

STATE OF MICHIGAN  
COURT OF APPEALS

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FRED L. STACKABLE,

Plaintiff-Appellant,

v

SERGEANT DAVID DAHLKE, Individually and  
as Agent for the LANSING POLICE  
DEPARTMENT,

Defendant-Appellee.

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UNPUBLISHED

January 27, 2009

No. 282174

Ingham Circuit Court

LC No. 06-001069-AW

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

MEMORANDUM.

Plaintiff, proceeding in propria persona, appeals as of right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10)<sup>1</sup> in this action seeking a writ of mandamus for the Lansing police to issue parking citations for vehicles parked in plaintiff's private parking lot without his consent. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's summary disposition decision de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

To obtain a writ of mandamus, a plaintiff must show:

(1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial in nature, and (4) the plaintiff has no other adequate legal or

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<sup>1</sup> The motion was brought under both MCR 2.116(C)(8) and (C)(10). Although the court did not identify the subrule under which it granted the motion, because the court considered evidence beyond the pleadings, subrule (C)(10) is the appropriate subrule to apply. *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

equitable remedy. [*Michigan Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506, 514; 708 NW2d 139 (2005) (citations omitted).]

“Whether the defendant had a clear legal duty to perform and whether the plaintiff had a clear legal right to the performance of that duty are questions of law that this Court reviews de novo.” *Id.*

Essentially, plaintiff argues that when read together, Lansing Ordinances §§ 2.17b and 8.06 mandate that when an officer finds a vehicle parked without permission on private property, the officer has no discretion to decide whether to issue a citation.

The use of a writ of mandamus to compel the police to enforce ordinances is addressed in *Gowan v Smith*, 157 Mich 443; 122 NW 286 (1909). There, the Court determined that judicial interference was inappropriate because the Court was unwilling to participate in ongoing supervision of daily actions of the police and because the police commissioner is clothed with discretion in determining how to use his force to enforce the law. *Id.* at 473-474. This holding is consistent with 55 CJS, Mandamus, § 244, p 307, which states:

With respect to the enforcement of police regulations, mandamus is not an appropriate remedy to compel a general course of official conduct for a long series of continuous acts to be performed under varying conditions . . . .

See also *Diamond Match Co v Powers*, 51 Mich 145, 147; 16 NW 314 (1883), in which the Court explained:

When the case presents a single occasion, and calls for an act which is presently determined, it is entirely practicable to direct the act by mandamus. But where the case contemplates something continuous, yet variable in its conditions and aptitudes, the remedy by that process seems an unfit one.

In the present case, plaintiff did not seek to force the police to act in a particular case, but sought judicial interference to require the police to enforce the parking ordinance on a continuous, ongoing basis. The trial court correctly determined that a writ of mandamus in this circumstance was not warranted.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra