

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RELATION OF STATE OF OHIO

ERNEST SMITH, :

Relator, :

No. 110078

v. :

JUANITA GOWDY, KOREAN
STEVENSON, NATHANIEL MARTIN, :

Respondents. :

JOURNAL ENTRY AND OPINION

JUDGMENT: WRITS DENIED

DATED: May 14, 2021

Writs of Quo Warranto and Mandamus
Motion No. 542566
Order No. 546278

Appearances:

Ernest Smith, *pro se*.

Juanita Gowdy, *pro se*.

Korean Stevenson, *pro se*.

Nathaniel Martin, *pro se*.

SEAN C. GALLAGHER, J.:

{¶ 1} The relator, Ernest Smith, has filed a complaint for a writ of quo warranto and a writ of mandamus. Smith, through his complaint for quo warranto, seeks the removal of respondent Korean Stevenson “from her unlawful position as [East Cleveland] Council President and restore [Smith], as the rightful Council President to said position as justice requires” and the removal of respondent, Juanita Gowdy, as East Cleveland Council Vice President. Smith also seeks an alternative writ of mandamus “to compel respondents Juanita Gowdy, Korean Stevenson and Nathaniel Martin to abide by the City of East Cleveland Charter, Municipal Code and Rules of Order as the prevailing law, rules, and regulations mandated by the City’s self-governing provisions.” Gowdy, Stevenson, and Martin have filed a joint pro se motion for summary judgment that is granted, albeit for different reasons than raised in the motion for summary judgment.

I. THE FACTS

{¶ 2} The facts, pertinent to this original action, are gleaned from Smith’s complaint for a writ of quo warranto and alternative writ for mandamus with attached affidavit, Smith’s addendum to verified complaint for quo warranto and alternative mandamus writ with attached affidavit, the respondents’ joint motion for summary judgment with attached affidavits, and Smith’s brief in opposition to the joint motion for summary judgment: (1) on September 1, 2020, a meeting of East Cleveland Council (“Council”) was convened; (2) Gowdy, although not recognized by Smith as required by Robert’s Rules of Order, made a motion to reorganize the

Council; (3) after Gowdy made her unrecognized motion to reorganize the Council, Martin seconded the motion for reorganization; (4) after Martin seconded the reorganization motion, the motion was discussed and went to a vote by the Council; (5) Stevenson was elected Council President by a majority of three-fifths of the members of the Council; and (6) Gowdy was elected Council Vice President by a majority of three-fifths of the members of the Council.

II. LEGAL ANALYSIS

A. Quo Warranto

{¶ 3} The Supreme Court of Ohio has firmly established that quo warranto is the sole remedy that may be employed to challenge the right of any person to hold a public office.

Quo warranto is the exclusive remedy to litigate the right of a person to hold a public office. *State ex rel. Deiter v. McGuire*, 119 Ohio St.3d 384, 2008-Ohio-4536, 894 N.E.2d 680, ¶ 20; *see also State ex rel. Ebbing v. Ricketts*, 133 Ohio St.3d 339, 2012-Ohio-4699, 978 N.E.2d 188, ¶ 8, citing *State ex rel. Johnson v. Richardson*, 131 Ohio St.3d 120, 2012-Ohio-57, 961 N.E.2d 187, ¶ 15. In quo warranto, judgment may be rendered on the right of the defendant to hold the contested office and the right of the person alleged to be entitled to hold the office “or only upon the right of the defendant, as justice requires.” *Deiter* at ¶ 22.

State ex rel. Flanagan v. Lucas, 139 Ohio St.3d 559, 2014-Ohio-2588, 13 N.E.3d 1135 ¶ 12. *See also State ex rel. Price v. Columbus, Delaware & Marion Elec. Co.*, 104 Ohio St. 120, 135 N.E. 297 (1922); Ohio Constitution, Article IV, Sections 2 and 3.

{¶ 4} Smith’s complaint for quo warranto, that he was improperly removed from the position of President of Council and that Stevenson and Gowdy improperly

filled the positions of President and Vice President of Council, is premised upon the claim that Robert's Rules of Order were not strictly followed prior to the reorganization vote. Specifically, Smith argues 1) pursuant to East Cleveland Codified Ordinances Chapter 113, Rule 5, all proceedings of Council shall be governed by Robert's Rules of Order; and 2) at a Council meeting, held on September 1, 2020, no member of the Council sought recognition/point of order from Smith to introduce a motion to reorganize Council.

{¶ 5} The Supreme Court of Ohio, with regard to the implementation of parliamentary procedures, such as contained within Robert's Rules of Order, has established that parliamentary rules are intended merely to assist in the orderly conduct of business and the failure to follow such parliamentary rules cannot be employed to invalidate otherwise lawful actions. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St.3d 543, 660 N.E.2d 463 (1996); *Nalluri v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 14AP-530, 2014-Ohio-5530. *See also Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 7th Dist. Jefferson No. 94-J-30, 1995 Ohio App. LEXIS 1184 (Mar. 21, 1995), ¶ 21 wherein the court adopted the language contained within 59 American Jurisprudence 2d, Parliamentary Law, Section 15:

The courts generally do not concern themselves with violations of parliamentary rules in deliberative proceedings, and this is so whether such rules are codified in the form of a manual and formally adopted, or whether they consist of a body of unwritten customs or usages, preserved in memory and by tradition. Since parliamentary rules are merely procedural and not substantive, the courts have no concern with their observance. * * *

As a general rule, the courts cannot review questions of parliamentary law governing acts of a presiding officer with respect to the order of motions, and no appeal lies to the court for alleged errors of a presiding officer in administering parliamentary Law.

Based upon *Savarese* and *Nalluri*, we find that any deviance from a strict application of Robert's Rules of Order, by failing to be recognized by Smith prior to making a motion for the reorganization of the Council, does not form the basis for finding that quo warranto is warranted.

{¶ 6} Furthermore, we find that pursuant to Rule 23(B) of the East Cleveland Codified Ordinances, Chapter 113, the reorganization of Council positions could occur at any time based upon a quorum vote of three-fifths of Council members:

The organization, reorganization and the filling of vacancies of the Council offices of President and Vice President shall be in accordance with the following provisions.

- (a) Organization. The organization of Council shall be as prescribed by § 102 of the Charter of the city.
- (b) *Reorganization. The reorganization of Council may occur at any time, by motion, upon the vote of three-fifths of the members of Council.*
- (c) Vacancy. When a vacancy occurs in the office of President or Vice President, it shall be filled, by motion, by the vote of three-fifths of the members of Council.

(Emphasis added.) The affidavits attached to the respondents' joint motion for summary judgment clearly demonstrate that the lawful reorganization of Council

occurred pursuant to Rule 23 and a three-fifths vote of Council. *State ex rel. Branch v. Pitts*, 8th Dist. Cuyahoga No. 105400, 2018-Ohio-1184.

B. Mandamus

{¶ 7} Finally, Smith through his request for a writ of mandamus requests an order that “compels the [respondents] to abide by the City of East Cleveland Charter, Municipal Code and Rules of Order as the prevailing law, rules, and regulations mandated by the city’s self-governing provisions.”

{¶ 8} In order for this court to issue a writ of mandamus, Smith is required to establish (1) Smith possesses a clear legal right to the requested relief; (2) the respondents possess a clear legal duty to perform the requested relief; and (3) there must exist no other adequate remedy in the ordinary course of the law. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987).

{¶ 9} Moreover, mandamus is an extraordinary remedy that is to be exercised with great caution and issued only when the right and duty is absolutely clear. Mandamus will not issue in doubtful cases. *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connoles v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993); *State ex rel. Dayton-Oakwood Press v. Dissinger*, 32 Ohio Law Abs. 308, 1940 Ohio App. LEXIS 1173 (1940). The Supreme Court of Ohio has also established that the facts submitted in support of the complaint for mandamus and the proof produced must be plain, clear, and convincing before a court is justified in using the “strong arm of

the law” and granting a writ of mandamus. *State ex rel. Pressley v. Indus. Comm. of Ohio*, 11 Ohio St.2d 141, 161, 228 N.E.2d 631 (1967).

{¶ 10} In addition to the aforesaid basic requirements that must be established by Smith, the following principles of law guide this court’s determination as to whether a writ of mandamus should be issued. Mandamus lies only to enforce the performance of a ministerial duty or act. A ministerial duty or act has been defined as one that a person performs in a given state of facts in a prescribed manner in the obedience to the mandate of legal authority, without regard to, or the exercise of, his or her own judgment upon the propriety of the act being done. The duty to be enforced must be specific and definite, clear and concise, must be specifically enjoined by law, must be incident to the office, trust, or station that the respondent holds, and it may not be one of a general character that is left to the respondent’s discretion. *State ex rel. Neal, Jr. v. Moyer*, 3d Dist. Allen No. 1-84-44, 1985 Ohio App. LEXIS 5380 (Jan. 9, 1985). The object of a writ of mandamus is to compel an officer to do a specific act required by law, and not to compel the general enforcement of the mandate of the law.

[A]nd while a court might well hold that the general course of conduct contended for by the relator, and which he seeks to have the plaintiff commanded to follow, is the course of conduct which the law requires, and, therefore, the course which the [respondent] is in duty bound to pursue, yet a court will not employ the extraordinary writ of mandamus to supplant every other form of remedy, *for if it be employed to compel the observance of law generally*, the court would thereby constitute itself the public conscience, and all others would become its agents through which the court would, within the law, exercise its will. The function of a court is to render judgment in actual controversies between adverse litigants, to command or restrain specific acts

affecting existing rights of parties before the court, as distinguished from declaratory judgments affecting possible rights and potential controversies.

(Emphasis added.) *State ex rel. Cullen v. Toledo*, 105 Ohio St. 545, 138 N.E. 58 (1922). *See also State ex rel. Keyser v. Commrs. of Wayne Cty.*, 57 Ohio St. 86, 48 N.E. 136 (1897).

{¶ 11} If the allegation of a complaint for a writ of mandamus demonstrates that the real object sought is a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus and must be dismissed for lack of jurisdiction. *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St.3d 131, 2007-Ohio-5699, 876 N.E.2d 953; *State ex rel. Obojski v. Perciak*, 113 Ohio St.3d 486, 2007-Ohio-2453, 866 N.E.2d 1070; *State ex rel. Grendell v. Davidson*, 86 Ohio St.3d 629, 716 N.E.2d 704 (1999).

{¶ 12} Mandamus will not issue to require a public officer to prospectively observe the law nor will it issue to compel the general observance of the law. *State ex rel. Home Care Pharmacy, Inc. v. Creasy*, 67 Ohio St.2d 342, 423 N.E.2d 482 (1981); *State ex rel. Kay v. Fuerst*, 156 Ohio St. 188, 101 N.E. 730 (1951).

{¶ 13} Because Smith requests that the respondents presently and prospectively generally observe the city of East Cleveland Charter, Municipal Code and Rules of Order, we decline to issue a writ of mandamus. *State ex rel. McGrath v. Calabrese*, 8th Dist. Cuyahoga No. 97082, 2011-Ohio-4833.

{¶ 14} Accordingly, we grant the respondents' joint motion for summary judgment. Costs to Smith. The court directs the clerk of courts to serve all parties

with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 15} Writs denied.

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR