STATE OF MICHIGAN

COURT OF CLAIMS

KAHLILIA Y. DAVIS,

Plaintiff,

v

DEPARTMENT OF STATE, SECRETARY OF STATE, and JONATHAN BRATER, Director of the Michigan Bureau of Elections,

Defendants.
_____/

OPINION AND ORDER

Case No. 22-000072-MB

Hon. Elizabeth L. Gleicher

Pending before this Court in this election matter are plaintiff's petition for writ of mandamus and emergency ex parte motion for an order to show cause and for entry of declaratory judgment. Also pending at this time is defendants' motion for summary disposition filed pursuant to MCR 2.116(C)(8). Because plaintiff cannot establish a clear legal duty on the part of defendants to accept an amended affidavit of identity, defendants' motion for summary disposition is GRANTED and the petition for writ of mandamus is DISMISSED with prejudice.

I. BACKGROUND

Plaintiff is an incumbent judge of the 36th District Court who seeks to run for reelection. Plaintiff was first elected in November 2016. In August 2017, plaintiff received a "Notice of Late Filing Fee" for a July 2017 quarterly campaign finance statement informing her that she was required to pay an amount in relation to the late filing. Defendant followed up in September 2017 and identified, according to the complaint, "several outstanding campaign finance related items"

for which late fees were owed. Plaintiff alleges that she believed she had resolved the problem in 2018 and that she did not receive any other notifications regarding the July 2017 quarterly statement until June of 2021. Plaintiff contends that she sought clarification at that time, but she never received a response to her request.[1] As a result, she "assumed Defendants had realized it [sic] made a mistake and was no longer seeking payment of the fine" that was allegedly owed in relation to the July 2017 quarterly statement.

On January 25, 2022, plaintiff filed an affidavit of identity, see MCL 168.558, with defendants because she sought reelection. Plaintiff now acknowledges that this affidavit of identity (AOI) was invalid because she checked multiple boxes indicating on which ballot—primary or general election—she wished to appear as a candidate, when only one box was supposed to be checked. In addition, and more significant for purposes of this case, the AOI included a signed and notarized statement from plaintiff that, "as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid . . . ." Plaintiff now admits, however, that she owed fees related to the July 2017 quarterly statement at the time, making her AOI inaccurate. Plaintiff contends that she learned after she submitted her AOI that defendants were still seeking payment of a fee related to the July 2017 quarterly statement.

[1] The email attached to the complaint shows that the message was sent to a member of plaintiff's own committee staff, as well as an individual with a Department of State email address. While not pertinent to the Court's analysis, defendants have represented that the individual no longer worked at the Department of State when plaintiff sent the email for clarification.

Plaintiff withdrew her candidacy and her AOI on February 7, 2022. She also paid the outstanding fee at that time. After paying the fee, plaintiff filed a second AOI in which she corrected the above-noted check-box error. In addition, she also resolved, in her estimation, the outstanding fee issue and attestation related thereto.

On May 17, 2022, defendant Direct of Elections Jonathan Brater sent a letter to plaintiff and informed her that she had been disqualified from the upcoming August 2, 2022 primary election. The letter declared that defendant Department of State was required to disqualify plaintiff from the ballot because, despite what was in plaintiff's January 25, 2022 AOI, she owed a late fee related to her July 2017 quarterly statement. The letter further stated that the AOI could not be cured by withdrawing the original document and resubmitting an updated AOI.

II. ANALYSIS

Plaintiff argues that she has a clear legal right to have her name included on the upcoming primary ballot and that she is entitled to mandamus relief. She argues that her January 25, 2022 AOI was facially invalid because she checked too many boxes and that the AOI was of no effect as a result. Stated otherwise, she argues that it should have never been considered—beyond the purported facial defect—in the first instance. She also argues that defendants' guidance, offered by way of an "Election Officials Manual" declares that a candidate can submit a new AOI to correct problems or issues. In the alternative, she argues that she is entitled to the issuance of declaratory relief.

The Court has discretion to issue declaratory relief to "declare the rights and other legal relations" of parties in a "case of actual controversy." MCR 2.605(A). See also *PT Today, Inc v Comm of Office of Fin & Ins Servs*, 270 Mich App 110, 126-127; 715 NW2d 398 (2006). The

primary relief plaintiff requests in this case, however, is mandamus relief. To be demonstrate entitlement to the extraordinary remedy of mandamus, plaintiff must show:

> (1) [she] has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. [*Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014).]

The Court agrees with defendants that plaintiff cannot show a clear legal duty on the part of defendants to accept the amended AOI. Nor will the declaratory relief sought by plaintiff issue. Defendants were required to reject the January 25, 2022 AOI because it contained an inaccurate statement, and plaintiff has not directed the Court to any authority indicating that defendant was required to accept the amended AOI when the original AOI contained a false statement.

A candidate for elected office in this state must strictly adhere to the requirements contained within the state's election statutes, including those provisions of the law applying to affidavits of identity. *Moore v Genesee Co*, __ Mich App __, __; __ NW2d __ (2021) (Docket No. 355291), slip op at 3.[2] Here, MCL 168.558(4) required plaintiff to provide a signed and notarized statement that, as of the date of the filing of the AOI, "all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to 169.282, have been filed or paid . . . ." MCL 168.558(4) prohibits the certification to the Board of

[2] Plaintiff incorrectly identifies *Moore* as an unpublished decision. In addition, plaintiff's attempt to distinguish *Moore* is unavailing. Plaintiff correctly argues that the case held that an election official had no clear legal duty to accept an amended AOI after the filing deadline. Contrary to plaintiff's suggestion, however, the case made no mention of a right to file an amended AOI before the expiration of the filing deadline.

Election Commissioners "the name of a candidate who fails to comply with this section, or the name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." Thus, a candidate's lack of compliance with MCL 168.558(4) requires defendants to refrain from certifying the candidate. *Moore*, __ Mich App at __, slip op at 3.

Returning to this case, there can be no dispute that plaintiff's January 25, 2022 AOI failed to comply with MCL 168.558(4). As a result, plaintiff had no right to appear on the ballot and defendants had a clear duty to exclude her. The more pressing question becomes whether defendants had a clear legal duty to accept plaintiff's amended AOI. Plaintiff has not provided such authority to the Court, however. To that end, she has not supplied the Court with any compelling authority for the notion that defendants had to accept the amended AOI after the first AOI was found to be defective for containing a false statement. At best, she has pointed to nonbinding guidance indicating that she could submit an amended AOI—and perhaps amendment could be permitted for some issues, such as those that do not involve false statements. However, this is not the same as binding authority declaring that defendants had any sort of duty or obligation to accept the amended AOI. Informal guidance suggesting that a candidate may attempt to remedy a problem does not impose on defendants a clear legal duty to accept a subsequent filing from the candidate, particularly when MCL 168.558(4) plainly required defendant to decline to certify plaintiff's candidacy in light of the false statement made in the AOI.

Likewise, the Court is not convinced by plaintiff's suggestion that the use of the word "an" in MCL 168.558(4) regarding AOIs meant that the Legislature implicitly allowed for a candidate to file multiple AOIs. Instead, the Court finds compelling the language in the last sentence of MCL 168.558(4), which unambiguously declares that an election official "shall not certify . . . the

name of a candidate who executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section." Plaintiff executed an AOI with a false statement, meaning that the only clear legal duty that can be parsed from the statute is a duty to *not* certify plaintiff's candidacy.

Plaintiff's emergency motion seeks to avoid any issues with the statement required by the AOI by arguing that the January 25, 2022 AOI was invalid on its face and that it should never have been considered because of the checkbox issue noted above. However, even accepting this as true, plaintiff still does not explain why this gives rise to a clear legal duty on the part of defendants to accept a second AOI. Nor has she explained why this defect would permit defendants to overlook the clear statutory duty under MCL 168.558(4) to decline to certify plaintiff because of the AOI's omission regarding campaign-finance-related fines. Stated otherwise, plaintiff has presented no reason why the presence of the check-box error required defendant to stop reviewing the AOI and to ignore all other issues that were present in the AOI.

Plaintiff's claim for declaratory relief will be dismissed as well. Plaintiff seeks a declaration that she is entitled to an order declaring that defendants must include her on the August 2, 2022 primary ballot. This is essentially a declaration that she is entitled to mandamus relief. And because her position is without merit in any event, declaratory relief will not issue in her favor.

III. CONCLUSION

IT IS HEREBY ORDERED that defendants' motion for summary disposition is GRANTED under MCR 2.116(C)(8) and that the petition for writ of mandamus is DISMISSED with prejudice.

IT IS HEREBY FURTHER ORDERED that plaintiff's emergency motion is DENIED.

June 1, 2022

Elizabeth L. Gleicher
Judge, Court of Claims