

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE A. OKRAGLESKI and ZIMNY
BOGUSLAVA,

UNPUBLISHED
March 13, 2003

Plaintiffs-Appellants,

v

CITY OF MT. CLEMENS, MT. CLEMENS CITY
COMMISSION, HARRY DIEHL, HENRY
GORDON, DAVID HARRINGTON, BARB
DEMPSEY, BRUCE INGERSOLL, GERALD
COTTRELL, and WILLIAM RUSSELL,

No. 235675
Macomb Circuit Court
LC No. 2000-003605-AS

Defendants-Appellees.

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's July, 3, 2001 order denying their request for injunctive relief and writ of mandamus. We affirm and remand.

Plaintiffs first argue that the trial court erred by refusing to issue a writ of mandamus compelling defendants to secure funds for the restoration of the building at issue. We disagree.

A trial court's decision to grant or deny a writ of mandamus is reviewed for an abuse of discretion. *Michigan Waste Systems, Inc v Dep't of Natural Resources*, 157 Mich App 746, 760; 403 NW2d 608 (1987). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999), or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

The issuance of a writ of mandamus is proper only where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial and involves no exercise of discretion or judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-511; 522 NW2d 686 (1994). We emphasize that mandamus is an extraordinary remedy and

it will not lie to review or control the exercise of discretion vested in a public official or administrative body. *Teasel v Dep't of Mental Health*, 419 Mich 390, 409-410; 355 NW2d 75 (1984).

The specific act plaintiffs sought to be compelled of defendants was the acquisition of grant funds that had at one point been approved by the state. However, we find that the trial court was correct in its determination that plaintiffs had no clear legal right to such action. Specifically, there is no legal authority, statutory, charter or otherwise, affording plaintiffs a legal right to the money, or requiring defendants to have accessed the grant money at issue. Thus, there is no evidence that defendants had a clear legal duty to acquire the grant funds.

Moreover, the initial decision to apply for the grant funds was discretionary. Defendants were not required to file the application requesting funds, but did so voluntarily. Accordingly, it follows that the decision to accept such funds is similarly discretionary. Thus, whether to reapply for, or renew, grant funds is clearly within defendants' discretion, and not action subject to a writ of mandamus. Further, the funds at issue are no longer available; therefore, the requested writ in this instance would be futile. Consequently, we find that the trial court did not abuse its discretion in denying plaintiffs' request for a writ of mandamus.

Next, plaintiffs argue that the trial court erred in refusing to grant injunctive relief prohibiting the demolition of the building at issue. Again, we disagree.

We note that plaintiffs' argument with respect to this issue on appeal consists of one paragraph, and contains no citation to legal authority. Plaintiffs may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims, or unravel and elaborate for them their arguments, and then search for authority either to sustain or reject their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Accordingly, we decline to address this issue.

Finally, plaintiffs argue that the trial court erred in determining that they were not denied due process when prohibited from making a presentation at the commission's hearing regarding the demolition of the building at issue because defendants failed to comport with the "due process requirements set forth in MCL 125.541." This issue presents a question of law which we review de novo. *Rogers v J B Hunt Transport, Inc*, 466 Mich 645, 650; 649 NW2d 23 (2002).

MCL 125.541 provides that in a hearing with regard to the demolition of a building, "the hearing officer should take testimony of the enforcing agency, the owner of the property, and any interested party." Plaintiffs in this instance argue that they were not afforded this right, and were consequently denied due process. However, it is undisputed that, while their initial request was denied, plaintiffs were subsequently offered an opportunity to address the commission. Because this opportunity was offered at the end of the meeting, plaintiffs refused, stating that their witnesses had already left and such a presentation would be futile because the board had already voted. However, plaintiffs could have requested a delay in proceedings to gather their witnesses or an adjournment of the meeting in order to present their case on a different day, and requested that the commission members recast their votes after plaintiffs' testimony. Under the circumstances, we find that there was nothing more defendants could have done to afford

plaintiffs due process in compliance with the controlling statute and their attempt was thwarted by plaintiffs' own actions. Therefore, plaintiffs' argument is without merit.

Because the trial court entered an order staying the building's demolition pending our decision, we remand this case for the ministerial task of vacating this order.

Affirmed and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Karen M. Fort Hood

I concur in result only.

/s/ Joel P. Hoekstra