

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN B. REDGE, f/k/a SUSAN
SCHMITCHEN REDGE,

Plaintiff-Appellant,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellee.

UNPUBLISHED
September 18, 2008

No. 276579
Ingham Circuit Court
LC No. 05-001329-AW

Before: Fitzgerald, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the February 13, 2007, order dismissing plaintiff's complaint for a writ of mandamus. We affirm.

On July 20, 1992, the Lapeer Circuit Court entered an order granting plaintiff's application to set aside her 1986 conviction for keeping a gambling house.¹ In 1993, the Lapeer Circuit Court denied the prosecutor's request to set aside the 1992 order. Plaintiff filed a complaint for a writ of mandamus in the Ingham Circuit Court in 2005, asking the court to compel defendant to remove the 1986 conviction from plaintiff's record pursuant to the 1992 Lapeer Circuit Court order. Plaintiff also filed a petition for an order to show cause, arguing that defendant was required to obey a valid court order. In its answer to plaintiff's petition, defendant requested that the court dismiss the show cause order, and instead hold an evidentiary hearing to allow defendant to show that plaintiff was not entitled to enforcement of the order. It asserted that shortly after entry of the July 20, 1992, order, it learned that plaintiff's fingerprints matched those of Susan Clark. The Ingham Circuit Court denied the order to show cause and transferred the action to Lapeer Circuit Court "for disposition as this Court finds that venue would be proper in Lapeer County Circuit Court as the contested Order of Expungement was entered in Lapeer

¹ A person convicted "of not more than 1 offense" may apply to set aside the conviction. MCL 780.621. According to the plain language of the statute, "only those persons whose criminal records are blemished by a single conviction for a single crime (crime being synonymous with offense) committed on a single occasion meet the threshold requirement and are eligible for expungement." *People v McCullough*, 221 Mich App 253, 257; 561 NW2d 114 (1997).

County Circuit Court.” This Court reversed the Ingham Circuit Court order and remanded to the Ingham Circuit Court “to determine whether plaintiff is entitled to a writ of mandamus.”

On remand, the trial court held an evidentiary hearing after meeting with counsel for both parties over plaintiff’s objection that the validity of the 1992 order was not an issue that was relevant to the mandamus action. At the hearing, defendant presented the testimony of Douglas Thorne, a fingerprint identification supervisor with the Michigan State Police and expert in fingerprint identification. He compared fingerprint cards for Susan Clark, Susan Schmidtchen Redge, and Susan Barbara Redge. The arrest date for the Susan Clark fingerprints was November 25, 1975, and the arrest date for the Susan Barbara Redge fingerprints was April 22, 1986. Upon examination of the two sets of prints, he concluded that Susan Clark and Susan Barbara Redge are the same person. Defendant introduced a judgment of sentence from the Oakland Circuit Court for Susan Clark. An additional fingerprint card for Susan Barbara Redge, for an arrest date of January 18, 1978, was later admitted into evidence. Thorne testified that, upon examination of the fingerprints, he concluded that Susan Schmidtchen Redge, Susan Clark, and Susan Barbara Redge are the same person.

Following this testimony, the Ingham Circuit Court held that because plaintiff had had a prior conviction, “the order signed by [the Lapeer Circuit Court] . . . is set aside because the application requested by the Plaintiff was falsely obtained.” The Ingham Circuit Court dismissed the order to show cause as well as plaintiff’s complaint for a writ of mandamus. The court found that plaintiff “had affirmatively misrepresented her identity to the Lapeer Circuit Court by failing to disclose that she was convicted in Oakland Circuit Court in November of 1977 of disorderly person: to wit, drunk in public, under the name of Susan Clark.” Because plaintiff had more than one conviction, the Ingham Circuit Court found that she was ineligible to have her conviction set aside.

Plaintiff argues that the Ingham Circuit Court’s improperly inquired into the validity of the Lapeer Circuit Court’s order. Defendant argues that the trial court properly considered the validity of the 1992 order because the order was a necessary element to plaintiff’s writ of mandamus, and thus within the realm of inquiry of the Ingham Circuit Court.

A writ of mandamus requires a showing that the plaintiff has a “clear legal right” to the performance of a duty. *Carter v Ann Arbor City Attorney*, 271 Mich App 425, 439; 722 NW2d 243; 741 NW2d 519 (2006). Defendant presented undisputed evidence that plaintiff had a prior conviction in 1977 that was not revealed to the Lapeer Circuit Court in her application to set aside her 1986 conviction. Because of plaintiff’s prior conviction, the Lapeer Circuit Court lacked authority to set aside her conviction. Unbeknownst to it, the Lapeer Circuit Court proceeded in the absence of statutory authority. Its order is in derogation of separation of powers principles, Const 1963, art 3, § 2, inasmuch as the powers of pardon and commutation are exclusively within the executive branch. *People v Erwin*, 212 Mich App 55; 536 NW2d 818 (1995). But for the statute, the judiciary is without power to expunge a conviction. *People v*

Jones, 94 Mich App 516; 288 NW2d 411 (1979).² Because plaintiff did not have a clear legal right to have her conviction set aside, the Ingham Circuit Court properly dismissed plaintiff's complaint for mandamus.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio

² It would be a waste of judicial resources to remand this matter to the Lapeer Circuit Court to allow defendant to present the proofs that have already been presented to the Ingham Circuit Court because the proofs demonstrate as a matter of law that plaintiff is not eligible to have her conviction set aside,