

Filed in District Court
State of Minnesota

April 10, 2024

STATE OF MINNESOTA
COUNTY OF OLMSTED

DISTRICT COURT
CIVIL DIVISION
THIRD JUDICIAL DISTRICT

Cassie Lynn McGregor,

Court File No. 55-CV-23-7307

Plaintiff,

vs.

ISD #535 Officials,
Kent Peckel, Cathy Nathan,
Julie Workman, Karen
MacLaughlin, Jean Marvin,
Don Barlow, Jessica Garcia,
Justin Cook,

**ORDER, ORDER FOR JUDGMENT,
JUDGMENT, AND MEMORANDUM**

Defendants.

This matter came before the Honorable Christina K. Stevens, Judge of District Court, at the Olmsted County Government Center, Rochester, Minnesota, on January 12, 2024, on Defendants' motion to dismiss.

Plaintiff appeared pro se.

Amy Weisgram, Dorsey & Whitney, LLP, Minneapolis, Minnesota, appeared on behalf of Defendants.

Based on the files, records, and proceedings, the court makes the following:

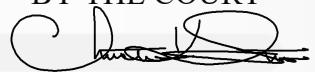
ORDER

1. Defendants' motion to dismiss is **GRANTED**.
2. Defendants' motion for sanctions is **DENIED**.
3. Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

4. The attached memorandum is incorporated.

ORDER FOR JUDGMENT

Let judgment enter accordingly.

BY THE COURT


Stevens, Christina
2024.04.10
16:18:46 -05'00'

Christina K. Stevens
Judge of District Court

JUDGMENT

I certify the above order constitutes the judgment of the court.

Hans Holland
Court Administrator



Deputy Clerk of District Court

Filed in District Court
State of Minnesota

Apr 11 2024 10:25 AM

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MEMORANDUM

This action involves a challenge by a Rochester citizen and property taxpayer to a capital project levy question initiated by the Rochester School District during the November 2023 special election. Plaintiff Cassie McGregor claims the technology improvements proposed by the Rochester School District were an improper capital project under Minnesota Statutes section 123B.63, subdivision 2, and alleges the school district engaged in deliberate misrepresentation to voters. McGregor demands relief pursuant to Minnesota Statutes section 204B.44(a). Defendants move to dismiss Plaintiff's claims for lack of standing, failure to join necessary and indispensable parties, failure to state a claim on which relief could be granted, and for filing a frivolous claim.

FACTS

McGregor is a Rochester citizen and property taxpayer. Defendants are school district officials and school board members of ISD #535 Rochester Public Schools (the District). The District provides educational services to thousands of students across 27 schools in Rochester and the greater community. The District developed a comprehensive strategy to strengthen the quality of technology for education and school operations throughout the district. In order to provide adequate educational services and ensure that it had funding to meet the needs of the students, the District determined that it needed to secure and sustain adequate funding for improved technology.

The District decided to place a technology capital project levy question before the voters. The District spent months informing voters about the proposed capital project—disseminating information on a web page, through social media, and emails. It also conducted more than 50 meetings across the district. On August 1, 2023, the school board held a regular public meeting

where it passed a resolution authorizing and calling for a special election and referendum. The process provided notice of the special election and presented the exact wording of the question on the ballot. The special election question read as follows:

The board of Independent School District No. 535 (Rochester Public Schools), Minnesota has proposed a capital project levy authorization in the maximum amount of 4.467% times the net tax capacity of the School District. The proposed capital project levy authorization will raise approximately \$10,150,000 for taxes first levied in 2023, payable in 2024, and would be authorized for ten (10) years. The estimated total cost of the projects to be funded over that time period is approximately \$101,500,000. The proposed authorization will provide funds for the purchase, installation, support, and maintenance of software and technology equipment.

Shall the capital project levy authorization proposed by the board of Independent School District No. 535 (Rochester Public Schools), Minnesota be approved?

BY VOTING “YES” ON THIS BALLOT QUESTION, YOU ARE VOTING FOR A PROPERTY TAX INCREASE.

The resolution started the formal process for preparing for the special election. Following the meeting, the school district clerk provided the Commissioner of Education and County Auditors written notice of the special election prior to the August 25, 2023 notice deadline. Ten days prior to the election, written notice was posted at the administrative offices of the district. Notice of the election, including the date, time, polling places, language of the ballot, and a reminder to register to vote, was published once a week for two consecutive weeks before the date of the special election. Proper notice was provided of the optical scan voting system. Absentee ballots were prepared and readied by September 22, 2023, and approximately 1,700 constituents voted absentee by October 31, 2023.

McGregor filed a complaint on October 30, 2023, and an amended complaint correcting deficiencies (not amending any of her original claims) on November 1, 2023. The complaint

alleges the District intends to use taxpayer money to fund an improper capital project. The complaint seeks an injunction against the District “from carrying out further election activities for it other than announcing the invalidity of the ballot question referendum” and requests the court issue immediate judgment due to the pending election. The District filed a motion to dismiss on November 6, 2023, and an amended motion to dismiss on December 15. 2023.

ANALYSIS

Standing

“Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court.” *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton*, 405 U.S. 727, 731-32 (1972)). Standing focuses on whether the plaintiff is the appropriate party to bring an action. *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 174 (Minn. Ct. App. 2009). A plaintiff has standing when the plaintiff has suffered an injury-in-fact, or the plaintiff is the beneficiary of legislative enactment granting standing. *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015).

1. Injury-in-Fact

“An injury-in-fact is a concrete and particularized invasion of a legally protected interest.” *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In the context of citizen and taxpayer lawsuits, the injury requirement prevents legal actions against government agencies based only on disagreement with policy. *Conant v. Robins, Kaplan, Miller, & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (citing *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977)). “[T]axpayer suits in the public interest are generally dismissed unless the taxpayers can show

some damage or injury to the individual bringing the action which is special or peculiar and different from damage or injury sustained by the general public.” *Olson v. State*, 742 N.W.2d 681, 684 (Minn. Ct. App. 2007).

McGregor cannot show a concrete and particularized injury-in-fact. The alleged injury—a property tax increase due to an allegedly improper ballot question—is no different from the alleged injury that any other property taxpayer would sustain.

2. Beneficiary of Legislative Enactment

McGregor’s claims are based on Minnesota Statutes sections 123B.63 and 204B.44(a).

A. Minnesota Statutes section 123B.63

Minnesota Statues section 123B.63 does not grant standing. The statute directs school districts to create capital project referendum accounts, explains the proper uses for those funds, and delineates the appropriate procedure for introducing a capital project levy question on a ballot. Minn. Stat. § 123B.63 (2023). Subdivision two of the statute, which serves as the basis for McGregor’s claim that technology improvements are not a proper capital project, requires that money in a capital project referendum account be used only for the purposes listed in Minnesota Statues section 126C.10, subdivision 14. Minn. Stat. § 123B.63, subd. 2. The statute does not grant a property taxpayer the right to bring an action against a school district. McGregor does not have standing.

B. Minnesota Statutes section 204B.44(a)

Minnesota Statutes section 204B.44(a) grants standing. The statute provides:

- (a) Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

(1) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot, including the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed;

(2) any other error in preparing or printing any official ballot.

Minn. Stat. § 204B.44(a)(1)-(2) (2023). McGregor alleges the District committed an error, omission, or wrongful act in the placement and preparing of the question on the ballot. She has standing under the statute to bring an action against the District.

Failure to Join Necessary and Indispensable Parties

Minnesota Rule of Civil Procedure 19.01 governs joinder of persons and operates in three parts. *Schulz v. Town of Duluth*, 936 N.W.2d 334, 340 (Minn. 2019). First, the rule applies to persons subject to service of process. *Id.* at 340-41. Second, the rule sets forth factors for determining which parties are necessary. *Id.* at 341. And third, if a necessary party has not been joined, the rule requires the court to order that person be made a party to the action. *Id.*

McGregor's claim is brought under Minnesota Statutes section 204B.44(a)(1) and (2).¹ Neither of these sections require the joinder of specific parties. In its submission, the District did not clarify which parties McGregor failed to join. The District's memorandum states in a footnote that "[a]dditional persons at the municipal and state level substantively participated in the process of certifying, notifying and preparing the District's referendum question prior to printing the text on the ballot for the special election and [are] necessary and indispensable parties to any dispute about the District's balloted question for the special election." The court cannot conduct the requisite Minnesota Rule of Civil Procedure 19.01 analysis based on the

¹ At the hearing, the court clarified McGregor's failure to join a proper party under subsection (a)(4) of the same statute. McGregor acknowledged this and clarified her petition was only brought under subsections (a)(1) and (2).

limited information in the record. The District has not shown that McGregor failed to join the proper parties to bring an action under Minnesota Statutes section 204B.44(a)(1) and (2).

Failure to State a Claim

Minnesota Rule of Civil Procedure 12(e) provides for dismissal of an action based on a plaintiff's failure to state a claim upon which relief can be granted. Under this rule, dismissal is proper only if there are no facts consistent with the complaint that could be introduced to support the relief demanded. *Doyle v. Kuch*, 611 N.W.2d 28, 31 (Minn. Ct. App. 2000) (citing *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (1963)). The only question before the court is whether the complaint sets forth a legally sufficient claim—the court does not consider whether the plaintiff can prove the facts alleged. *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (citing *Royal Realty Co. v. Levin*, 69 N.W.2d 667, 670 (Minn. 1955)).

McGregor fails to allege facts that would allow the court to grant the relief demanded. The majority of the complaint consists of conclusions of law based on facts not contained within the complaint. Moreover, McGregor's complaint alleges that an error, omission, or wrongful act occurred under Minnesota Statutes section 244B(a). But what McGregor takes issue with is the language used by the District in describing the technology improvement as a capital project, which is not an error, omission, or wrongful act in the placement or preparing of the question on the ballot. The ballot is accurate. The language on the ballot is identical to the language certified by the school board. The complaint also demands an injunction to prevent the District from carrying out further election activities. The court cannot grant this relief. Minnesota Statutes section 204B.44(a) only allows the court to order a correction of the ballot, and there is nothing for the court to correct. Regardless, the issue is now moot. The capital project levy question was certified at the school board meeting on August 25, 2023. Absentee ballots were prepared and

readied on September 22, 2023. Over 1,700 constituents voted absentee by the time McGregor filed her amended complaint on November 1, 2023. And the election occurred on November 7, 2023. The complaint fails to state a claim upon which relief can be granted.

Frivolous Litigation

The District argues that McGregor's complaint and multiple subsequent filings render her a frivolous litigant and subject to sanctions in the form of attorney fees and costs. At the hearing, counsel for the District confirmed the motion was brought under Minnesota General Rule of Practice 9. This rule has two procedural requirements. First, motions under this rule must be filed separate from other motions. Minn. Gen. R. Prac. 9.01. Second, the rule provides a safe-harbor provision: “[a]ll motions under this rule... shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged claim, motion, or request is not withdrawn or appropriately corrected.” *Id.*; *see also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 294-95 (Minn. Ct. App. 2007) (confirming the procedural requirements of the rule and noting the moving parties failure to comply).

The District did not comply with the first procedural requirement. The Rule 9 motion was combined with the motion to dismiss. As to the second procedural requirement, McGregor filed a complaint on October 30, 2023, and an amended complaint on November 1, 2023.² The District filed its motion to dismiss on November 6, 2023. The affidavit of service indicates the District served McGregor by U.S. Mail that same day. There is nothing in the record that indicates the District served its motion on McGregor before filing with the court. Even if it had, McGregor was not provided the requisite 21 days to withdraw or correct her claim, and the court did not prescribe a different period for McGregor to withdraw or correct. The District did not comply

² The amendment was done to correct a deficiency noted by the court, and not because the District served its Rule 9 motion on McGregor.

with the safe-harbor provision of the rule. The Rule 9 motion is not properly before the court. Nonetheless, Rule 9 does not allow the court to impose the sanctions the District seeks. The District argues that McGregor is a frivolous litigant and should be sanctioned in the form of attorney fees and costs. These sanctions are available under Minnesota Rule of Civil Procedure 11. Rule 9 only allows the court to order the furnishing of security or the imposition of preconditions on the sanctioned party's ability to file new claims, motions, or requests. This action is dismissed with prejudice based on lack of standing and failure to state a claim upon which relief can be granted. McGregor cannot file new claims, motions, or requests in this action. The court cannot consider the request for attorney fees and costs as sanctions against McGregor.

C.K.S.

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