STATE OF MICHIGAN

COURT OF CLAIMS

DOUGLAS G. KIRK, individually and on behalf of other non-motorized transportation infrastructure users,

Plaintiff,

v

Case No. 24-000088-MB

Hon. James Robert Redford

MICHIGAN DEPARTMENT OF TRANSPORTATION, MDOT DIRECTOR BRADLEY WIEFERICH, and MDOT SOUTHWEST REGION ENGINEER WILLARD THOMPSON,

Defendant.
_____/

OPINION AND ORDER GRANTING DEFENDANTS' APRIL 29, 2025 MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFF'S APRIL 1, 2025 MOTION FOR SUMMARY DISPOSITION

In this action, plaintiff, a private citizen and bicycle enthusiast, filed suit for a writ of mandamus to compel defendants, the Michigan Department of Transportation (MDOT) and MDOT Southwest Region Engineer Willard Thompson, to replace direct cross-street access for nonmotorized traffic in a roadway that was reconstructed to include only "Michigan lefts" or "J" turns. Following discovery, the plaintiff and defendants filed motions for summary disposition.

The act that plaintiff seeks to compel is not ministerial and defendants have no clear legal duty to perform it. Accordingly, plaintiff cannot establish entitlement to a writ of mandamus. The

Court GRANTS defendants' April 29, 2025 motion for summary disposition and DENIES plaintiff's April 1, 2025 motion for summary relief in his favor.

I. BACKGROUND

On May 1, 2023, defendants began reconstruction on an eight-mile rural stretch of US-131 in Kalamazoo and St. Joseph Counties between the village of Schoolcraft and the city of Three Rivers. There are several county roads that intersect US-131 in this area and some that end in a "T." It appears that only one has a traffic signal. The posted speed limit is 55 miles per hour. The roadway previously was divided by a grassy median with open access for vehicles to drive straight through or make direct left-hand turns prior to the reconstruction (straight-through access points).

Concerned about the number of severe motor vehicle accidents in the area, defendants decided to redesign the roadway. Defendants blocked the straight-through access points and installed "Michigan left" or "J" turns in the median. Drivers can no longer make a direct left turn or travel straight through intersections across US-131. Instead, drivers must make a right turn onto US-131 and use the J turn lane in the median to turn left before either driving along US-131 in the opposite direction or making a right turn onto an intersecting street.

Plaintiff is a bicyclist. He alleges that the new design of US-131 is unsafe for nonmotorized roadway users (NMRUs), such as bicyclists, pedestrians, and users of assisted devices, because it forces them to also use the J turns and thereby travel with high-speed motorized vehicle traffic for a longer distance than before the reconstruction. Plaintiff contends that defendants could have achieved optimal safety for all roadway users by leaving the straight-through access points in place while incorporating J turns for motorized vehicular traffic and installing signage about proper usage. Plaintiff contends that defendants violated MCL 247.660k and MCL 247.660p of the State

Trunk Line Highway System Act (the Act) and MDOT's "Complete Streets" policy in failing to incorporate features to make the roadway safe for NMRUs.

Plaintiff filed suit, seeking a writ of mandamus directing defendants to construct "means for non-motorized traffic to cross US-131" at the intersections of YZ Avenue, Flowerfield Road, Muskrat Road, Cotherman Lake Road, Michigan Avenue, Johnson Road, Moorepark Road, and Heimbach Road.[1]

Following discovery, the parties filed competing motions for summary disposition. Plaintiff asserted that defendants "intentionally did the opposite of what the law requires" in redesigning the roadway in a manner that made it more dangerous for NMRUs. This not only violated the complete-streets provisions of the Act, plaintiff contended, but amounted to negligence per se and discriminated against the NMRUs that the statutory provisions are intended to protect. Plaintiffs further relied on the doctrine of res ipsa loquitor for the proposition that defendants' acts were the necessary cause of the danger faced by NMRUs. Although plaintiff introduced these tort concepts into his motion for summary disposition, he raised no tort claims in his complaint.

Defendants, on the other hand, argued that plaintiff lacked standing to bring this suit, because he did not suffer any special injury separate from the citizenry at large and there was no recognized legal cause of action under the relevant statutes. Defendants further argued that plaintiff is not entitled to a writ of mandamus because the complete-streets provisions of the Act

[1] Following negotiations with plaintiff, defendants added sidewalks across the median at XY Avenue to allow NMRUs to directly cross US-131 at that intersection.

do not create a ministerial duty on the State's part to reconstruct straight-through access points along this stretch of US-131. Rather, the statutes in question grant defendants significant discretion in determining how to design roadways. And defendants contended that plaintiff's bid for relief is barred by the doctrine of laches because plaintiff waited until the construction project was well under way to raise his concerns despite that defendants held open meetings and issued several press releases regarding the nature of the project.

II. SUMMARY DISPOSITION

Summary disposition is supported under MCR 2.116(C)(5) when the plaintiff lacks legal capacity to file suit. In considering a motion for dismissal on this ground, the Court must consider the pleadings and all evidence submitted by the parties. *Int'l Union UAW v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. The Court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion" to determine if there exist any genuine issues of material fact that must proceed to trial. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

III. STANDING

"The purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy. Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355 (2010)

(quotation marks and citation omitted). Standing exists when the statutes at issue expressly create a cause of action. *Id.* at 358. The Act does not create a cause of action in this matter.

Accordingly, the Court must conduct a deeper review:

> Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant . . . has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.* at 372.]

Plaintiff contends that he alleged a special injury different from the citizenry at large: the rights and safety concerns of NMRUs, which is a small portion of the citizenry of this State, to safe passage on Michigan's roadways. Plaintiff alleges that he is an avid bicyclist who frequently rides in the area of US-131. The Court finds this is sufficient to confer standing on plaintiff to file this suit seeking a writ of mandamus. Accordingly, the Court DENIES defendants' motion for summary disposition on this ground. However, summary disposition in defendants' favor is warranted on other grounds.

IV. NO QUESTION OF FACT REGARDING MINISTERIAL DUTY

As noted, plaintiff seeks a writ of mandamus to compel a specific action on defendants' part. "Mandamus is not a matter of right, but rather one of grace. . . and of discretion." *Toan v McGinn*, 271 Mich 28, 33; 260 NW 108 (1935).

> To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that: (1) the plaintiff 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 v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014).]

The Court finds that plaintiff has not created a genuine issue of material fact that he is seeking the compulsion of a ministerial act. "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." *Hillsdale Co Senior Servs v Hillsdale Co*, 494 Mich 46 n 11; 832 NW2d 728 (2013) (quotation marks and citation omitted). The installation of straight-through access points along this stretch of US-131 to improve road safety for NMRUs is not a ministerial act; defendants were required to use their discretion to make several decisions in this regard.

One purpose of the Act is to improve safety for NMRUs on roadways. The title for 2010 PA 135 states, in relevant part: "AN ACT . . . to promote safe and efficient travel for motor vehicle drivers, bicyclists, pedestrians, and other legal users of roads, streets, and highways. . . ." MCL 247.660k was first enacted through 1972 PA 327 and provides for the consideration of NMRUs in roadway planning. The statute currently provides, in relevant part:

> (1) Transportation purposes as provided in this act include provisions for facilities and services for nonmotorized transportation.
>
> (2) Of the funds allocated from the Michigan transportation fund to the state trunk line fund and to the counties, cities, and villages, a reasonable amount, but *not less than 1% of those funds* shall be expended for construction or improvement of *nonmotorized transportation services and facilities*.
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> (3) An improvement in a road, street, or highway that meets accepted practices or established best practices and facilitates nonmotorized transportation such as the paving of unpaved road shoulders, the widening of lanes, the addition or improvement of a sidewalk in a city or village, or any other appropriate measure shall be considered to be a qualified nonmotorized facility for the purposes of this section.
>
> (4) Units of government need not meet the provisions of this section annually, if the requirements are met as an average over a reasonable period of years, not to exceed 10.
>
> (5) The state transportation department or a county, city, or village receiving money from the Michigan transportation fund annually *shall prepare a 5-year*

program for the improvement of qualified nonmotorized facilities which when implemented would result in the expenditure of an amount equal to at least 1% of the amount distributed to the state transportation department or the county, city, or village, whichever is appropriate, from the Michigan transportation fund in the previous calendar year, multiplied by 10, less the accumulated total expenditures by the state transportation department or the county, city, or village for qualified nonmotorized facilities in the immediately preceding 5 calendar years. . . . The department shall notify each affected county, city, or village when the department completes preparation of its 5-year program. . . . The department shall consult with a county, city, or village when planning a nonmotorized project affecting a transportation facility within the county, city, or village.

(6) *Facilities for nonmotorized transportation including those that contribute to complete streets as defined in section 10p* may be established in conjunction with or separate from already existing highways, roads, and streets and ***shall*** *be established when a highway, road, or street is being constructed, reconstructed, or relocated,* ***unless***:

(a) The cost of establishing the facilities would be disproportionate to the need or probable use.

(b) The establishment of the facilities would be contrary to public safety or state or federal law.

(c) Adequate facilities for nonmotorized transportation already exist in the area.

(d) The previous expenditures and projected expenditures for nonmotorized transportation facilities for the fiscal year exceed 1% of that unit's share of the Michigan transportation fund, in which case additional expenditures shall be discretionary. . . . [Emphasis added.]

MCL 247.660p, as referenced in MCL 247.660k(6) states, in relevant part:

(1) As used in this section:

(a) "Complete streets" means roadways planned, designed, and constructed to provide appropriate access to all legal users in a manner that promotes safe and efficient movement of people and goods whether by car, truck, transit, assistive device, foot, or bicycle.

(b) "Complete streets policy" means a document that provides guidance for the planning, design, and construction of roadways or an interconnected network of transportation facilities being constructed or reconstructed and designated for a transportation purpose that promotes complete streets and meets all of the following requirements:

(*i*) Is sensitive to the local context and recognizes that needs vary according to urban, suburban, and rural settings.

(*ii*) Considers the functional class of the roadway and project costs and allows for appropriate exemptions.

(*iii*) Considers the varying mobility needs of all legal users of the roadway, of all ages and abilities.

* * *

(2) The state transportation commission shall do both of the following by not later than 2 years after the effective date of the amendatory act that added this section:

(a) Adopt a complete streets policy for the department.

(b) Develop a model complete streets policy or policies to be made available for use by municipalities and counties.

(3) . . . Before the department submits its multiyear capital plan to the commission or a county road agency approves its multiyear capital plan, for any project that affects a roadway or transportation facility within or under the jurisdiction of a municipality, the department or county road agency shall consult with the municipality and agree on how to address the respective complete streets policies, subject to each agency's powers and duties. Failure to come to an agreement shall not prevent the department from submitting its multiyear capital plan to the commission. This subsection does not apply under any of the following circumstances:

(a) If neither the agency proposing the project nor the affected agency has a complete streets policy.

(b) If the project was included in a municipality's multiyear capital program or the department's or a county's multiyear capital plan on July 1, 2010. . . .

There are mandatory provisions in these statutes. MCL 247.660p(2)(a) required MDOT to create a complete streets policy within two years of the statute's amendment. MDOT did. MCL 247.660k(6) also required MDOT to establish "[f]acilities for nonmotorized transportation including those that contribute to complete streets" when a highway is being reconstructed, like the US-131 project at issue in this case. See *Walters v Nadell*, 481 Mich 377, 383; 751 NW2d 431 (2008) ("[T]he term 'shall' is clearly mandatory."). However, there are four exceptions to

defendants' duty to include complete-streets elements into a highway reconstruction project. Consideration of those exceptions requires defendants to use their discretion.

For example, defendants used their discretion to determine whether the cost of including straight-through access points was disproportionate to the probable use of those access points as provided in MCL 247.660k(6)(a). Defendants presented evidence that they reviewed bicycle route maps from more than one source to determine that NMRU traffic crossing US-131 was low. Defendants also met with several community groups, held open meetings, and published their plans. Defendants used the evidence gathered and considered concerns raised by citizens before determining that the cost of including nonmotorized traffic facilities was not justified by their probable use.

Further, MCL 247.660k(2) limits defendants' duty to incorporate nonmotorized transportation facilities in projects statewide. Annually, only 1% of road construction funds must be directed toward nonmotorized facilities. And MCL 247.660k(6)(d) makes an exception to the mandatory inclusion of nonmotorized transportation facilities in road reconstruction projects if the State has already expended or planned to expend 1% of its appropriations on such features in other projects. This, too, was a matter in defendants' discretion, regardless of whether plaintiff accurately alleges that defendants actually made the roadway more dangerous for NMRUs.

Ultimately, although the state is required to spend at least 1% of road funds for complete street facilities and to incorporate such features in road reconstruction projects, the act of choosing where, when, and how to implement those features is discretionary. Accordingly, the Court may not issue a writ of mandamus to compel defendants to construct straight-through access points at

the specific intersections identified by plaintiff. The Court thereby DENIES plaintiff's motion for summary disposition and GRANTS defendants' motion in this regard.[2]

IT IS ORDERED:

1. The Court GRANTS defendants' motion for summary disposition and DENIES plaintiff's motion.

2. The Court DISMISSES plaintiff's complaint in full and with prejudice.

3. This is a final order resolving all issues in this case.

Date: 1-7-2026

James Robert Redford
Judge, Court of Claims

[2] Given the Court's resolution of this issue, it need not consider whether plaintiff's claim was also barred by the doctrine of laches.