STATE OF MICHIGAN

COURT OF APPEALS

DESMOND M. WHITE and ROBERT DAVIS,

Plaintiffs-Appellants,

v

WAYNE COUNTY ELECTION COMMISSION and JANICE WINFREY, in her capacity as the Elected City Clerk,

Defendants-Appellees,

and

MARY ANNE KOVARI,

Intervening Defendant/Appellee.

UNPUBLISHED
September 20, 2016

No. 334818
Wayne Circuit Court
LC No. 16-011786-AW

Before: MURRAY, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's final order dismissing plaintiffs' complaint with prejudice. Because plaintiffs' challenge is to the eligibility of a candidate for election on November 8, 2016, to the newly created Detroit Community School District Board, we granted plaintiffs' request to expedite this appeal. See *White v Wayne Co Election Comm*, unpublished order of the Court of Appeals, entered September 19, 2016 (Docket. No. 334818).[1] We affirm.

For two reasons plaintiffs' appeal cannot succeed. First, the trial court did not clearly err in holding that plaintiffs' complaint was barred by laches. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998). Both our Court and the Supreme Court have previously cautioned litigants to refrain from waiting until the "11th hour" to bring a challenge to the electoral process. See *Schwartz v Secretary of State*, 393 Mich 42, 50 n 5; 222 NW2d 517

[1] We appreciate all counsels' efforts in complying with the very tight briefing schedule mandated by the timing of this proceeding.

(1974), *Kuhn v Secretary of State*, 228 Mich App 319, 335; 579 NW2d 101 (1998), and *New Democratic Coalition v Austin*, 47 Mich App 343, 356; 200 NW2d 749 (1972). Here, as the trial court presumably found, plaintiffs waited until September 9, 2016, to first challenge the validity of Mary Anne Kovari's candidacy based upon her Affidavit of Identity, a document which was filed and available to the public no later than July 26, 2016. Yet plaintiffs failed to bring any challenge, in court or otherwise, until just prior to defendant Wayne County Election Commission's decision, and filed their complaint in court on September 14, 2016. At the same time, printing of absentee ballots has commenced and will be completed by September 20, and those ballots must be turned over to local election officials by September 24. As was the case in *Schwartz*, 393 Mich at 50 n 5, it appears as though plaintiffs delayed in the filing of their suit until such time it would become impossible to conduct the general election on the prescribed dates. As such, the trial court did not clearly err in concluding that plaintiffs acted with unexcused delay, which in turn caused prejudice to defendants. *Gallagher*, 232 Mich App at 369.

Second, the trial court did not err in concluding that Kovari was qualified to be placed on the ballot. Contrary to plaintiffs' arguments, recently enacted statutory law governs elections to community school district boards, and relevant for our purposes, is set forth in MCL 380.6, MCL 380.384 and MCL 168.492. Pursuant to those provisions, (1) seven "school electors" are to be elected at the first general election following creation of (or transfer to) a community school district, MCL 380.384(3); (2) a school elector must be qualified under MCL 168.492 and be a resident of the school district on or before the 30th day before the next general election, MCL 380.6(3), which in this case is the November 8, 2016 general election, MCL 380.384(3), and (3) under MCL 168.492, a person is a qualified elector if she is a United States citizen, 18 years of age or older, a Michigan resident for not less than 30 days, and a resident of the city on or before the 30th day before the next general election, i.e., November 8, 2016. As the trial court found, Kovari met these requirements. Plaintiffs' argument to the contrary neglects the more recent and specific law applicable to community school district elections.[2]

Affirmed. No costs, an issue of public importance at issue. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan

[2] *Davis v Chatman*, 292 Mich App 603; 808 NW2d 555 (2011) and *Berry v Garrett*, ___ Mich App ___; ___ NW2d ___ (2016)(Docket No. 333225), are inapplicable because they applied different provisions of the revised school code and election law than are at issue here. Nor did either case address laches.