

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES SUTIKA,

Plaintiff-Appellee,

v

ROSCOMMON COUNTY CLERK,

Defendant-Appellant.

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UNPUBLISHED

March 14, 2017

No. 337144

Roscommon Circuit Court

LC No. 16-723378-AS

Before: O'CONNELL, P.J., and BORRELLO and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals by right the circuit court's order granting summary disposition under MCR 2.116(I)(1) in this election case. We reverse.

This case stems from the efforts of plaintiff and others to recall Houghton Lake Community School Board member Kelly Christian. Plaintiff submitted a recall petition to defendant for placement of the recall measure on the ballot in a May 2017 election. Defendant determined that the petition did not have enough valid signatures and rejected it.

Plaintiff brought this action to challenge the invalidation of 23 petition signatures and to compel defendant to count them. One signature was rejected because ditto marks were used to indicate the signer's address, one signature was rejected because the signature was printed, and the remaining 21 signatures were rejected because it appeared that someone other than the signer had written the signer's address or date of signing on the petition. If these 23 signatures were counted, plaintiff would have enough signatures to have the recall measure placed on the ballot.

Defendant responded that the signatures in question were invalid under MCL 168.954. The statute provides in pertinent part that "[e]ach signer of a recall petition shall affix his or her signature, address, and the date of signing".

On the stipulation of the parties, the circuit court expedited the proceedings and issued a ruling on the pleadings under MCL 2.116(I)(1).<sup>1</sup> The court determined that the signatures were valid. Relying on MCL 168.544c(2) and *Families Against Incinerator v Haines*, unpublished opinion per curiam of the Court of Appeals, issued July 29, 2004 (Docket No. 245319), the court stated that if the petition signatures match the signatures on the voter registration cards, defendant may not invalidate the signatures on the basis that the handwriting in the address and date column is not in the signer's handwriting. The court entered an order in plaintiff's favor ordering the 23 signatures to be added to the valid signature count for the recall petition.<sup>2</sup>

Defendant argues that the circuit court erred in ordering that the signatures be counted because they are invalid under Michigan election law. We agree.

The circuit court's order effectively granted plaintiff mandamus relief by directing defendant to count signatures that it deemed invalid. We review a circuit court's grant or denial of a writ of mandamus for an abuse of discretion. *Wilcoxon v City of Detroit Election Comm*, 301 Mich App 619, 630; 838 NW2d 183 (2013). A writ of mandamus is an extraordinary remedy that will only be issued if (1) the party seeking the writ has a clear legal right to the 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 (4) no other remedy exists that might achieve the same result. *Barrow v Detroit Election Comm*, 305 Mich App 649, 661-662; 854 NW2d 489 (2014). We review de novo whether a defendant has a clear legal duty to perform and whether a plaintiff has a clear legal right to performance. *Wilcoxon*, 301 Mich App at 630. We also review de novo questions about the correct interpretation and application of statutes. *Hess v Cannon Twp*, 265 Mich App 582, 589; 696 NW2d 742 (2005).

MCL 168.954 requires each signer of a recall petition to affix his or her signature, address, and the date of signing. In *Schmidt v Genesee Co Clerk*, 127 Mich App 694; 339 NW2d 526 (1983), this Court interpreted MCL 168.954 to require that the signer personally affix the required information. In that case, the circuit court invalidated a recall petition because the dates of signing were not written by the signers. *Id.* at 700-701. We upheld the invalidation of the signatures because MCL 168.954 requires the signer to personally write the information. *Id.* at 107.

Additionally, recall petitions are subject to the rules governing the validity of signatures set forth in MCL 168.544c(2). MCL 168.952(1)(a). MCL 168.544c(2) distinguishes between minor defects that do not affect a signature's validity and egregious errors that do:

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<sup>1</sup> MCR 2.116(I)(1) provides: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."

<sup>2</sup> The circuit court qualified its order by stating that the addition of the printed signature will depend on the printed signature matching the printed name on the voter registration card.

The failure of the circulator or an elector who signs the petition to print his or her name, to print his or her name in the location prescribed by the secretary of state, or to enter a zip code or his or her correct zip code does not affect the validity of the signature of the circulator or the elector who signs the petition. A printed name located in the space prescribed for printed names does not constitute the signature of the circulator or elector. *If an elector does not include his or her signature, his or her street address or rural route, or the date of signing on the petition as required under subsection (1), the elector's signature is invalid and shall not be counted by a filing official.* [Emphasis added.]

The Legislature's use of the word "shall" in MCL 168.954 and MCL 168.544c(2) denotes mandatory action or direction. *Wilcoxon*, 301 Mich App at 631.

The language of MCL 168.954 and MCL 168.544c(2) plainly require electors to personally affix their signatures, street addresses, and dates of signing for their signatures to be valid. Defendant determined that for 23 of the submitted signatures, the signer did not personally affix to the petition his or her signature, address, or date. Because the signatures are invalid under the plain language of MCL 168.954 and MCL 168.544c(2), plaintiff has no right to have them counted and defendant has no duty to count them. See *Barrow*, 305 Mich App at 661-662.

We reverse.

/s/ Peter D. O'Connell  
/s/ Stephen L. Borrello  
/s/ Michael J. Kelly