writ of mandamus is inappropriate. Applying that remedy would require the trial court to embroil itself in making choices regarding the operation of the RCH program. By statute, resolution of these matters is vested in defendants. The trial court is not empowered to either oversee the process or dictate the results. Allowing the trial court to decide the level of funding and the eligibility for retroactive benefits would require the court to make discretionary decisions that it is not authorized by law to make, *Musselman, supra*, and are decisions for which statutory law makes defendants responsible.

We disagree with plaintiffs argument that *King v Director of the Midland Co Dep't of Social Services*, 73 Mich App 253; 251 NW2d 270 (1977), controls the present case. In *King*, the Midland County Board of Commissioners had funded its social services program for the year with appropriation, however, the funding was about to be exhausted well before the end of the year. *Id.* at 256-257. The plaintiff brought suit, alleging that the defendant “was required under the Social Welfare Act to provide general assistance to persons in need or to those permanently or temporarily ineligible for categorical assistance and that payments could not be terminated or suspended because the funds appropriated to maintain the general assistance program were insufficient.” *Id.* at 257. The plaintiffs contended that the board of commissioners was required to appropriate sufficient funds to maintain the general assistance program. This Court interpreted MCL 400.70 to require sufficient funding so that qualified recipients would not have their benefits terminated or suspended. *King, supra* at 260-262.

We find *King* factually distinguishable. In the present case, defendants completely failed to fulfill the statutory mandate to run an RCH program and fund it. These are non-discretionary acts that the law requires. If, after the program becomes operational, the funds approved are determined to be insufficient, then perhaps *King* would have some applicability. However, that is not the case presented to us. Here, the trial court would, in effect, design the program, decide retroactively who is eligible, direct funding for the program, and retroactively award payments. These circumstances are distinctly different from those in *King*. In *King*, this Court recognized that setting the level of funding for social services is a discretionary act for county boards to determine pursuant to MCL 400.70. *King, supra* at 261-262. Consequently, we conclude that *King* does not provide support for plaintiffs here.

Reversed.

/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra