

STATE OF MICHIGAN
COURT OF APPEALS

PAULINE JEZEWSKI, CHARLES JOHNSON,
and JANE C. HIGGS,

UNPUBLISHED
July 18, 2006

Plaintiffs-Appellants,

v

THOMAS HICKNER and BAY COUNTY
BOARD OF COMMISSIONERS,

No. 264120
Bay Circuit Court
LC No. 04-003759-AW

Defendants-Appellees.

PAULINE JEZEWSKI, CHARLES JOHNSON,
and JANE C. HIGGS,

Plaintiffs-Appellees,

v

THOMAS HICKNER,

No. 264473
Bay Circuit Court
LC No. 04-003759-AW

Defendant-Appellant,

and

BAY COUNTY BOARD OF COMMISSIONERS,

Defendant.

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

In Docket No. 264120, plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. In Docket No. 264473, individual defendant Hickner appeals as of right from the trial court's order denying his request for sanctions. We affirm.

Plaintiffs are clients of the Home Health Care Services operation of the Bay County Health Department. Plaintiffs filed a complaint seeking a writ of mandamus after it was learned that defendant Hickner, the county executive, intended to reduce home health nursing and home health aide staffing levels. The trial court denied the writ of mandamus after an evidentiary hearing revealed that the changes to staffing levels had not caused a loss of services. Plaintiffs amended their complaint to allege that a violation of the Open Meetings Act (OMA), MCL 15.261 *et seq.*, had occurred when defendant board failed to take steps to address the action taken by defendant Hickner and that the modification to the staffing levels constituted legislative action that was contrary to defendant board's appropriations. The trial court granted defendants' motion for summary disposition, but denied the request for sanctions.

Plaintiff first alleges that the trial court erred in denying its request for mandamus relief. We disagree. "A trial court's decision regarding a writ of mandamus is reviewed for an abuse of discretion." *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005). An abuse of discretion occurs when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). The issue of whether a party has standing to enter the courts presents a question of law subject to de novo review. *Lee v Macomb Co Bd of Commissioners*, 464 Mich 726, 734; 629 NW2d 900 (2001).

"Standing is a legal term used to denote the existence of a party's interest in the outcome of litigation that will ensure sincere and vigorous advocacy." *House Speaker v State Admin Bd*, 441 Mich 547, 554; 495 NW2d 539 (1993). It requires that an action be prosecuted by a "real party in interest, . . . one who is vested with the right of action." *Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997); see also MCR 2.201(B). It is a constitutional mandate rooted in the separation of powers. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 621-622; 684 NW2d 800 (2004). To demonstrate standing, a party must establish the following:

First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be "fairly . . . trace[able] to the challenged action of the defendant and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [*Lee, supra* at 739 quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1991).]

Standing requires more than a personal stake in the outcome of the litigation. *MOSES, Inc v SEMCOG*, 270 Mich App 401, 414; ___ NW2d ___ (2006). Rather, the plaintiff must demonstrate that his substantial interest will be detrimentally impacted in a manner different from the citizenry at large. *Id.*

In the present case, plaintiffs failed to meet the criteria for standing. The testimony at the evidentiary hearing established the health care services provided to plaintiffs had not diminished.

Therefore, there was no injury in fact that could be traced to the actions of defendants. Accordingly, plaintiffs did not have standing to maintain their lawsuit.¹

In Docket No. 264473, defendant Hickner contends that the trial court clearly erred in failing to order sanctions for filing and amending a frivolous lawsuit. We disagree. A trial court's determination that an action is frivolous is reviewed for clear error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "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." *Id.* at 661-662. Whether a claim is frivolous is contingent on the facts of each case. *Id.* at 662. The mere fact that the plaintiff did not ultimately prevail does not indicate that the position was frivolous. *Id.* The trial court held an evidentiary hearing to determine that services were not impacted as a result of the reduction in staffing, although scheduling had been affected. Based on the record available, we cannot conclude that the trial court's decision was clearly erroneous.

Affirmed.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Karen M. Fort Hood

¹ We note that the trial court questioned the validity of plaintiffs' standing to file this suit, but nonetheless addressed the claim for mandamus relief. Alternatively, we hold that the trial court did not abuse its discretion when it denied the writ of mandamus. Mandamus is an extraordinary remedy issued to compel one to perform a clear legal duty. See *Jones v Dep't of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003); *Genesis Center, PLC v Financial and Insurance Services Commissioner*, 246 Mich App 531, 546; 633 NW2d 834 (2001). Plaintiffs failed to demonstrate that there was a clear legal duty for which there was no other adequate legal or equitable remedy. *Casco Twp, supra* at 577. Moreover, the trial court properly dismissed the claim alleging violations of the OMA. Defendant Hickner was not subject to the OMA when acting in his executive capacity. *Herald Co v Bay City*, 463 Mich 111, 131; 614 NW2d 873 (2000). Defendant commission did not engage in decision making by allowing the personnel change because the executive had final responsibility for budget expenditures, MCL 141.434(1), and an appropriation does not constitute a mandate to spend. *Detroit City Council v Mayor of Detroit*, 449 Mich 670, 680; 537 NW2d 177 (1995). Standing issues aside, the trial court properly granted summary disposition of the amended complaint.