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STATE OF MICHIGAN

COURT OF APPEALS

BRENDA HILL, LEIGH REED-PRATT, and ROBERT DAVIS,

Plaintiffs-Appellants,

v

DETROIT CITY CLERK and WAYNE COUNTY ELECTION COMMISSION,

Defendants-Appellees,

and

DR. IRIS TAYLOR,

Intervening Defendant-Appellee.

UNPUBLISHED
June 17, 2021

No. 354707
Wayne Circuit Court
LC No. 20-011072-AW

Before: REDFORD, P.J., and BORRELLO and TUKEL, JJ.

PER CURIAM.

In this election case, plaintiffs appeal as of right the circuit court's order denying plaintiffs' emergency motion for declaratory relief and a writ of mandamus, granting intervening defendant Dr. Iris Taylor's motion to intervene, dismissing plaintiffs' complaint with prejudice, and sanctioning plaintiffs under MCR 2.625(A)(2). For the reasons set forth in this opinion, we dismiss plaintiff's appeal as moot with respect to the claims for declaratory relief and a writ of mandamus, affirm with respect to Taylor's motion to intervene, and vacate the trial court's imposition of sanctions.

I. FACTUAL BACKGROUND

On August 27, 2020, plaintiffs filed a verified complaint and an emergency motion in the circuit court, both of which sought a writ of mandamus and declaratory relief related to the November 3, 2020 Detroit Public Schools Community District Board of Education election. According to the complaint, plaintiffs Brenda Hill and Leigh Reed-Pratt were both declared write-

in candidates in the upcoming Detroit Public Schools Community District Board of Education election, and plaintiff Robert Davis was a registered voter of the City of Highland Park who was supporting and campaigning for two nonincumbent candidates for the Detroit Public Schools Community District Board of Education. Plaintiffs asserted in the complaint and emergency motion that the Detroit City Clerk and the Wayne County Election Commission (defendants) were precluded under MCL 168.558 from certifying Taylor as a candidate in the November 3, 2020 general election for the Detroit Public Schools Community District Board of Education because Taylor allegedly did not file two copies of her affidavit of identity with the Detroit City Clerk and did not include on her affidavit of identity the precinct number in which she was registered to vote.

Taylor filed a motion to intervene as a defendant in the action, arguing that she had been specifically named by plaintiffs in the complaint, that plaintiff's allegations were false, and that she had a direct and substantial interest in the outcome of the litigation as it could potentially impair her ability to remain on the ballot for the upcoming election.

The circuit court held a hearing to address the above the pending matters. First, the circuit court granted Taylor permission to intervene under MCR 2.209(B)(2) based on the court's findings that Taylor's claim or defense shared a common question of law with the main action and that permitting her to intervene would not cause undue delay or prejudice to the adjudication of the original parties' rights. Next, the circuit court denied plaintiff's requests for a writ of mandamus and declaratory judgment. The court concluded that plaintiff had not demonstrated a clear legal right to the performance of the duties sought to be compelled under MCL 168.558. The court also seemed to conclude that the plaintiffs' claims were without legal merit and that plaintiff had not demonstrated that the statute had been violated. The circuit court dismissed plaintiffs' complaint with prejudice. Finally, the circuit court found that sanctions were warranted under MCR 2.625(A)(2) because plaintiffs' complaint was "frivolous and vexatious on the point of harassing, Dr. Taylor," and the court thus awarded reasonable attorney fees and costs. This appeal followed.

II. MOOTNESS: DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

With respect to plaintiffs' pursuit of a declaratory judgment and writ of mandamus, plaintiffs argue that defendants should not have certified Taylor to appear on the November 3, 2020 ballot because of the alleged defects in Taylor's affidavit of identity. However, these issues have been rendered moot because the election already has occurred.

"The question of mootness is a threshold issue that a court must address before it reaches the substantive issues of a case." *In re Tchakarova*, 328 Mich App 172, 178; 936 NW2d 863 (2019). Further,

> "[t]his Court's duty is to consider and decide actual cases and controversies." We generally do not address moot questions or declare legal principles that have no practical effect in a case. "An issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." [*Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014) (citations omitted).]

In this case, the November 3, 2020 election already has occurred and plaintiffs admit that Taylor was defeated in the election. Thus, it is impossible for this Court to grant the relief sought by plaintiffs, i.e., disqualifying Taylor from appearing on the ballot in the November 3, 2020 election.[1] A judgment in plaintiffs' favor cannot have any practical legal effect on the existing controversy. Accordingly, these issues are moot. *Id*.

Plaintiffs nonetheless assert that these issues should not be considered moot because "the issues presented herein are of great public significance that are likely to recur and evade judicial review." "[A] moot issue will be reviewed if it is publicly significant, likely to recur, and yet likely to evade judicial review." *Id*. at 660 (citation and quotation marks omitted). "An issue is likely to evade judicial review if the time frames of the case make it unlikely that appellate review can be obtained before the case reaches a final resolution." *In re Tchakarova*, 328 Mich App at 180.

However, plaintiffs merely state in conclusory fashion, and by simply parroting the rule, that the issues presented in this case satisfy the above standards. Plaintiffs do not develop their argument or offer any explanation of how or why such issues are likely to evade judicial review should they recur in the future. Although we do not doubt the public significance of voting issues generally, there is no indication that the specific issues involved here will avoid judicial review in the future. In fact, it is clear that challenges to the validity of a candidate's affidavit of identity may be fully reviewed *before the election occurs* when those challenges are timely and diligently pursued. See, e.g., *Berry v Garrett*, 316 Mich App 37, 40-41, 50-51; 890 NW2d 882 (2016).

Moreover, by merely asserting that these issues are likely to evade judicial review and failing to provide any development of this argument, plaintiffs have abandoned their contention that these issues should not be dismissed for being moot. "[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority. *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008). The "failure to properly address the merits of [an] assertion of error constitutes abandonment of the issue on appeal." *Id*.

III. INTERVENTION

Next, plaintiffs argue that the circuit court erred by granting Taylor's motion to intervene because Taylor failed to attach a "pleading" to her motion as required by MCR 2.209(C). This issue is not moot because its resolution impacts Taylor's status as a party in this action and thus her potential entitlement to the reasonable attorney fees and costs that were imposed as a sanction against plaintiffs under MCR 2.625(A)(2). See MCR 2.201(D)(5) ("A person desiring to appear and show his or her interest in the subject matter of the action must proceed under MCR 2.209.

[1] To the extent plaintiffs suggest on appeal that this Court should void all votes received by Taylor, plaintiffs do not cite any legal authority to support such a proposed remedy. Thus, this argument is abandoned. "[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority." *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

Subject to that rule, the person may be made a party in his or her proper name."); MCR 2.625(A)(2) ("In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."); MCL 600.2591(1) ("Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.").

"This Court reviews for abuse of discretion a trial court's decision on a motion to intervene." *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001) (citation omitted). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *City of Bay City v Bay Co Treasurer*, 292 Mich App 156, 164; 807 NW2d 892 (2011).

MCR 2.209(C) provides that "[a] person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107." The motion must "state the grounds for intervention" and must "be accompanied by a pleading stating the claim or defense for which intervention is sought." MCR 2.209(C)(1) and (2). Under MCR 2.110(A), a pleading is defined as a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to any of those pleadings, and a reply to an answer. "No other form of pleading is allowed." *Id*.

In the instant matter, Taylor's motion to intervene was accompanied by a supporting brief. However, intervening defendant Taylor's motion was not accompanied by any documents defined as pleadings under MCR 2.110(A) which stated the claim or defense for which intervention was sought. Thus, Taylor did not comply with MCR 2.209(C).

Nevertheless, we need not reverse the circuit court's order granting Taylor's motion to intervene. In *SCD Chem Distrib, Inc v Maintenance Research Laboratory, Inc*, 191 Mich App 43, 45; 477 NW2d 434 (1991), this Court stated that it will not "indulge in an overly technical reading of [MCR 2.209(C)] where the interest of justice would not be served." In that case, we declined to reverse a trial court's decision to allow intervention where the intervening party had not technically complied with MCR 2.209(C) but had nonetheless filed a motion that "was sufficient to inform plaintiff of all the [intervening party's] claims." *SCD Chem Distrib*, 191 Mich App at 45.

In this case, Taylor did not assert any claims against plaintiffs. Rather, it is clearly evident from Taylor's motion and brief that she sought to intervene in order to defend against plaintiffs' challenge to her appearance on the ballot, which had specifically named Taylor and sought to prevent her name from being included on the ballot. It is further evident from Taylor's motion and brief that she sought to protect her interest in remaining a candidate for the Detroit Public Schools Community District Board of Education and to ensure that her name appeared on the ballot. She explained that plaintiffs' action directly impacted her candidacy and that her defense against plaintiffs' challenge would involve common questions of law and fact with the main

action.[2] Taylor also argued that her affidavit of identity fully complied with all of the statutory requirements at issue. Finally, Taylor asked the court to assess sanctions under MCR 2.625(A)(2) against plaintiffs for filing a frivolous and vexatious action that was intended to harass Taylor.

Considering that Taylor's motion to intervene and supporting brief provided a detailed legal argument in opposition to plaintiffs' legal challenge seeking to preclude Taylor's name from appearing on the ballot, as well as additionally including a request for sanctions under MCR 2.625(A)(2), Taylor's motion to intervene was sufficient to inform plaintiffs of her defenses and her request for attorney fees and costs. Accordingly, we will not reverse the circuit court's order granting intervening defendant Taylor's motion to intervene. *SCD Chem Distrib*, 191 Mich App at 45.

IV. SANCTIONS

Finally, plaintiffs argue that the circuit court clearly erred by imposing sanctions under MCR 2.625(A)(2).

> A trial court's findings with regard to whether a claim or defense was frivolous, and whether sanctions may be imposed, will not be disturbed unless it is clearly erroneous. "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." [*1300 LaFayette E Coop, Inc v Savoy*, 284 Mich App 522, 533-534; 773 NW2d 57 (2009) (citations omitted).]

Under MCR 2.625(A)(2), "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591 provides as follows:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with

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[2] MCR 2.209(B) provides as follows:

> (B) Permissive Intervention. On timely application a person may intervene in an action
>
> (1) when a Michigan statute or court rule confers a conditional right to intervene; or
>
> (2) when an applicant's claim or defense and the main action have a question of law or fact in common.
>
> In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(*iii*) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

In this case, plaintiffs' claims were premised on a legal argument regarding whether MCL 168.558(2) required an affidavit of identity to include the applicant's voting precinct and a factual argument regarding whether Taylor filed two copies of her affidavit of identity as required by MCL 168.558(1).

Regarding the voting precinct issue, the trial court found that plaintiffs' argument was based on a prior version of the statute that explicitly included that requirement while the current version did not contain that language. However, plaintiffs quoted the current version of the statute in their verified complaint initiating this action and further argued that the current statutory language in MCL 168.558(2) stating that an "affidavit of identity must contain . . . other information that may be required to satisfy the officer as to the identity of the candidate . . ." implicitly included the requirement that Taylor had to include her voting precinct because the affidavit of identity form that the Detroit City Clerk provided for her to complete included a question about the applicant's voting precinct. The trial court rejected plaintiffs' argument.

Regarding the number of copies of the affidavit of identity filed, there was a dispute between the parties over this factual issue. Plaintiff Davis submitted an affidavit in which he averred to have confirmed through conversations with Akilah Williams, who was an elections clerk in the Detroit City Clerk's office, and Alecia Brown, who was the interim deputy director of elections for the City of Detroit, that Taylor did not file two copies of her affidavit of identity when she filed the original affidavit of identity.

However, Taylor submitted an affidavit in which she averred that she completed the affidavit of identity in the Detroit Department of Elections office, that she was assisted in doing so by Detroit Department of Elections employee Jacqueline White, that White made copies of the completed affidavit of identity, that two copies of the affidavit of identity were filed with the Detroit Department of Elections, and that White provided a copy of the affidavit of identity to

Taylor for Taylor's files. The Detroit City Clerk submitted the affidavit of Brown, who averred that she worked within the Detroit Elections Department of the Detroit City Clerk and that the staff of the Detroit City Clerk's office had multiple copies of Taylor's affidavit of identity before Taylor left the Detroit City Clerk's office on the day that she filed her affidavit of identity. The Detroit City Clerk also submitted the affidavit of Williams; she similarly averred that as an employee of the Detroit Elections Department of the Detroit City Clerk, she assisted Taylor when Taylor completed her affidavit of identity and that she had multiple copies of Taylor's affidavit of identity before Taylor left the Detroit City Clerk's office that day.

Plaintiffs contended in the circuit court that these copies had been made by the Detroit City Clerk's office staff and that this was insufficient under the statute. The circuit court rejected plaintiffs' arguments.

In imposing sanctions, the circuit court found as follows:

> But I do want to indicate this, I do think that this is a frivolous motion. That has been filed on behalf of the Plaintiff. I think -- I don't know, Dr. Taylor, I've never met Dr. Taylor in life, but I certainly would conclude that a motion or for a writ of mandamus that was so utterly without any legal justification in this Court's view, does rise to the level of being frivolous and vexatious on the point of harassing, Dr. Taylor. I do think it does fall within MCR 2.65(a)(2), and I am going to order reasonable attorney fees and costs in this matter.

The circuit court did not provide any reason for concluding that plaintiffs' claims were without any legal justification other than the fact that it had ruled against plaintiffs. Plaintiffs advanced a somewhat cogent argument about how to interpret the relevant statutory provisions and submitted evidence to support their claims regarding factual disputes. Our Supreme Court has held that in the context of sanctions under MCL 600.2591, the "mere fact that plaintiffs did not ultimately prevail does not render the . . . complaint frivolous." *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002). Because it does not appear that the circuit court in the present case relied on anything more than plaintiffs' failure to prevail in their position to justify the finding that plaintiffs' claims were frivolous, vexations, and intended to harass, the circuit court clearly erred in making this finding and in imposing sanctions. *Id.*; *1300 LaFayette E Coop*, 284 Mich App at 533-534. We therefore vacate the circuit court's order solely with respect to the imposition of sanctions.

Affirmed in part, dismissed as moot in part, and vacated in part. We do not retain jurisdiction. No costs are awarded. MCR 7.219.

/s/ James Robert Redford
/s/ Stephen L. Borrello
/s/ Jonathan Tukel