

Court of Appeals, State of Michigan

ORDER

DR ANIL KUMAR V BOARD OF STATE CANVASSERS

Docket No. 371222

Kathleen A. Feeney
Presiding Judge

Kirsten Frank Kelly

Adrienne N. Young
Judges

The motion for immediate consideration is GRANTED.

The complaint for mandamus and other related relief is DENIED pursuant to MCR 7.206(D)(3). In our view, plaintiff’s request for relief is fatally flawed on two grounds.¹ First, the action that he seeks to compel—i.e., the post-challenge vetting of disputed elector signatures in a particular fashion (by using, among other things, private databases such as “the Democratic Party’s database of registered voters”)—is neither a “ministerial” task nor one that he has shown defendant Board had any clear legal duty to perform. Although the Board had a clear legal duty under MCL 168.552(8) to investigate and canvass the disputed signatures once a valid challenge was filed, the ensuing investigation process involves the exercise of discretion and professional expertise, and plaintiff cites no legal authority to the contrary. See *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 58 n 11; 832 NW2d 728 (2013) (“A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.”); *Johnson v Bd of State Canvassers*, 341 Mich App 671, 689; 991 NW2d 840 (2022). See also *Johnson v Bd of State Canvassers*, 509 Mich 1015 (2022) (MCCORMACK, C.J., concurring in the denial of leave, joined by ZAHRA, J.) (“A finding that the signatures supporting the plaintiff’s petitions were sufficient is a matter of the Board’s judgment that requires some expertise. Therefore, it is not a ministerial task subject to mandamus. * * * The plaintiff quarrels with the Board’s methodology—he does not claim the Board’s decision was ministerial. Oral argument won’t change this deficiency in his application.”); *id.* (ZAHRA, J., concurring in the denial of leave, joined by VIVIANO, J.) (“even if Johnson [wa]s correct that the Bureau of Elections erred by failing to check every signature against the qualified voter file, Johnson would only be entitled to *that* relief, *not the placement of his name on the ballot*”) (emphasis added).

Secondly, plaintiff’s request for mandamus is premised almost exclusively on disputed facts. In *Conyers v Wayne Co Clerk*, unpublished per curiam opinion of the Court of Appeals, issued June 12, 2018 (Docket No. 344171), pp 2-3, this Court analyzed a similar scenario—albeit one involving a county clerk’s review of challenged signatures, rather than a review of such signatures by the Board and its staff—and affirmed the trial court’s denial of mandamus, reasoning (in pertinent part) as follows:

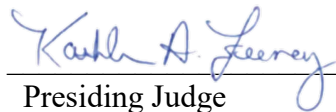
¹ Because plaintiff has not yet been afforded an opportunity to respond to the laches defense raised by defendant, we express no opinion whether laches might bar the claims at issue here.

The trial court properly denied plaintiff's request for a writ of mandamus. A county clerk who receives a sworn complaint challenging the "registration or genuineness" of the signatures on a nominating petition must commence an investigation by comparing those signatures claimed invalid with the signatures appearing on the registration record, MCL 168.552(2), an action which by its very nature is a fact-based dispute. The validity of the signatures stricken by the Wayne County Clerk are clearly in dispute, as plaintiff claims his petition should have been certified because it contained the requisite number of valid signatures, and that many of the names deemed invalid by the Clerk are actually valid. Because of the existence of this inherently factual dispute, the trial court did not abuse its discretion when it denied plaintiff's complaint for a writ of mandamus.

Although *Conyers* is, as an unpublished opinion, not precedentially binding, we find its reasoning highly persuasive² and applicable by analogy in this case. At root, plaintiff's request for mandamus is founded on his factual contention that the Board discounted elector signatures that should instead have been deemed valid. But in its answer, defendant Board explicitly disputes plaintiff's factual allegations in that regard and offers contrary evidence. Given the existence of such material factual disputes, we conclude that it would be inappropriate to grant plaintiff any of his requested relief here. See *McLeod v Kelly*, 304 Mich 120, 125; 7 NW2d 240 (1942) ("Mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts but is designed to enforce a plain, positive duty upon the relation of one who has a clear legal right to have it performed, and when there is no other adequate legal remedy."); accord *Powers v Dignan*, 309 Mich 530, 533; 16 NW2d 62 (1944).

In light of the foregoing, the motion to expedite and to set a briefing schedule is DENIED as moot.

This order constitutes our final judgment in this case, see MCR 7.215(E)(1), and shall have immediate effect pursuant to MCR 7.215(F)(2). No taxable costs are awarded under MCR 7.219(A), as matters of significant public interest are involved.



Presiding Judge

² See MCR 7.215(C)(1); *Whitmer v Bd of State Canvassers*, 337 Mich App 396, 409; 976 NW2d 75 (2021) ("[U]npublished decisions of this Court are not precedentially binding under principles of stare decisis. They may, however, be consulted as persuasive authority.").



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 11, 2024

Date



Chief Clerk