

STATE OF MICHIGAN
COURT OF APPEALS

FLOYD CALDWELL,

Plaintiff-Appellant,

v

PAROLE BOARD,

Defendant-Appellee.

UNPUBLISHED

April 7, 2000

No. 215758

Ingham Circuit Court

LC No. 98-088628-AW

Before: Bandstra, C.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition and dismissing plaintiff's complaint for mandamus. We affirm.

In 1975, plaintiff was convicted of two counts of armed robbery and sentenced to two concurrent terms of life imprisonment. His convictions and sentences were affirmed on appeal. In 1993, plaintiff filed motions for relief from judgment and for peremptory reversal, which were denied by this Court. The Supreme Court subsequently denied plaintiff's application for leave to appeal from that order.

Plaintiff subsequently applied to the parole board for a pardon or commutation of sentence pursuant to MCL 791.244(2); MSA 28.2314(2). The board concluded that the application lacked merit, and its recommendation consistent with that finding was forwarded to the governor's office, which denied the request for pardon. Plaintiff then filed a complaint for mandamus, seeking the disqualification of the parole board chairperson and asking the court to compel the board members to conduct a full investigation into the case. Plaintiff claimed that the parole board failed to act on his request for disqualification; had an informal, illegal rule that it would not consider claims of innocence; failed to conduct a full and fair investigation; and violated his right to fair treatment. Finally, plaintiff sought to have all the parole board members disqualified, arguing that they would not be willing to find him innocent after repeatedly denying him parole.

Defendant moved for summary disposition on the ground that the complaint failed to state a claim for which relief could be granted because it had no clear legal duty to do anything other than

conduct a review to determine whether the application for pardon had merit and deliver its recommendation to the governor. The trial court granted defendant's motion pursuant to MCR 2.116(C)(8) and dismissed plaintiff's complaint, concluding that a writ of mandamus could not issue because the parole board fully complied with the procedures mandated by MCL 791.244(2); MSA 28.2314(2). We agree.

Contrary to plaintiff's argument, there is no legal duty on the part of the parole board to conduct a full-scale investigation into his claim of innocence, particularly in view of the fact that the same issues raised by defendant in his application for pardon were considered and rejected by this Court and the Supreme Court in his appeal of right and in his motions for relief from judgment. Furthermore, there is no statutory provision requiring the board to provide reasons for its findings of merit with regard to an application for pardon.¹

Plaintiff claims that reversal of the trial court's order is compelled by the Supreme Court's decision in *Teasel v Dep't of Mental Health*, 419 Mich 390, 409-410; 355 NW2d 75 (1984). However, not only does *Teasel* deal with an unrelated statute, but the defendants in that case essentially admitted that no review had taken place. See *id.* at 405. In contrast, in the instant case the trial court made the factual finding that the board had conducted a proper review and submitted a recommendation to the governor, as required by statute.

We agree with plaintiff that the board erred in failing to address his request for disqualification of Stephen Marschke, the chairperson of the parole board. However, as Marschke did not begin his term as Berrien County Sheriff until well after plaintiff had been convicted and sentenced, and plaintiff admits that Marschke had no prior involvement with the case, we conclude that plaintiff is not entitled to any relief.

Finally, plaintiff claims that the trial court erred in ruling that defendant was entitled to tax costs. We decline to address this issue because it is not ripe for appellate review. Defendant did not file a timely motion for costs, and no order awarding costs was ever entered.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra

¹ Plaintiff's reliance on *In re Parole of Glover*, 226 Mich App 655; 575 NW2d 772 (1997), aff'd in part and rev'd in part sub nom *Glover v Parole Bd*, 460 Mich 511; 596 NW2d 598 (1999), is misplaced. *Glover* involved a prisoner's right to a written explanation of the parole board's decision not to release him pursuant to MCL 791.235(12); MSA 28.2305(12). Plaintiff claims that, under *Glover*, the board was required to give reasons for its conclusion that his application for parole lacks merit. However, MCL 791.244(2); MSA 28.2314(2), which governs applications for pardons, does not require the board to provide a written explanation of its recommendation.