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STATE OF MICHIGAN

COURT OF APPEALS

ROBERT DAVIS,

Plaintiff-Appellant,

v

SECRETARY OF STATE,

Defendant-Appellee.

UNPUBLISHED
August 24, 2026
9:32 AM

No. 382032
Court of Claims
LC No. 26-000135-MB

Before: KOROBKIN, P.J., and FEENEY and MARIANI, JJ.

PER CURIAM.

In this election matter, plaintiff, Robert Davis, appeals by right the Court of Claims' August 14, 2026 order granting summary disposition in favor of defendant, the Secretary of State, and dismissing the case. We affirm.

I. FACTS

Davis filed the instant lawsuit on June 25, 2026, seeking a ruling that Eli Savit, who has been endorsed by the Michigan Democratic Party (MDP) for the office of Attorney General, and Garlin Gilchrist II, who has been endorsed by the MDP for the office of Secretary of State, cannot appear on the November 3, 2026 general election ballot. Davis's June 25, 2026 complaint pleads two counts, one seeking a writ of mandamus and the other seeking declaratory relief. Both counts rest on the same underlying legal theory. Davis alleges that Savit and Gilchrist were not merely "endorsed" by the MDP at its April 19, 2026 endorsement convention, but were in fact "nominated" at that convention. He asserts this is so even though the MDP will hold its fall nominating convention, see MCL 168.596,[1] on August 29, 2026. Pursuant to MCL 168.558(1), a candidate nominated at a political party convention "shall file an affidavit of identity within 1 business day after being nominated with the secretary of state." Davis's position is that, because Savit and Gilchrist were "nominated" at the April 19, 2026 endorsement convention and did not

[1] "The state convention held for the purpose of nominating candidates for state offices to be voted for at the November election shall be known as the 'fall' state convention . . . ." MCL 168.596.

file affidavits of identity (AOIs) within one business day of being so nominated, neither may now be placed on the November 3, 2026 general election ballot.

In the August 14, 2026 order appealed, the Court of Claims rejected this legal argument. The court held that Savit and Gilchrist were merely endorsed, and not nominated, at the MDP's April 19, 2026 convention, and so they "were not required to file an AOI with the Secretary of State within one business day after [that] endorsement convention." Accordingly, the Court of Claims granted summary disposition and dismissed the complaint with prejudice, finding no basis to afford the relief requested by Davis.

On appeal, Davis has made no argument whatsoever about the merits of that legal conclusion. Rather, he attacks the Court of Claims' final disposition of the case on the basis of a preceding, procedural ruling. After Davis filed his complaint, the Court of Claims entered a scheduling order recognizing "the time-sensitive nature of this election matter" and correspondingly requiring the Secretary of State to either file an answer to Davis's complaint or a dispositive motion in lieu of an answer by July 27, 2026. The court further directed that if the Secretary of State filed a dispositive motion, Davis's response would be due by 4:00 p.m. on August 3, 2026, and the Secretary of State's reply would be due by 4:00 p.m. on August 7, 2026.

On July 27, 2026, the Secretary of State filed a motion for summary disposition in lieu of an answer. Relevant to this appeal, the Secretary of State generally argued that the MDP's April 19, 2026 endorsement convention was just that—an endorsement convention—and did not result in the nomination of either Savit or Gilchrist by the MDP. The Secretary of State also directed the Court of Claims to an interpretive statement issued by the Secretary of State in January of this year, in response to a request from another individual who sought the Secretary of State's opinion concerning whether a candidate endorsed at a party's spring endorsement convention would be deemed "nominated" and, as such, then have obligations under the Michigan Campaign Finance Act, MCL 169.201 *et seq*. Consistent with its position in this case, the Secretary of State's interpretive statement answered that question in the negative. A copy of this interpretive statement was provided with the motion.

On August 3, 2026, at 3:49 p.m., Davis filed an amended complaint. In this complaint, he first stated allegations explaining why he believed he had a right to amend his complaint under MCR 2.118(A)(1). Substantively, the amended complaint added one count to those pleaded before. This new, third count asked the Court of Claims to declare that the Secretary of State's interpretive statement was legally incorrect for the same underlying reasons Davis argued with respect to the other two counts. Then, about 15 minutes after filing that amended complaint, Davis filed a response to the motion for summary disposition. Rather than argue the merits of the underlying legal issue he had raised, Davis asserted that the Secretary of State's motion was now moot because his amended complaint superseded the initial complaint, which meant that the Secretary of State's motion sought summary disposition as to a now-inoperative complaint.

The Court of Claims entered an order the following day rejecting the amended complaint, concluding that Davis did not have a right to amend his original complaint under MCR 2.118(A)(1). Davis sought reconsideration, arguing that he did. That motion was denied on

August 5, 2026.[2] The Court of Claims also entered an amended scheduling order stating that Davis could file a substantive answer to the motion for summary disposition by August 7, 2026.

Then, on August 6, 2026, this Court released a published decision in *Barkley v Southfield*, ___ Mich App ___; ___ NW3d ___ (Docket Nos. 369608; 370050; 370112; 370580; 370583; 372060; 372076). *Barkley* is not an election matter but does concern the right to amend a complaint under MCR 2.118(A)(1). And in *Barkley*, this Court held:

> In sum, MCR 2.118(A)(1), by its plain terms, does not condition a party's ability to amend its complaint by right on whether the adverse party has served a responsive pleading; instead, *that subrule permits a party may amend its complaint once by right at any point before, and then up to 14 days after, the adverse party serves its requisite responsive pleading*. This comports not only with the court rule's plain terms, but also with its history and the manner in which published authority from this Court has interpreted it. Plaintiffs thus did not amend their complaints in violation of MCR 2.118(A). [*Id*. at ___; slip op at 13 (emphasis added).]

Citing *Barkley*, Davis moved for reconsideration a second time, again arguing that the Court of Claims could not reject his amended complaint. The Court of Claims again denied reconsideration, holding that *Barkley* was distinguishable and did not require the court to accept his amended complaint. Davis then filed his substantive response to the motion for summary disposition, and the Secretary of State replied. The Court of Claims issued its opinion and order on August 14, 2026, granting summary disposition and dismissing the case.

This appeal followed.

II. ANALYSIS

On appeal, Davis argues that the Court of Claims was required to accept his amended complaint. He does not address the merits of the August 14, 2026 order granting summary disposition, but instead asserts that it must be vacated because it granted summary disposition as to an inoperative complaint. Accordingly, he asks this Court to vacate that summary-disposition ruling and remand the matter to the Court of Claims to accept his amended complaint and resolve the merits of the case expeditiously, given that the MDP will hold its nominating convention on August 29, 2026.

A. STANDARD OF REVIEW

The primary issue to be resolved is whether the Court of Claims reversibly erred by rejecting Davis's amended complaint. A trial court's decision to strike a pleading is reviewed for

[2] Davis also filed a motion for leave to amend the complaint under MCR 2.118(A)(2). The Court of Claims entered a separate order denying that motion, concluding that the amended complaint was unreasonably delayed and would cause undue prejudice to the Secretary of State. Davis does not seek to challenge that conclusion in this appeal.

an abuse of discretion. *Id*. at ___; slip op at 9. "A trial court abuses its discretion when it renders a decision outside the range of reasonable and principled outcomes, which necessarily occurs when it makes an error of law." *Id*. at ___; slip op at 9. The proper interpretation and application of court rules is reviewed de novo. *Id*. at ___; slip op at 9.

B. DISCUSSION

We agree with Davis that, under *Barkley*, the Court of Claims erred by rejecting his amended complaint. Davis, however, has made no attempt to address—and we do not see—why that error entitles him to the relief he seeks through this appeal, in light of the particular set of circumstances presented in this case.

We start with the error. In *Barkley*, *id*. at ___; slip op at 13, this Court set forth a straightforward rule: under MCR 2.118(A)(1), "a party may amend its complaint once by right at any point before, and then up to 14 days after, the adverse party serves its requisite responsive pleading." Davis's filing of his amended complaint fell comfortably within this rule. Davis filed his amended complaint on August 3, 2026. At that point, the Secretary of State had filed a motion for summary disposition in lieu of an answer. The parties dispute whether that motion constituted a "responsive pleading" for purposes MCR 2.118(A)(1). Compare, e.g., *Progress Mich v Attorney General*, 506 Mich 74, 95; 954 NW2d 475 (2020) (explaining that, "[u]nder MCR 2.118(A)(1), [the] plaintiff was entitled to amend its complaint, without seeking leave from the Court of Claims, within 14 days of [the] defendant filing its motion to dismiss") with *Dimondale v Grable*, 240 Mich App 553, 565; 618 NW2d 23 (2000) ("A motion for summary disposition is not a responsive pleading under MCR 2.110(A)."); see also *Barkley*, ___ Mich App at ___ n 12; slip op at 12 n 12 (noting the understanding of "responsive pleading" recognized in caselaw such as *Dimondale* but declining to follow unpublished decisions that have relied on it to foreclose amendment by right before such a "responsive pleading" has been served). Regardless of the answer to that question, Davis was within the timeframe provided by MCR 2.118(A)(1) for amending his complaint once by right. If the Secretary of State's motion was a "responsive pleading," then Davis filed his amended complaint well within 14 days of its service. MCR 2.118(A)(1). If it was not a "responsive pleading," then Davis filed his amended complaint before any such responsive pleading had been served. *Id*. As *Barkley* makes clear, "MCR 2.118(A)(1) sets an outer boundary on when an amended pleading may be filed by right but does not require the filing of a responsive pleading by an adverse party before that right is triggered." *Barkley*, ___ Mich App at ___ ; slip op at 11. Davis thus did not need to wait for the filing of a responsive pleading before amending his complaint once by right pursuant to MCR 2.118(A)(1).

The Secretary of State argues on appeal that *Barkley* is not controlling because it concerned the amendment of a complaint before service of the original complaint had occurred, a fact pattern not at issue in this case. We disagree. While the fact patterns of this case and *Barkley* are distinct in this respect, *Barkley* did not purport to base its holding or analysis regarding MCR 2.118(A)(1) on that distinction. The amended complaint was properly filed in *Barkley* not because it was filed before service of the original complaint, but because it was filed before any responsive pleading had been served—and thus necessarily before 14 days had elapsed since service of any such responsive pleading. Under *Barkley*'s interpretation of MCR 2.118(A)(1), that same conclusion holds true as to the facts presented here, and we see no basis for distinguishing *Barkley* with respect to it.

The Secretary of State also contends that, even if *Barkley* applies in this case, the Court of Claims had the inherent authority to control its own docket. According to the Secretary of State, the Court of Claims' rejection of the amended complaint was a permissible exercise of that authority, given the nature of this case and Davis's actions in response to the scheduling order. A trial court undoubtedly has the general, inherent authority to control its own docket in order to achieve the orderly disposition of the case before it. *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). But a trial court must also comply with the court rules. See MCR 1.103 ("The Michigan Court Rules govern practice and procedure in all [Michigan] courts . . . ."). And as explained, the court rules, as interpreted by this Court in *Barkley*, permitted Davis to amend his complaint by right. The Secretary of State has identified no colorable legal or factual basis for concluding that Davis could not exercise that right in this case.[3]

Accordingly, and as *Barkley* makes clear, the amended complaint was timely filed under MCR 2.118(A)(1) and should have been accepted, as it was Davis's right to amend his complaint once under that rule. Davis's position appears to be that this error automatically entitles him to his requested relief—namely, to a vacatur of the Court of Claims' award of summary disposition to the Secretary of State and a remand for that court to essentially start this case over, albeit with only mere days now before the August nominating convention at issue. Another court rule, however, indicates that our finding of error under MCR 2.118(A)(1) does not necessarily end our inquiry into Davis's entitlement to relief. MCR 2.613(A) provides:

> Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

Davis has made no effort to address this provision, its application to his claim of error, or why refusing his requested relief under the particular circumstances presented by this case would be "inconsistent with substantial justice." See, e.g., *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue."). Nor do we see reason to conclude that it would be.

As discussed, Davis filed his original complaint on June 25, 2026, and the Court of Claims afforded his case expedited treatment to accommodate the nature of his claims and requested relief.

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[3] The Secretary of State makes a passing reference to MCL 600.2301, stating that it provides a court with discretion to allow amendment of pleadings. The Secretary of State does not explain how this statute would permit rejection of a pleading, or otherwise develop an argument that the Court of Claims' rejection of the amended complaint in this case can be justified by the statute. And to the extent the Secretary of State directs this Court to MCR 2.118(A)(2) and the Court of Claims' denial of Davis's motion for leave to amend under that rule, that issue is not before this Court. Davis has not raised it, and for the reasons discussed, the question here is whether Davis had a right to amend his complaint, not whether he should have been granted leave to do so.

Davis's complaint raised two claims, both premised on the same underlying legal theory. Consistent with the Court of Claims' expedited schedule for the case, the Secretary of State provided Davis with its position on the merits of his claims through a motion for summary disposition. In response, Davis chose not to address the merits in kind; instead, right at the deadline for articulating his substantive position, he opted to amend his complaint and to seek to effectively start the merits-adjudication process over—only with even less time now to carry out that process in a manner that would duly accommodate his requested relief. And the core substantive amendment he made was to add a third claim that shared the same underlying legal theory as the other two; at no point has Davis suggested otherwise or explained how the new, third claim might prevail on this underlying legal theory should the other two not. See *id*.

The Court of Claims, though erroneously refusing to accept this amendment, proceeded to provide Davis with a substantive answer to the underlying legal question shared by all his claims within the expedited timeframe required by those claims. Davis has at no point suggested that his amended complaint would fare any better under the Court of Claims' substantive analysis than his original one did—nor, for that matter, has Davis made any attempt to challenge the merits of the Court of Claims' ruling on appeal, opting instead to abandon any such arguments. See *id*. Furthermore, this merits analysis, in our view, is sound. As the Court of Claims explained:

> MCL 168.596 of the Michigan Election Law provides:
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> > The state convention held for the purpose of nominating candidates for state offices to be voted for at the November election shall be known as the "fall" state convention and the county convention held for the purpose of electing delegates to the fall state convention shall be known as the "fall" county convention. The state convention held not less than 37 days before the first Monday of April in every odd numbered year shall be known as the "spring" state convention, and the county convention held for the purpose of electing delegates to the spring state convention shall be known as the "spring" county convention.
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> Under MCL 168.591(1), "the state convention of all political parties for the nomination of candidates for state offices in the even numbered years shall commence not less than 60 days before the general November election. The date, time, and location of the state convention shall be designated by the state central committees of the various political parties in their call for a state convention. The calls shall be issued at least 60 days before the August primaries." See also MCL 168.598(1)[.] On May 31, 2026, the Michigan Democratic Central Committee approved the call for its fall convention that will be held on August 29, 2026. The MDP sent that call to all its members on June 5, 2026.
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> After a political party holds its fall convention, the party must forward to the Secretary of State a list of the names of all candidates nominated at the state convention. MCL 168.686. After receiving the list of nominees, the Secretary of State "shall forward a copy" of the list received to the board of election commissioners of each county. *Id*. A candidate nominated for a state office at a

political party convention "shall file an affidavit of identity within 1 business day after being nominated with the secretary of state." MCL 168.558(1).

The Michigan Election Law generally regulates the political party conventions in the State of Michigan. See *Heitmanis v Austin*, 899 F2d 521, 522 (CA 6, 1990). It clearly provides that political parties will hold a fall nominating convention where the parties will determine the nominees at the convention[, MCL 168.596], that the parties must forward to the Secretary of State a list of the names of all candidates nominated at the state convention[, MCL 168.686], that nominated candidates shall file an AOI within one business day after being nominated with the Secretary of State[, MCL 168.558(1)], that the Secretary of State (or relevant officer) shall not certify to the board of election commissioners the name of a candidate who fails to comply with MCL 168.558(1)[, MCL 168.558(4)], and that the Secretary of State forward a list of candidates nominated at the convention to the board of election commissioners of each county[, MCL 168.686].

Plaintiff contends that the MDP's spring endorsement convention nominated Savit and Gilchrist for state office. Plaintiff focuses on the language in MCL 168.558(1) that "[a] candidate *nominated* for a . . . state . . . office at *a* political party convention . . . shall file an affidavit of identity within 1 business day after being *nominated* with the secretary of state." [(Emphasis added.)] Plaintiff argues that the MDP's spring endorsement convention was "a" political party convention and that the MDP "nominated" Savit and Gilchrist for a state office at that convention.

The Michigan Election Law does not require an endorsement convention. The endorsement convention is entirely a creature of internal Democratic party rules and procedures, legally unrelated to the formal nominating process outlined in state law. The documents attached to plaintiff's complaint show that the endorsement convention and the nominating convention are different events with different purposes. The MDP chose to issue a spring call for an endorsement convention "to *endorse* Democratic candidates to the November General Election (emphasis added)." The term "endorse" means "to approve openly," "to express support or approval of publicly and definitely," such as "a mayoral candidate." *Meriam-Webster's Collegiate Dictionary* (11th ed). The term "nominate" means "to propose as a candidate for election to office." *Id*. At the endorsement convention the MDP publicly expressed support for the candidacies of Savit and Gilchrist—that is, the MDP endorsed Savit's and Gilchrist's candidacies—but the MDP did not propose Savit and Gilchrist as candidates for election to office to the Secretary of State. In accordance with the Michigan Election Law, the MDP will nominate its candidates for office at the fall nominating convention and will provide the names of its candidates to the Secretary of State after the fall nominating convention.

Savit and Gilchrist were not nominated for office at the MDP's endorsement convention and were not required to file an AOI with the Secretary of State within one business day after the endorsement convention. Plaintiff is not entitled to a

> declaration that the SOS has a duty not to certify to the election commissions of each county the names of Savit and Gilchrist as candidates for the offices of Michigan Attorney General and Secretary of State, respectively, to the November 3, 2026 general election ballot, nor is he entitled to a writ of mandamus compelling her to do the same. The Court therefore GRANTS summary disposition of the declaratory judgment and mandamus claims in favor of the SOS. [Footnotes omitted; ellipses in original.]

We see no error in this analysis, nor any reason to think its substance would apply any differently or less completely to Davis's amended complaint—and again, Davis has offered nothing whatsoever on appeal to suggest otherwise. See *Johnson*, 256 Mich App at 339-340. Nonetheless, he now seeks to send the matter back to the Court of Claims for another ruling, with an ever-vanishing amount of time for that ruling to be issued and any appeal of it completed within a timeframe that would duly accommodate the relief he is pursuing through this lawsuit.

As discussed, Davis had a right to amend his complaint as he did; he should not have been denied that right. But here we are, and the task before us on appeal is to determine not only if error occurred, but whether the relief sought for that error is in order. And Davis has wholly failed to explain why, given the particular set of circumstances presented by this case, it would be "inconsistent with substantial justice" to let stand the Court of Claims' award of summary disposition to the Secretary of State, rather than vacate that ruling and remand as he requests. MCR 2.613(A). Accordingly, while we agree with Davis that the Court of Claims erred under *Barkley* when it rejected his amended complaint, we disagree that he has demonstrated entitlement to the relief he has requested on appeal for that error in this case.

Affirmed. No costs, a public question being involved.

/s/ Daniel S. Korobkin
/s/ Kathleen A. Feeney
/s/ Philip P. Mariani