

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SCIO TOWNSHIP CLERK,

Plaintiff-Appellant,

COA Case No. 363414

Washtenaw County Trial Court
Case No. 22-000414-CZ
(Hon. Timothy P. Conners)

v.

SCIO TOWNSHIP BOARD,

Defendant-Appellee.

Mark J. Magyar (P75090)
DYKEMA GOSSETT, PLLC
Attorneys for Plaintiff-Appellant
201 Townsend St., Suite 900
Lansing, MI 48933
(616) 776-7523
mmagyar@dykema.com

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
FOSTER SWIFT COLLINS & SMITH, PC
Attorneys for Defendant-Appellee
1700 E. Beltline Ave. NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2230
mhomier@fosterswift.com
lgenovich@fosterswift.com

APPELLEE'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Appellee agrees that this Court has jurisdiction over this appeal.

QUESTIONS PRESENTED

Plaintiff, the Scio Township Clerk, sued Defendant, the Scio Township Board, claiming she is entitled to exclusive control over the Township's data management software under MCL 41.65 and that the Township Board's resolutions giving the Township Administrator administrative authority over software vendors and user access to software interferes with the Plaintiff's performance of her statutory duties.

As of this filing, the Township Board has restored Plaintiff's "enterprise administrator" control over the software.

I. Is Plaintiff's appeal moot?

Appellant, the Scio Township Clerk, would answer: No.

Appellee, the Scio Township Board, answers: Yes.

The trial court would answer: *Did not address this issue.*

II. Did the trial court correctly hold that MCL 41.65 does not vest a township clerk with *exclusive* access to and control over all of the township's electronic records?

Appellant, the Scio Township Clerk, answers: No.

Appellee, the Scio Township Board, answers: Yes.

The trial court would answer: Yes.

III. Did the trial court properly dismiss plaintiff's lawsuit where plaintiff failed to show that the township board had interfered with her performance of her statutory duties as clerk?

Appellant, the Scio Township Clerk, answers: No.

Appellee, the Scio Township Board, answers: Yes.

The trial court would answer: Yes.

IV. Should this Court deny Plaintiff's request for attorney fees where any award of attorney fees is discretionary and the trial court did not reach the issue?

Appellant, the Scio Township Clerk, answers: No.

Appellee, the Scio Township Board, answers: Yes.

The trial court would answer: *Did not address this issue.*

INTRODUCTION

Plaintiff, the Scio Township Clerk, filed suit against the Scio Township Board, seeking a sweeping increase and declaration of her political power. Plaintiff reads MCL 41.65 – a statute giving a township clerk “custody” of “records, books, and paper” – as vesting her with unfettered and exclusive access to and control of the Township’s data management software, to the exclusion of other township officials and staff. The trial court disagreed with Plaintiff’s unworkably broad reading of the statute and granted summary disposition to the Township Board. This Court should affirm.

This case is less complicated and consequential than Plaintiff’s brief suggests. This case is not about “reaffirming *McKim*¹,” a non-precedential, pre-1990 case with distinguishable facts. Nor is this case about any “blatant and appalling statutory violation²,” as Plaintiff argues. Rather, this case is about whether a township clerk is the only person who controls township-purchased software and the read/write access to that software. Michigan law does not give a township clerk this kind of exclusive control over public records, and Plaintiff has not shown that she was ever prevented from carrying out her statutory duties simply because other township officials and employees interacted with township records. Plaintiff is therefore not entitled to any relief on appeal.

Ultimately, this case is nothing more than a political dispute between Plaintiff and a majority of the members of the Township Board. Plaintiff abandoned and amended various claims throughout this litigation, at one point making 13 requests for declaratory relief from the trial court, but the point of her lawsuit remains the same: Plaintiff wants to wrest control of the Township’s

¹ See Pl. Brief on Appeal, p. 31; see also *McKim v Green Oak Tp Bd*, 158 Mich App 200; 404 NW2d 658 (1987).

² Pl. Brief on Appeal, p. 4.

finances because she disagrees with the Township Board's policy decisions. But her differing policy views are not legally actionable, and Plaintiff's remedy lies at the ballot box, not in court.

For these reasons and as explained below, the Township Board asks this Court to affirm the decision of the Washtenaw County Trial Court.

STATEMENT OF FACTS

I. Factual Background

Plaintiff/Appellant Jessica Flintoft is the Township Clerk of Scio Township. Plaintiff has been at political odds with other members of the Board, specifically including the Township Supervisor.³ Over the course of the past year, Plaintiff has made myriad claims against the Township Board related to contracts, hiring decisions, and access to the Township's data management software. Only the last of these – access to data – is at issue in this appeal.

Like many other townships in Michigan, Scio Township uses BS&A software to electronically store and manage its data. This includes, among other things, the Township's data concerning property tax assessments, utilities billing, payroll, account payable, and the general ledger. The software has various "modules" for different functions, all of which share data.

In August 2021, the Township Board adopted Resolution No. 2021-31 to approve updated job descriptions for the Township Supervisor (an elected official) and the Township Administrator (a township employee). The Township Administrator is the individual "responsible for the day to day running of the Township's operations." (Resolution No. 2021-31, p. 6.) Among many other things, the Administrator's job description includes assisting the Supervisor "in preparing and administering the annual budget and related financial reports[.]" *Id.*

³ Plaintiff has made no secret of what she thinks of her fellow elected officials. Plaintiff argues in her Brief that "[i]t would not be exaggeration or hyperbole to say the Clerk has been bullied by the Supervisor. Not every instance (not even close) is at issue on this appeal." (Pl. Brief on Appeal, p. 46.) Plaintiff's original complaint went so far as to describe the Township Board members as "inexperienced Board rookies [who] have shown an unabashed and cavalier willingness and insistence to vote together as a block with no critical thinking." (Original Complaint, ¶ 33.)

A few months later, the Township Board further refined the Township Administrator's job description to include "hold[ing] ultimate authority over BS&A administration and accessibility." (Resolution No. 2022-05, p. 6.) Pursuant to the job descriptions, Township Administrator James Merte oversees the BS&A software. (**Exhibit A**, Merte Affidavit, ¶ 5.) The Township Clerk has maintained concurrent read and write access at all relevant times. *Id.* Nothing in either resolution gives the Township Administrator sole or exclusive access to BS&A, nor does either resolution (or any other Township record) take away the Township Clerk's ability to access and modify records on BS&A to perform her statutory job functions.

In the spring of 2022, the Township began preparing for its annual audit. The Township has been late in filing its audit with the State every year since Plaintiff took office. (Exhibit A, ¶ 7.) Plaintiff has admitted at public meetings that she lacks the qualifications and training to prepare the appropriate financial records. *Id.* As Plaintiff remarked at one public meeting, "I could not speak to the financial statements. I don't have the right training."⁴ As a result, other Township employees, such as the Deputy Treasurer, are called upon perform those necessary tasks.⁵ *Id.* Before Plaintiff became Township Clerk, the Township's audits were performed by the (then-serving) Township Clerk and were timely filed with the State. *Id.* The delays with the audit did not arise until Plaintiff became the Township Clerk. *Id.*

To avoid another delay in the audit, the Township Administrator enlisted the Deputy Treasurer, Sandy Egeler, to assist with preparing the required account reconciliations. (Exhibit A, ¶ 6.) Ms. Egeler previously served as the Finance Director and has been a Township employee for

⁴ <https://www.youtube.com/watch?v=8uw0wqlITjk&t=13433s> (Timestamp: 2:25:20-25). This quotation is included in the record below on page 1 of the Township Board's Brief in Opposition to Plaintiff's Motion for Summary Disposition.

⁵ The Township obtained additional resources to assist Plaintiff, including hiring additional staff, but Plaintiff was dissatisfied with the Township Board's hiring choices. This was the focus of Plaintiff's Count II, which Plaintiff has now abandoned.

approximately 30 years. *Id.* The Township Administrator gave Ms. Egeler temporary “read/write” access to the necessary BS&A modules so that the accounts could be timely reconciled.

Plaintiff, who at that time could control BS&A access permissions, promptly revoked Ms. Egeler’s read/write access. In response, the Township Administrator revoked Plaintiff’s ability to change other users’ access permissions. This did not preclude Plaintiff from accessing, editing, or managing any of the data on BS&A. The Township Administrator then restored Ms. Egeler’s temporary access so she could continue the reconciliations that Plaintiff had failed to do. The Township Administrator thereafter disabled Ms. Egeler’s “write” access 11 days later.

Plaintiff took issue with Ms. Egeler having even temporary read/write access to BS&A, even though Plaintiff’s own read/write access was never interrupted and even though there was no allegation of error in Ms. Egeler’s reconciliations. (Exhibit A.) During the pendency of this appeal, Plaintiff’s enterprise administrator status was reinstated as well. (Pl. Brief on Appeal, p. 20.) As of this filing, Plaintiff has full enterprise administrator status to BS&A, and she has not identified any records that were improperly added or altered at any time.

II. Procedural History

A. Original Complaint

Plaintiff’s original complaint did not relate to BS&A software or control over Township records. Plaintiff’s first claim (now abandoned) was that the Township Board should be enjoined from terminating a contract with Rehmann Robson that the Clerk and Treasurer executed on an “emergency” basis without Board approval. The Township Board voted to terminate the contract before Plaintiff’s motion for a temporary restraining order was heard, but Plaintiff proceeded with her motion hearing. The trial court denied Plaintiff’s request for a TRO at a hearing on April 22, 2022, reasoning in part that “[i]t is not appropriate for any judge to micromanage, step in, become

something that we are not elected to do, and that is to run a local township council or board.”⁶ The trial court further noted that “[a] dispute of personalities among people whose obligation is to serve the public is not an emergency.” *Id.*

B. First Amended Complaint

Plaintiff thereafter abandoned her challenge to the termination of the Rehmann Robson contract and instead took aim at other discretionary actions of the Township Board. In her 86-paragraph First Amended Complaint, Plaintiff asserted three counts:

Count I: “Declaratory Judgment of the Clerk’s Statutory Duties and Vacating Resolutions Interfering with those Duties”

This count alleges that the Township Board improperly delegated some of Plaintiff’s statutory duties (including control over the BS&A software) in a manner that interfered with her performing those duties.

Count II: “Declaratory Judgment and Injunction of the Board’s Improper Appropriations Decisions in the Finance Department.”

This count alleged that the Township Board failed to appropriately staff the finance department with the number of employees that Plaintiff felt was appropriate and that the Township Board should allow Plaintiff to select the new hires.

Count III: “Attorneys Fees”

This count sought an award of Plaintiff’s attorney fees.

Amid these counts, Plaintiff made 13 requests for declaratory relief relating to the job descriptions, supervisory control over finance employees, hiring decisions, and access to BS&A software.

⁶ <https://www.mlive.com/news/ann-arbor/2022/04/judge-rules-against-scio-township-clerk-in-lawsuit-against-her-own-board.html> Plaintiff did file a transcript of the April 22, 2022 hearing with this Court.

C. Summary Disposition

The Township Board immediately filed a motion for summary disposition in lieu of an answer to the First Amended Complaint, seeking dismissal of all of Plaintiff's claims under MCR 2.116(C)(8). In turn, Plaintiff filed a motion for summary disposition under MCR 2.116(C)(10). The Township Board opposed Plaintiff's motion, requested summary disposition in its favor under MCR 2.116(I)(2), and included an affidavit of the Township Administrator rebutting Plaintiff's unsubstantiated factual allegations.

i. *Summary Disposition Hearings*

Plaintiff glosses over the first summary disposition hearing on August 25, 2022 in her Brief on Appeal, stating that the parties and the trial court "quickly determined during the hearing that, due to technical issues and a large presence of spectators from the public, an in-person hearing would aid the argument and decisional process." (Pl. Brief on Appeal, p. 22, n 6.) This is only partially correct. Contrary to Plaintiff's description, the trial court convened the August 25, 2022 via Zoom, and the parties argued for more than 30 minutes, primarily about whether Plaintiff was statutorily entitled to dictate who the Township Board hired as finance staff (i.e., Count II). (**Exhibit B**, Transcript of 8/25/22 Hearing.) The trial court judge discontinued the Zoom hearing and ordered counsel to appear in person because Plaintiff's counsel was repeatedly speaking over the judge. (Tr. pp. 24-25.)

The continued summary disposition hearing was held in person on September 21, 2022.⁷ During that hearing, Plaintiff's counsel argued that the Township Board's two resolutions were an "extreme violation" of law because "the clerk needs to be the exclusive enterprise administrator

⁷ Plaintiff's commentary that there was a "large public presence in the courtroom at the summary disposition hearing, which filled the seating areas on both sides of the court room (*all* of whom were supporters of the Clerk)" is irrelevant. (See Pl. Brief on Appeal, p. 5, emphasis in original.) Trial court hearings are not popularity contests. Elections, of course, are – and if the public is discontent with the actions of its public officials, it may vote them out.

for the BS&A modules of the township[.]” (**Exhibit C**, Transcript of 9/21/22 Hearing, p. 5.) Plaintiff’s counsel emphasized that “the clerk [must have] exclusive control over all township papers, including these read/write functions over the journals and ledgers.” (Tr. 15.) The Township Board’s counsel responded that neither the statute (MCL 41.65) nor any case law holds that the Clerk is entitled to *exclusive* custody and control. To the contrary, access to public records is never exclusive because the records are subject to disclosure under the Freedom of Information Act (FOIA). (Tr. 57.)

ii. *Trial Court’s Decision*

At the end of the September 21, 2022 hearing, the trial judge issued his bench opinion and granted the Township’s motion for summary disposition. (Tr. 60-64.) With respect to Count I, the trial court agreed with the Township Board that the Clerk’s custody of records is intended to ensure that records are protected and available if requested under FOIA, and he did not read the statute as vesting “exclusive” custody in the Clerk. (Tr. 63.) The trial court reasoned that Plaintiff was “asking me to read something into the responsibility and statute and that I don’t see” and that “these two resolutions [do not] impede the clerk from performing statutory duties.” *Id.*

The trial court observed that the wisdom of the resolutions was beyond its jurisdiction:

I take no position as to whether it’s wise, not wise, whether I agree or disagree. It’s frankly none of my business. It’s the business of the elected officials and the public that has elected them to perform their duties. (Tr. 64.)

The trial court also granted summary disposition to the Township on Count II. Because the trial court found no merit in Plaintiff’s claims, the trial court did not reach the question of attorney fees under Count III. Plaintiff thereafter filed this appeal.

STANDARD OF REVIEW

This Court reviews *de novo* the trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

SCOPE OF APPEAL

Plaintiff's first amended complaint asserts two substantive counts: Count I, which focuses on access to BS&A software, and Count II, which focuses on the staffing of the Township's finance department. Count III seeks attorney fees in connection with the other counts. Plaintiff has explicitly waived any appeal of the dismissal of Count II. (See Plaintiff's Brief on Appeal, p. 15, n. 5: "Only Counts I and III of the Clerk's [verified first amendment complaint] are at issue on this appeal.") Accordingly, the Township has omitted any argument about Count II.

ARGUMENT

I. Plaintiff's appeal is moot.

An issue is moot "when an event occurs that renders it impossible for a reviewing court to grant relief" and where the case "presents only abstract questions of law that do not rest upon existing facts or rights." *BP7 v Mich Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998); *see also In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003) (holding that an issue is moot when "a subsequent event renders it impossible for [the court] to fashion a remedy").

Under Michigan law, "a court will not decide moot issues" and will not "reach moot questions or declare principles or rules of law that have no practical legal effect in the case before [it]." *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010). A court may not "decide moot questions in the guise of giving declaratory relief." *Mich Dept of Soc Services v Emmanuel Baptist Preschool*, 434 Mich 380, 470; 455 NW2d 1 (1990).

Here, the relief Plaintiff seeks on appeal (other than a moral victory and attorney fees) is to vacate two Township Board resolutions and “reinstate the Clerk with top administrative authority over the Township’s papers, records, and books including the journals and ledgers within the Township’s BS&A software.” (Pl. Brief on Appeal, p. 47.) The resolutions merely approve job descriptions; they do not effectuate any Township action in themselves. Importantly, the resolutions do not take away any of Plaintiff’s read/write access to BS&A. Thus, Plaintiff will be in no different position if the resolutions are vacated.

As to enterprise administrator access, Plaintiff concedes that the Township has restored this access. (Pl. Brief on Appeal, p. 20.) There is therefore no relief for this Court to grant as to that issue. Plaintiff speculates that her actions “may” be overridden in the future. (Pl. Brief on Appeal, pp. 20-21.) But the merely “physical or theoretical possibility” of a future occurrence is insufficient to overcome mootness; the plaintiff must show “a demonstrated probability that the same controversy will recur involving the same complaining party.” *Murphy v Hunt*, 455 US 478, 482 (1982). As discussed below, Plaintiff has not shown that the Township Board *ever* interfered with her statutory duties, and she certainly has not shown a “demonstrated possibility” that it will happen in the future. Accordingly, Plaintiff’s appeal is moot, and she is not entitled to relief.

II. MCL 41.65 does not give Plaintiff *exclusive* control over all public records.

Even if the appeal were not moot, Plaintiff’s legal arguments are meritless. Plaintiff argues that MCL 41.65, as interpreted by this Court in *McKim v Green Oak Township Board*, 158 Mich App 200; 404 NW2d 658 (1987), gives a township clerk **exclusive** custody and control of the Township’s papers, records, and books, specifically including BS&A. The trial court held that neither MCL 41.65 nor *McKim* vests this exclusive control in Plaintiff. This Court should affirm.

A. Statutory Language

Plaintiff relies solely on MCL 41.65 as the source of her purported exclusive control. MCL 41.65 provides as follows in its entirety, with emphasis added:

The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law. The township clerk shall file and safely keep all certificates of oaths and other papers required by law to be filed in his or her office, and shall record those items required by law to be recorded. These records, books, and papers shall not be kept where they will be exposed to an unusual hazard of fire or theft. The township clerk shall deliver the records, books, and papers on demand to his or her successor in office. The township clerk shall also open and keep an account with the treasurer of the township, and shall charge the treasurer with all funds that come into the treasurer's hands by virtue of his or her office, and shall credit him or her with all money paid out by the treasurer on the order of the proper authorities of the township, and shall enter the date and amount of all vouchers in a book kept by the township clerk in the office. The township clerk shall also open and keep a separate account with each fund belonging to the township, and shall credit each fund with the amounts that properly belong to it, and shall charge each fund with warrants drawn on the township treasurer and payable from that fund. The township clerk shall be responsible for the detailed accounting records of the township utilizing the uniform chart of accounts prescribed by the state treasurer. The township clerk shall prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.

MCL 41.65.

Plaintiff argues that she, as Township Clerk, is entitled to complete, exclusive, and unfettered access to and control over all Township records under this statute. Specifically, Plaintiff alleges that she alone is entitled to “enterprise administrator” control over the Township’s BS&A software, which holds the Township’s financial data and many other public records.

But the statute does not give Plaintiff this sweeping unilateral control over the Township’s records. When statutory language is unambiguous, this Court must give its words their plain meaning and apply the statute as written. *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). Nothing in MCL 41.65 provides that the township clerk’s custody is exclusive and that no other township officials or employees can access or edit public records. That interpretation would

make it impossible for local government to function; various officials and employees must use public records to do their jobs, but this does not deprive the clerk of “custody” of those records.

The legislature contemplated that multiple officials would be able to access and edit public records. A township treasurer, for example, is required by law to account for receipts and expenditures of township money. MCL 41.78. This requires entering financial information into the Township’s records. Similarly, the Township Supervisor, as Chief Administrative Officer of the Township, is vested with “final responsibility for budget preparation, presentation of the budget to the legislative body, and the control of expenditures under the budget and the general appropriations act[.]” MCL 141.434. The Township Clerk, by contrast, is charged with maintaining records but is not responsible for preparing or administering the budget. MCL 41.65. If the Township Clerk held exclusive access to those records, then the Township Supervisor would be unable to perform his statutory duties regarding the budget.

The trial court correctly held that Plaintiff is reading too much into MCL 41.65. The statute does not provide for exclusive access or control by the Township Clerk. Based on the plain language of the statute, the trial court correctly granted summary disposition to the Township Board, and its decision should be affirmed.

B. Case law further supports the Township Board’s position.

Beyond the plain language of the statute, the trial court’s decision is also supported by case law from this Court. Specifically, this Court has held that “custody” under MCL 41.65 does not mean *exclusive* control. *Charter Twp of Royal Oak v Brinkley*, unpublished opinion of the Court of Appeals, issued May 18, 2017 (Docket No. 331317), 2017 WL 2200609 (May 18, 2017) **(Exhibit D)**.

In *Brinkley*, this Court was tasked with evaluating the trial court’s denial of an award of attorney fees after a township unsuccessfully sued its township clerk. One issue was the scope of

the clerk's duties and powers under MCL 41.65. The township had adopted a resolution "requiring defendant not to open mail she received if it was addressed to someone else, and defendant openly defied that resolution." *Id.* at *5. The clerk argued that she had a right under MCL 41.65 to open all mail.

This Court disagreed with the clerk and held that MCL 41.65 does not "expressly giv[e] a township clerk authority to open all mail that is delivered to the township. Rather, the authorities give a clerk 'custody' over the mail. It is not apparent that 'custody' means a clerk can open mail addressed to anyone, regardless of the subject of the mail." *Id.* Thus, this Court found it appropriate for the township to direct its secretary, not its clerk, to open the mail. *Id.* "Custody" therefore does not mean *exclusive* access and control of all township papers.

Plaintiff's reliance on *McKim v Green Oak Township Board*, 158 Mich App 200; 404 NW2d 658 (1987), remains misplaced. *McKim* involved a township board that **prohibited** the clerk from accessing township records, including all of the township's mail. *McKim*, 158 Mich at 202. The issue was not whether the Township Clerk could bar *other* Township officials and staff from accessing public records, which is what Plaintiff claims here, or whether concurrent access to public records was lawful. Plaintiff does not allege (nor could she) that the Township Board has ever prohibited her from accessing any records or books of the Township, and thus *McKim* does not control here.

Even if *McKim* were on point, it is not binding on this Court because it was issued before November 1, 1990. MCR 7.215(J)(1). That is why the *Brinkley* court declined to rely on *McKim* and instead upheld the Royal Oak Charter Township's resolution authorizing township staff *other than the clerk* to open township mail.

This case is not about “reaffirming” *McKim*, as Plaintiff claims. (Pl. Brief p. 8.) *McKim* presented materially different facts. *McKim* would be instructive if the Township Board had barred Plaintiff from accessing BS&A altogether – but that did not happen. Plaintiff has not been deprived of access to BS&A, financial ledgers and journals, or any other Township records. (See Exhibit A, ¶¶ 5, 8, 10.) Nor does her complaint allege that she has been deprived of that access. Rather, Plaintiff’s complaint is that she does not have *exclusive* access and that other Township employees, such as the Administrator and Deputy Treasurer, have had concurrent access. Nothing in Michigan law vests Plaintiff with the exclusive access and control she seeks.

The trial court correctly concluded that MCL 41.65 does not require exclusivity. The trial court reasoned that statute creates a “responsibility to maintain custody of records . . . so that they’re there and available for things like FOIA requests for the public[.]” (Tr. 63.) The trial court’s decision was correct as a matter of law and should be affirmed.

III. The Township’s resolutions did not prevent Plaintiff from performing any of her statutory duties.

A. Plaintiff has access to all documents and records necessary for her to perform her statutory duties.

Plaintiff argues that the Township Board’s resolutions concerning the Administrator’s job duties “interfered with and usurped duties that are statutorily vested exclusively with the Clerk.” (Pl. Brief on Appeal, p. 1.) But other than having exclusive control over BS&A data (which, as discussed above, is not statutorily mandated), Plaintiff has not identified any duty that she was unable to perform as a result of the Township Board’s resolutions. Plaintiff recites numerous statutory duties in footnote 3 of her Brief on Appeal, but she offered no documentary evidence in the trial court explaining *how* she was precluded from performing those duties.

In fact, Plaintiff was not prevented from performing any of her statutory duties. As the Township Administrator’s affidavit explains, Plaintiff currently has – and has always had – read

and write access to the Township’s financial journals and ledgers. (Exhibit A, ¶ 8.) Plaintiff also has – and has always had – the ability to view the history of changes to the journals and ledgers. *Id.* The Township Administrator has not “overridden” any of Plaintiff’s actions, and Plaintiff has not been deprived of access to the Township’s records. (Exhibit A, ¶¶ 10, 11.) Plaintiff’s speculation about what other access “may” have occurred is unsupported by any documentary evidence. (Plaintiff’s Brief, p. 5.)

Importantly, Plaintiff has never alleged that anyone made inaccurate entries in BS&A, deleted information, or otherwise misused the BS&A software. There are no allegations of fraud or embezzlement in this case. Plaintiff’s First Amended Complaint also does not allege that the Township Board prevented Plaintiff from accessing the public records necessary to do her job. Plaintiff does not claim that she was ever barred from using BS&A, reviewing and modifying the journals and ledgers, or accessing other Township financial records. Rather, Plaintiff pleads in her Complaint that she has a claim because other Township officials and staff had *concurrent* access to those same records and that Plaintiff should exclusively control who else can access public records. (First Amended Complaint, ¶¶ 28, 30, 35.) But as discussed above, the statute does not give Plaintiff exclusive control over all records. The trial court therefore correctly held that the “two resolutions [do not] impede the clerk from performing statutory duties.” (Tr. 63.)

B. The Township audit is not in the record on appeal and is irrelevant.

In her Brief on Appeal, Plaintiff discusses a December 15, 2022 Audit Report presented at the Township Board’s January 24, 2023, which is not on the record on appeal and which is dated after the trial court’s decision in this case. Plaintiff argues (in footnote 8) that this Court may take “judicial notice” of the meeting and report. Although this Court may take judicial notice of the fact that the meeting occurred under MRE 201 and that the report was submitted, that does not mean that this Court can use the audit report as evidence for the substantive truth of the matters asserted

therein. *See, e.g., Edwards v Detroit News, Inc*, 322 Mich App 1, 4; 910 NW2d 394 (2017) (the “court cannot take judicial notice of a newspaper article for the truth of the matters asserted therein because of the general prohibition against inadmissible hearsay”). Plaintiff’s line of argument based on the substance of an audit report that was not in the record below is inappropriate.

Regardless, the audit report is irrelevant to the issues in this appeal. The purpose of an audit is to identify possible weaknesses in an entity’s internal controls and recommend process changes to address those weaknesses. Its purpose is not to render legal advice or answer legal questions. The audit does not endorse exclusive access and control by the Clerk; to the contrary, the “segregation of duties” finding on which Plaintiff relies would weigh *against* giving the Clerk sole and exclusive access: duties cannot be segregated if one person holds all the keys. (See Pl. Brief, p. 28.) Simply put, the audit report should not be considered by this Court, but if it is considered, it does nothing to support Plaintiff’s legal claims.

C. Plaintiff is not entitled to attorney fees.

The triviality of Plaintiff’s claims should not be lost on this Court. The Township is being forced to spend taxpayer dollars to defend this lawsuit and argue about “administrator” versus “read/write” access to software, even though the distinction has no impact on Plaintiff’s ability to do her job. As the trial court recognized at the TRO hearing, this is ultimately a “dispute of personalities” that is best addressed in Township Hall or at the ballot box, not in the courtroom.

Despite that, Plaintiff asks this Court to award her attorney fees in the first instance, even the trial court did not reach the (discretionary) question of attorney fees because it found that Plaintiff’s claims had no merit. (Pl. Brief on Appeal, pp. 44-46.) In arguing for attorney fees, Plaintiff accuses the Township Supervisor of bullying her, touts her own master’s degree, quotes her own counsel’s oral argument in the trial court as though it were legal authority, and describes herself as having the “courage” to bring this lawsuit. *Id.* Plaintiff then requests that “because this

Court has all of the facts and law before it, that it make the decision now and remand to the Circuit Court with directions to award the Clerk her attorneys fees and costs.” (Pl. Brief on Appeal, p. 46.)

This is not how appellate review works. “[A]ppellate review is limited to issues that the lower court actually decided.” *Gallagher v Persha*, 315 Mich App 647, 666; 891 NW2d 505 (2016). Moreover, the question of attorney fees under *McKim* (a case not even binding on this court) would be a matter of discretion for the trial court. *McKim*, 158 Mich App at 208. There is no legal authority for this Court to supplant the trial court’s discretion and decide the issue of attorney fees, nor has Plaintiff cited any such authority.

Even if this Court were to entertain Plaintiff’s novel request, Plaintiff is not entitled to attorney fees. As discussed above, the trial court correctly dismissed Plaintiff’s claims, as Plaintiff is not entitled to exclusive control over the BS&A software and the Township Board did not interfere with any of her statutory duties. Plaintiff’s lawsuit was not necessary for the performance of her duties. Rather, this lawsuit is the manifestation of a policy dispute, and Plaintiff’s claims are a political maneuver to enlarge the Township Clerk’s control over the Township’s operations and finances because the Township Clerk disagrees with the policy decisions made by the Township Board.

This case unfortunately resembles *McKim* in one important respect, which is that it is an utter waste of taxpayer money, and an attorney fee award (to be paid for with taxpayer funds) would further exacerbate that waste. As the *McKim* court observed,

[W]e wish to register our dismay that as a result of what can best be characterized as a squabble between township officers, the parties have expended approximately \$15,000 for legal representation before appeal and have no doubt burdened the resources of the trial court. **We view this as an affront to the legal system and the township’s taxpayers and an embarrassment to the parties.** We hope that in the future such divisive conduct can be set aside in favor of more productive behavior.

McKim, 158 Mich App at 208 (emphasis added).

The Township Board has no desire to be part of this prolonged “affront to the legal system,” which is why it immediately sought dismissal in lieu of filing an answer. When Plaintiff abandoned her original claim and created new claims, the Township Board sought dismissal of those claims, too. Plaintiff appealed, so the Township has been pulled into additional legal expenses. This case is not the Township Board’s making; the Township Board only wishes to do its job for its residents and reserve policy disagreements for public debate and the ballot box – not the courtroom.

CONCLUSION

For these reasons, the Scio Township Board requests that this Court AFFIRM the Washtenaw County Trial Court’s decision granting summary disposition in its favor.

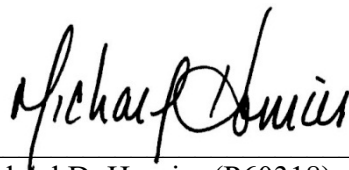
WORD COUNT STATEMENT

This Brief includes 5,966 countable words pursuant to MCR 7.212.

FOSTER SWIFT COLLINS & SMITH, PC
Attorneys for Defendant-Appellee

Dated: March 13, 2023

By:



Michael D. Homier (P60318)
Laura J. Genovich (P72278)
1700 E. Beltline Ave. NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2230
mhomier@fosterswift.com
lgenovich@fosterswift.com

EXHIBIT A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk
of Scio Township,

Plaintiff,

Case No. 22-000414-CZ

Hon. Timothy P. Connors

v.

SCIO TOWNSHIP BOARD,

Defendant.

Mark J. Magyar (P75090)
DYKEMA GOSSETT, PLLC
Attorneys for Plaintiff
201 Townsend St., #900
Lansing, MI 48933
(616) 776-7523
mmagyar@dykema.com

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
FOSTER SWIFT COLLINS & SMITH, PC
Attorneys for Defendant
1700 E. Beltline Ave. NE, Ste. 200
Grand Rapids, MI 49525
(616) 726-2200
mhomier@fosterswift.com
lgenovich@fosterswift.com

AFFIDAVIT OF JAMES MERTE

James Merte, being duly sworn, deposes and says as follows:

1. I have personal knowledge of the facts set forth herein. If I am called to testify and am sworn as a witness, I can testify competently to the facts set forth herein.
2. I am the interim Township Administrator of Scio Township in Washtenaw County, Michigan. I previously served as the Scio Township Assessor. I have served as a Township employee for 43 years.
3. I am aware that Plaintiff has served as Township Clerk since June 2019 when she was appointed to fill a vacancy.

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4. I have reviewed the Brief in Support of Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(I)(2) and disagree with certain factual representations made by Plaintiff.

5. Plaintiff's Brief states that the Township Board "direct[ed] the administrator to grant illegal access to the Deputy Supervisor to manipulate the township's general ledger and revoke certain access of the Clerk to the Township's books, records and papers in clear and direct violation of MCL 41.65." (Brief, p. 1.) This is incorrect. The Township Board did not direct me or any prior administrator to revoke Plaintiff's access to the Township's general ledger, nor have I revoked her access. As Administrator, I do oversee the Township's software, including the BS&A software, but Plaintiff maintains concurrent read and write access.

6. Plaintiff's Brief further states that I was instructed to give BS&A access to Township Deputy Treasurer Sandra Egeler. (Brief, p. 4.) To be clear, Deputy Treasurer Sandy Egeler (who has served as a Township employee for approximately 30 years, and who previously served as Finance Director) was given access so she could reconcile journal entries in preparation for the audit because the reconciliations had not been performed by Plaintiff or anyone else.

7. The Township has been late in filing its audit with the State since Plaintiff took office. This is because Plaintiff, by her own admission, lacks the qualifications and training to prepare the appropriate financial records. As a result, other Township employees, such as the Deputy Treasurer, must perform those tasks. Before Plaintiff became Township Clerk, the Township's audits were performed by the (then-serving) Township Clerk and were timely filed with the State. The delays with the audit did not arise until Plaintiff became the Township Clerk.

8. Plaintiff's Brief further states that Plaintiff "could not see what changes Mr. Merte or others may have made to the journals and ledgers, or if other unauthorized people had access."

(Brief, pp. 4-5.) This is incorrect. Plaintiff was not deprived of access to the journals and ledgers and retained the ability to view the history of changes to the journals and ledgers.

9. Plaintiff's Brief further states that "Egeler entered 155 general journal entries all dated within the prior fiscal year ending March 31st, and Egeler posted 57 of these to the general ledger" and that "Egeler reversed only the 57 general ledger entries." (Brief, p. 5.) Plaintiff seems to suggest that Deputy Treasurer Egeler should have reversed the 98 entries that were entered into the general journal, but this is incorrect. Because those 98 entries were never posted to the general ledger, there was nothing for Deputy Treasurer Egeler to reverse. The general ledger was returned to the same condition it was in before Deputy Treasurer Egeler began assisting with the entries.

10. Plaintiff's Brief further states that "Plaintiff does not have the necessary permissions to be able to fully verify the integrity or corruption of these Township records" and speculates that "[t]here may be more ongoing and unauthorized access to the eight financial management modules of BS&A, as well as to the Assessing or Tax Rolls that are within other BS&A modules." (Brief, p. 5.) This is incorrect. Plaintiff was not deprived of access to the Township records and retained the ability to view the history of access to the BS&A modules and the Assessing and Tax Rolls.

11. With respect to my "Enterprise Administrator" access to the BS&A software, contrary to Plaintiff's speculation, I have not "overridden" any of Plaintiff's actions without the Board's or Plaintiff's knowledge or consent. (Brief, p. 6.)

12. Plaintiff's Brief claims that the Township Board has refused to hire qualified finance staff. (Brief, p. 15.) This is incorrect. The Township Board hired one additional employee to assist with finance functions, and it has offered to expand the roles of existing staff members (including the Deputy Treasurer) to provide further support to Plaintiff. Plaintiff has rejected these

staffing options as insufficient because, as she has stated at public meetings, she would prefer to hire different individuals.


James Merte

STATE OF MICHIGAN)
) ss.
COUNTY OF Washtenaw)

On this 29 day of June, 2022, before me, a Notary Public, in and for said County, personally appeared the above-named James Merte, and made oath that he has read the foregoing Affidavit, and acknowledged the same to be his free act and deed.



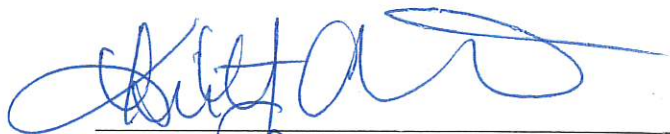

Kristy Aiken, Notary Public
County of Jackson, State of Michigan
My commission expires: 5-12-2028
Acting in Washtenaw County

EXHIBIT B

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of
Scio Township,

Plaintiff,

vs.

Case No. 22-000414-CZ

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,
Defendant.

Proceedings taken before the
Honorable Timothy P. Connors
Taken Via Zoom Videoconference
Commencing at 12:04 p.m.
Thursday, August 25th, 2022
Transcribed by Carolyn Grittini, CSR-3381

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1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
3
4 JESSICA FLINTOFT, as Clerk of
5 Scio Township,
6 Plaintiff,
7 vs. Case No. 22-000414-CZ
8 Hon. Timothy P. Connors
9 SCIO TOWNSHIP BOARD OF TRUSTEES,
10 Defendant.
11
12

13 Proceedings taken before the
14 Honorable Timothy P. Connors
15 Taken Via Zoom Videoconference
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17 Thursday, August 25th, 2022
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MARK J. MAGYAR</p> <p>4 Dykema Gossett</p> <p>5 201 Townsend Street</p> <p>6 Suite 900</p> <p>7 Lansing, Michigan 48933</p> <p>8 66.776.7523</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 MICHAEL HOMIER</p> <p>12 Foster Swift Collins & Smith</p> <p>13 1700 East Beltline, N.E.</p> <p>14 Suite 200</p> <p>15 Grand Rapids, Michigan 49525</p> <p>16 616.726.2238</p> <p>17 Appearing on behalf of the Defendant.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 conferring with the written arguments as well. With</p> <p>2 that, if you would like to state your appearances,</p> <p>3 attorneys on the record, and then we'll hear argument.</p> <p>4 MR. MAGYAR: Thank you, Judge Connors.</p> <p>5 Mark Magyar, here for the plaintiff and alongside me</p> <p>6 is the plaintiff, Jessica Flintoft.</p> <p>7 MR. HOMIER: Thank you, Your Honor. On</p> <p>8 behalf of Scio Township Board, Mike Homier appearing.</p> <p>9 THE COURT: Go right ahead, counsel.</p> <p>10 MR. MAGYAR: Thank you, Your Honor. Mark</p> <p>11 Magyar for the plaintiff. This is Plaintiff's motion</p> <p>12 for Summary Disposition under MCR 2.116(B)(10) and</p> <p>13 I-01.</p> <p>14 Just briefly as an introduction, I want to</p> <p>15 say that this is not a policy dispute. I know the</p> <p>16 board has made that argument and said that it has no</p> <p>17 place in this court, but what we're dealing with is</p> <p>18 the taking of statutorily prescribed duties of a clerk</p> <p>19 as an officer and removing them by a series of two</p> <p>20 resolutions and redirecting them to the supervisor and</p> <p>21 to the township administrator, who is not an officer</p> <p>22 but who is an employee serving at the pleasure of the</p> <p>23 board.</p> <p>24 And under the McKim case that we, of</p> <p>25 course, extensively rely upon and there's a ton more</p>
<p style="text-align: right;">Page 3</p> <p>1 Thursday, August 25, 2022</p> <p>2 12:04 p.m.</p> <p>3</p> <p>4</p> <p>5 COURT CLERK: We are on the record in the</p> <p>6 matter of Flintoft vs. Scio Township Board for</p> <p>7 Plaintiff's Motion for Summary Disposition and for</p> <p>8 Defendant's Motion for Summary Disposition.</p> <p>9 THE COURT: Good morning. This is Judge</p> <p>10 Connors. I'll ask for appearances in a minute. I</p> <p>11 know that there are many observers to this motion and</p> <p>12 some of them have actually been listening in on prior</p> <p>13 cases, and I think they can attest that I appreciate</p> <p>14 your patience. You are the last motion I have this</p> <p>15 morning on the 10:30 docket. After yours, I'll start</p> <p>16 the 11:30 docket. The reason you are last on the</p> <p>17 10:30 docket is that there were more substantive</p> <p>18 issues involved in yours, and so I wanted to make sure</p> <p>19 it was given time. So that's neither -- it's not an</p> <p>20 excuse, but it is an explanation and I thank you for</p> <p>21 your patience.</p> <p>22 In addition, I have the briefs in front of</p> <p>23 me, which I have read and continue to look at, and so</p> <p>24 when you see me looking down, it's not that I'm not</p> <p>25 paying attention to what is being said, it's that I'm</p>	<p style="text-align: right;">Page 5</p> <p>1 on these topics, that's for this court to come in and</p> <p>2 vacate anything that interferes with the clerk's</p> <p>3 duties. And so what we're asking for in Count I is</p> <p>4 three things. We want the two resolutions vacated.</p> <p>5 That's the August 17, '21 and February 22, '22.</p> <p>6 We tried to be specific about what the</p> <p>7 offending provisions of those were. We had some</p> <p>8 criticism of how detailed we were. I think maybe I</p> <p>9 agree with the board that it would be much more</p> <p>10 streamlined to just vacate those resolutions and if</p> <p>11 they want to go back to the drawing board of</p> <p>12 (inaudible) that don't interfere with the clerk's</p> <p>13 duties, they, of course, can do so at the next</p> <p>14 meeting. We're also happy to go in, though, by detail</p> <p>15 and have a thorough discussion of the provisions of</p> <p>16 the resolutions. That's number one, vacate the</p> <p>17 resolutions.</p> <p>18 Number two, restore the clerk as what was</p> <p>19 already the case before these resolutions and before</p> <p>20 May of 2022 changes to having custody and enterprise</p> <p>21 administrative authority under the township's journals</p> <p>22 and records. And that software now, in this day and</p> <p>23 age, it's all computer, this is the BS&A software</p> <p>24 we're talking about. But really, as an analogy, you</p> <p>25 can even think of it has hardbound books in a safe.</p>

<p style="text-align: right;">Page 6</p> <p>1 And what the board has done with these resolutions, 2 has been to take the key to the safe of the township's 3 journals and records, journals and ledgers, to take 4 that key and to give it to someone else contrary to 5 law, contrary to statute. And what I mean by that, 6 and we'll get into it a little more, this is just a 7 summary of what we want, but the clerk no longer has 8 the power under the status quo under these resolutions 9 to even know who's being granted access to the 10 journals and ledgers of the township and who can 11 change them. That authority rests with James Merte, 12 the interim township administrator.</p> <p>13 THE COURT: If I may, Mr. Magyar, at the 14 beginning -- I just wanted to ask the clerk to confer, 15 this is no jury demand in this case, am I correct?</p> <p>16 MR. MAGYAR: I believe that's correct, Your 17 Honor.</p> <p>18 THE COURT: So the first question I have, 19 and I would really like to direct this to both sides, 20 my general observation in looking at the briefs and 21 being familiar with this dispute for the various 22 motions that continue to seem to come my way, my 23 observation is the parties don't like each other very 24 much, and they happen to have beliefs on what their 25 authority should be in their common obligation to the</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. MAGYAR: Thank you, Your Honor, yes. 2 And as Your Honor pinpointed and what's going to be 3 the key here is material facts. Because the board has 4 certainly, through the Affidavit of Mr. Merte, tried 5 to make it appear that there's all kinds of disputes, 6 when really, there are no disputes of material fact 7 and we contend that C(10) Summary Disposition is 8 proper.</p> <p>9 And the reason we're confident in that 10 result is, when we look at what the clerk's statutory 11 duties are, which for purposes of this discussion, 12 I'll try to stay brief, but it's custody and 13 administration of the township's journals and ledgers. 14 And when you look at then what these resolutions did 15 and what the status quo is now, there's an 16 undisputable, clear interference with the clerk's 17 duties over the journals and ledgers. And what that 18 interference is, is the authority that was expressly 19 provided under, particularly the second resolution, 20 where they say that the board is going to have this, 21 quote, ultimate authority through the administrator or 22 the BS&A software and the IT, that is saying, we are 23 giving the administrator the ultimate authority over 24 the journals and ledgers because that's where they're 25 located in the software.</p>
<p style="text-align: right;">Page 7</p> <p>1 public. As a result, they have disputes about what 2 they believe their obligations are or what the others 3 are doing and that there is a level of distrust that 4 is, in my opinion, fairly obvious. And as a result of 5 that, it's difficult to get anybody to agree on 6 anything about anything.</p> <p>7 And the reason I bring that up is that that 8 oftentimes goes to credibility, and when we don't have 9 agreement on basic facts, even if they're not legally 10 significant, I'm always cautious to try a case by 11 pleadings. So I say that at the front end because 12 your motion, for example, is under a C(10) saying 13 there are no material factual disputes, and then of 14 course I-1 using the equitable ability that I have to 15 sort of come in.</p> <p>16 So can we focus on, rather than arguing the 17 case as if this is the trial today, tell me why I can 18 legally grant a C(10) motion, and then I'll hear from 19 the other side as to whether they agree. So you tell 20 me whether there's not any material factual disputes, 21 I guess that's your assertion, and let me check with 22 the other side to see if there are, and if they 23 believe there are, I would like to have them identify 24 what those are and then you tell me whether they're 25 material or not. Okay?</p>	<p style="text-align: right;">Page 9</p> <p>1 And after we filed our complaint, the board 2 changed their conduct because they were allowing a 3 deputy to actually enter at her leisure and manipulate 4 and change the general ledger and other modules of the 5 township's journals and ledgers. And when we filed 6 this suit and said absolutely not, and the township 7 attorney agreed with us, the only thing they did was 8 stop letting this employee manipulate the ledgers, but 9 what they didn't do was return to the status quo from 10 before, which was that only the clerk has the ultimate 11 authority over accessing the township's journals and 12 ledgers and giving authority to others to manipulate 13 those records.</p> <p>14 As it stands right now, if Mr. Merte, an 15 employee of the township, wants to grant access to 16 Sandra Egeler or me or anyone else to enter the 17 software and the journals and ledgers of the township, 18 to edit them or do whatever under his enterprise 19 administrator access, he can do that, the clerk will 20 not know of that, and that is the fundamental problem 21 and --</p> <p>22 THE COURT: I need to interrupt you again, 23 sir. I'm not sure you heard what I was saying. For 24 example, the term manipulating records is a fairly --</p> <p>25 MR. MAGYAR: I don't mean it derogatorily.</p>

<p style="text-align: right;">Page 10</p> <p>1 THE COURT: I'm not done speaking now, if 2 you don't mind. Manipulation of records is a fairly 3 explosive term. I suspect they don't agree with you 4 that they're giving carte blanche manipulation of 5 records. That to me would be a material factual 6 dispute. Let me ask you this question: Assuming I 7 denied motions for Summary Disposition like I would 8 temporary ex parte motions or emergency motions, are 9 you ready to go to trial or do you need any discovery? 10 MR. MAGYAR: I think we would have some 11 discovery we would want in case there were 12 communications that were kept private amongst the 13 board on these topics. 14 THE COURT: Let me then shift the 15 conversation to opposition asking if they think there 16 are material factual disputes and let them identify 17 rather than you arguing the case, and then you can 18 respond on that and then I'll take the next motion. 19 Counsel, do you believe there are material 20 factual disputes such that whether or not discovery is 21 necessary, there needs to be a hearing to determine 22 for the relief requested and for the finder of fact, 23 which apparently in this case is me, to listen to that 24 and determine credibility and apply facts to all? 25 MR. HOMIER: Thank you, Your Honor. Mike</p>	<p style="text-align: right;">Page 12</p> <p>1 that there is, contrary to black letter statute, that 2 there's a minimum staffing right or obligation in any 3 way. But what the township has done, has created a 4 currently sitting pot of 255,000 dollars that they 5 approved that at a March 29th meeting under the 6 board's special powers, which we're not disputing, and 7 appropriations power, and have done absolutely nothing 8 with it in an arbitrary and capricious manner. While 9 the finance director position remains vacant since 10 November of '21, we have documented that the finance 11 manager has had some very serious family medical leave 12 issues with family members. 13 We've provided evidence from experts such 14 as the Woodfield Group, (inaudible), Plante Moran, 15 former administrator Rowley, who has tons of 16 background and experience in this, all to say what is 17 your typical staffing in the finance department, which 18 the finance department is another way of saying the 19 accounting department, and all of it is inextricably 20 intertwined with the duties of the clerk with respect 21 to the accounts of the township. 22 THE COURT: So let me interrupt you again, 23 because I'm reading -- since you've gone to Count II, 24 Count I, you want me to vacate resolutions. Count II, 25 when I looked at your brief, it says insufficient and</p>
<p style="text-align: right;">Page 11</p> <p>1 Homier. I don't believe there are any material facts 2 as it pertains to the township's request for judgment 3 under I-2 as a matter of law in its favor, because the 4 law simply does not provide what Plaintiff thinks it 5 should provide. So in other words, the various 6 statutes that they've relied upon are in direct 7 conflict with, one, the allegations that they've made 8 in the complaint, and two, the pleading in their 9 motion. 10 THE COURT: Again, counsel, so in your 11 case, you're saying that this case, you don't need 12 discovery, this case is ripe on the facts that there 13 are -- the courts can and should make a determination 14 one way or the other for the relief requested from the 15 various parties? 16 MR. HOMIER: Based on the statutes at 17 issue, that's correct. 18 THE COURT: All right. Well, that saves 19 you there, sir, Mr. Magyar. Now you can go ahead and 20 argue your case. 21 MR. MAGYAR: Thank you, Your Honor. And 22 just to move on from the introduction to Count I, the 23 court seeking the vacating of the resolutions. In 24 Count II, it is a separate -- it's related but it's a 25 separate issue than Count I. We are not contending</p>	<p style="text-align: right;">Page 13</p> <p>1 under-trained finance staff, attempts to replace 2 Sandra Egeler with a qualified finance director, the 3 under-trained finance team, what is it you want me to 4 do in Count II? 5 MR. MAGYAR: Thank you, Your Honor. And 6 this is -- what we want in Count II is we want the 7 clerk's position, as is normal in every township and 8 was the case here until recently, to be able to 9 oversee and make the hiring recommendations to the 10 board for the board's approval, rather than what these 11 resolutions did was expressly shift that over to the 12 supervisor. 13 These positions, when we look at the 14 statute and the bolded highlighted portions of MCR 15 41.65, these positions are what directly support 16 things like the clerk shall also open and keep a 17 separate account with each fund belonging to this 18 township and shall credit each fund with the amounts 19 that properly belong to it, et cetera, et cetera. 20 What we're talking about -- 21 THE COURT: Back to my question, sir. When 22 you say what you want me to do in Count II is direct 23 that the clerk should oversee, when you say oversee, 24 does that mean coordinate, account for, make sure it's 25 done, or does that mean that that's the ultimate</p>

<p style="text-align: right;">Page 14</p> <p>1 decision maker and so whatever your client decides is</p> <p>2 the way it is? What do you mean by that?</p> <p>3 MR. MAGYAR: No, not whatever my client</p> <p>4 decides. In fact, we can look right to the resolution</p> <p>5 that we want vacated, where it was the supervisor who</p> <p>6 wrote into his own job description that he will have</p> <p>7 the budget and finance director report to him. The</p> <p>8 finance director --</p> <p>9 THE COURT: Now you're going back to Count</p> <p>10 I. I understand you want me to vacate those</p> <p>11 resolutions. Count II, I'm asking you what you want</p> <p>12 me to do and you want me to issue something, and you</p> <p>13 use the term oversee, and I'm trying to understand</p> <p>14 what do you mean by oversee?</p> <p>15 MR. MAGYAR: Your Honor, the resolutions do</p> <p>16 have overlap into both counts. The supervisor has</p> <p>17 given himself the new power that didn't exist before</p> <p>18 under the August resolution, that the finance</p> <p>19 director, who does all things that impact the clerk's</p> <p>20 role and duties, that now the finance director will</p> <p>21 report to the supervisor. So what we're asking for,</p> <p>22 Your Honor, is when the board creates a budget, as is</p> <p>23 their role and they have done, and when they</p> <p>24 appropriate money to the accounting group to hire</p> <p>25 accounting staff, which is sitting in a pot right now</p>	<p style="text-align: right;">Page 16</p> <p>1 candidate.</p> <p>2 THE COURT: I'm sorry, that what?</p> <p>3 MR. MAGYAR: Then the clerk presents a next</p> <p>4 or new candidate. Underlying all of this is the board</p> <p>5 cannot be under the Wayne County case that we cited</p> <p>6 acting in an arbitrary and capricious manner --</p> <p>7 THE COURT: Hey, I don't need the</p> <p>8 invective. So what you're saying is, she makes a</p> <p>9 recommendation, if the board says no thank you, she</p> <p>10 makes another recommendation. And if the board says</p> <p>11 no thank you, she makes another recommendation. And</p> <p>12 if the board says no thank you, she makes another.</p> <p>13 What happens if all her recommendations the board says</p> <p>14 no thank you. Then what do we do?</p> <p>15 MR. MAGYAR: Well, I think there would be</p> <p>16 necessarily underlying those decisions with some</p> <p>17 rationale, and I'm not trying -- I'm trying to use the</p> <p>18 legal terminology in terms of art when I say arbitrary</p> <p>19 and capricious. If those decisions are based on -- I</p> <p>20 mean, it seems like under our hypothetical, it would</p> <p>21 be hard to get through that many candidates and</p> <p>22 there's not one qualified one. When you look to the</p> <p>23 history of who has been put in those roles who have no</p> <p>24 qualifications, then to say that the board would</p> <p>25 reject all of these, I think then you're entering into</p>
<p style="text-align: right;">Page 15</p> <p>1 of 255,000 dollars, that it then shifts to the clerk</p> <p>2 to recommend to the board how those hiring decisions</p> <p>3 for her group get made and that when those hirings get</p> <p>4 made, that those people report to the clerk. That's</p> <p>5 what we're asking for.</p> <p>6 The board still has to approve the hiring,</p> <p>7 but those employees who are doing the finance tasks</p> <p>8 and with the money that the board budgets in its</p> <p>9 appropriations role, should have the say so of who is</p> <p>10 recommended to the board to be hired --</p> <p>11 THE COURT: You need to distill this down.</p> <p>12 You're using words like should, recommend; these are</p> <p>13 vague terms. Give me specifically what you're asking</p> <p>14 in Count II. Because if I adopted what you just asked</p> <p>15 me, I couldn't explain it to anybody.</p> <p>16 MR. MAGYAR: Okay. That the clerk</p> <p>17 recommend to the board who should be hired for finance</p> <p>18 staff, and that once hired, any finance staff reports</p> <p>19 to the clerk. That's what we're asking.</p> <p>20 THE COURT: Let's stay with the first</p> <p>21 thing. You're saying the clerk should recommend to</p> <p>22 the board, so she makes a recommendation. If they</p> <p>23 decide thank you very much, we're not following the</p> <p>24 recommendation, then what do you say?</p> <p>25 MR. MAGYAR: That she comes up with a next</p>	<p style="text-align: right;">Page 17</p> <p>1 a realm where it is arbitrary and capricious.</p> <p>2 THE COURT: Tell me where you think the</p> <p>3 breakdown is. You're saying that the board is not</p> <p>4 taking any recommendations? Is that where you're</p> <p>5 saying the breakdown is?</p> <p>6 MR. MAGYAR: Yeah, the breakdown is they've</p> <p>7 had a fund for months to provide necessary support</p> <p>8 to --</p> <p>9 THE COURT: Sir, it would really help me if</p> <p>10 I could just get an answer to my questions. So what</p> <p>11 you're saying --</p> <p>12 MR. MAGYAR: I'm trying, Your Honor.</p> <p>13 THE COURT: No, you're not. You're arguing</p> <p>14 all kinds of stuff with it. Listen. So you're saying</p> <p>15 the board is not listening to her recommendations,</p> <p>16 yes?</p> <p>17 MR. MAGYAR: Yes, and not even supplying</p> <p>18 any staff. It's an empty position.</p> <p>19 THE COURT: Okay. So then what you're</p> <p>20 saying is that I should shift it from her recommending</p> <p>21 and giving her the ability to hire and pick the person</p> <p>22 since she feels they aren't listening to her, is that</p> <p>23 what you're asking me to do?</p> <p>24 MR. MAGYAR: I think if you conceptualize</p> <p>25 it, like if you had a recruiting committee --</p>

<p style="text-align: right;">Page 18</p> <p>1 THE COURT: I don't need -- counsel, I 2 don't need to conceptualize things. I'm asking you a 3 direct question. What is it you want me to do? To 4 say your client has the authority to pick and decide 5 who it is, because of the feeling that the 6 recommendations aren't being listened to? What are 7 you asking me to do specifically? 8 MR. MAGYAR: We are asking for the 9 authority to use the already allocated and budget 10 funds to recruit, to use those funds to fill that 11 role, be in the first and only instance with the 12 clerk. So that's why I brought up recruiting 13 committee. She's the recruiting committee, not as it 14 currently stands, the supervisor or the board. 15 THE COURT: You want me to order the board 16 to fill a position that your client picks? 17 MR. MAGYAR: No. 18 THE COURT: Then what is it you want me to 19 do? 20 MR. MAGYAR: We want the clerk, not the 21 supervisor, not the board, to be charged with the task 22 of going out and finding talented, educated in the 23 ways that are qualified for the finance roles that are 24 needed. It's the clerk's office charge with finding 25 those candidates and presenting them for hire, and</p>	<p style="text-align: right;">Page 20</p> <p>1 that it's the clerk's sole province to recruit and 2 present qualified candidates to the board. I cannot 3 promise you that we won't be back here when the board, 4 let's say, hypothetically, arbitrarily without reason 5 or without proper reasons denies, denies, denies and 6 doesn't fill, then yeah, we'll probably be back here. 7 But a good start, and what we think is required under 8 the law, is that the province for who's making these 9 recommendations, because the clerk knows what is 10 needed to support her duties, is that it's the clerk 11 presenting those. 12 THE COURT: So because you feel I'm down 13 the street, every time we have a dispute, I'm the one 14 you're running to. When you say -- you want me to 15 issue an order saying the clerk has the sole province 16 to provide the board with qualified candidates. When 17 I look at that language, it's saying the clerk is 18 deciding who's a qualified candidate, the clerk 19 decides who the list is the board can consider, the 20 board can't consider anybody else even if they happen 21 to think we ought to take a look at this person, and 22 if they reject any of the sole province of the 23 qualified candidates, then how are they supposed to 24 function? How is the board supposed to function? 25 In de facto, you're saying the clerk is</p>
<p style="text-align: right;">Page 19</p> <p>1 then once hired, reporting to, within that group, to 2 the clerk's office. That's what we're asking for. 3 And yes, there will be circumstances where 4 her first or second candidate, as the recruiting 5 committee, as she and her deputy are the recruiting 6 committee, there will be instances where the board 7 may, in an articulated fashion, have a reasonable 8 reason why they don't agree with that hiring that 9 staff member or maybe they can't come to terms on 10 salary if they are overqualified. 11 THE COURT: I'm back to sort of my initial 12 comments to you. It's like you're asking me to come 13 in and run the township. 14 MR. MAGYAR: I'm not, Your Honor. I'm 15 asking for the clerk to be able to perform her 16 statutory duties and not be prevented from doing so by 17 the board. 18 THE COURT: You need to nail this down in 19 very specifically -- 20 MR. MAGYAR: I wish I could today, Your 21 Honor, I wish I should head off all future disputes, 22 and whatever comes out of today, that we'll never be 23 back here again. But just like any decision that goes 24 before the board, hiring decisions are going to be 25 going before the board. And what we are asking for is</p>	<p style="text-align: right;">Page 21</p> <p>1 picking from the group, defines the group and you must 2 pick one, is that not what you're saying to me? 3 You're saying -- 4 MR. MAGYAR: First of all -- 5 THE COURT: It would help me if I can 6 finish before you interrupt me. 7 MR. MAGYAR: I'm sorry. I thought you 8 asked me. 9 THE COURT: Usually I'm not done talking 10 when I'm in the middle of words and you're 11 interrupting, that's just a general observation I have 12 about discourse. Now, when you say the sole province 13 to provide qualified candidates to the board, what 14 happens if the board disagrees? 15 MR. MAGYAR: I thought that was the 16 question, so I'm sorry Your Honor, I did not mean to 17 interrupt you. The topic isn't function. Okay. 18 That's the first thing, it isn't functioning. So we 19 don't have to worry about it won't be able to 20 function, it isn't functioning. Right now there isn't 21 a finance staff, and part of the reason is that the 22 board won't fill it. 23 And no, it's not the case. In any 24 situation where you have someone in charge of 25 recruiting, someone could come up and say hey, have</p>

<p style="text-align: right;">Page 22</p> <p>1 you heard about this candidate? They have a Master's 2 in accounting and they've told the supervisor that 3 they're interested; why don't you consider this 4 person? Of course, they could get into the mix of 5 candidates to be reviewed. And certainly, the board 6 can vote on approving any candidate no matter where 7 they came from. But what we've seen so far leading us 8 here today is tax work. We want people that were 9 part-time, no accounting experience, we'll throw those 10 to you, and what it has the effect of doing and why 11 we're here trying to creatively come up with a 12 solution that complies with the law is it has the 13 effect of preventing the clerk from performing her 14 duties. And that's the problem. That's the legal 15 problem.</p> <p>16 THE COURT: If I may ask you, so my 17 understanding is, first thing you're asking me to do 18 is rule as a matter of law that the clerk has the sole 19 province to provide qualified candidates to the board, 20 and there may be subsequent problems after that, but 21 that's what you're asking me to do today?</p> <p>22 MR. MAGYAR: Yes, and whoever is hired, 23 that if --</p> <p>24 THE COURT: We'll go to number two. Can we 25 agree that's the first thing you're asking me to do?</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. MAGYAR: No, Your Honor.</p> <p>2 THE COURT: So we vacate the resolutions, 3 you want me to issue an order today that says the 4 clerk has the sole province to provide qualified 5 candidates to the board. The board must pick from 6 whoever the clerk submits; whoever they pick, then 7 that person reports directly to the clerk?</p> <p>8 MR. MAGYAR: Yes, except I think we also 9 acknowledge there could be room to add by agreement of 10 the clerk, add other candidates.</p> <p>11 THE COURT: I'm just trying -- I'm here 12 today, I just want to know. Is there a third thing 13 you want me to order today?</p> <p>14 MR. MAGYAR: No, there isn't, Your Honor. 15 And I don't think what we're asking for is very novel.</p> <p>16 THE COURT: Sir, I'm not asking if you're 17 telling me why you're so entitled to it. I'm trying 18 to understand what it is you're asking me to do and 19 then when I ask you why, you can go into that.</p> <p>20 MR. MAGYAR: Okay, okay.</p> <p>21 THE COURT: Lord, you know what, maybe we 22 need to have these hearings in person, because you 23 keep interrupting me. Now I have to interrupt you to 24 get you on track, and I acknowledge I'm doing that. 25 But when I'm trying to put on the record my ruling and</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. MAGYAR: In Count II, yes.</p> <p>2 THE COURT: Geez, I just really need to 3 know what you're asking me to do today. So Count I is 4 to say, your resolutions are void, I'm the judge, they 5 don't mean anything. Now Count II, you want me to say 6 that the clerk has the sole province to provide 7 qualified candidates to the board. Now you have a 8 second thing you want me to do under Count II?</p> <p>9 MR. MAGYAR: It's just whoever is hired, 10 once we can ever get to actually employ people in the 11 finance group, is that they should be reporting to the 12 clerk, because the support they're providing is to 13 comply with the statutory duties of the clerk.</p> <p>14 THE COURT: Let's distill that down. So 15 you're saying whoever it is reports directly to the 16 clerk?</p> <p>17 MR. MAGYAR: That's right.</p> <p>18 THE COURT: And not to the board? They 19 don't report to the board? That's the sole --</p> <p>20 MR. MAGYAR: I'm sorry, Your Honor. The 21 resolution that was adopted that we're seeking to 22 vacated has the finance director contrary to past 23 practice report to the supervisor.</p> <p>24 THE COURT: Anything else under Count II 25 you want me to do?</p>	<p style="text-align: right;">Page 25</p> <p>1 why and you're interrupting, I can't do it. Should we 2 do this in person? I'm happy to do that, because you 3 can see I'm speaking when you're interrupting me when 4 you're in person. You want to do it that way? I'm 5 happy to do that.</p> <p>6 MR. MAGYAR: First of all, let me again 7 apologize, Your Honor. I'm not trying to interrupt 8 you. There has been times when I thought a question 9 was asked or I thought I was responding. If I'm too 10 quick on it, I do apologize. I'm fine to do it in 11 person, or maybe (inaudible) a little bit of feed 12 issues. However Your Honor directs, but I think that 13 is where the issue is coming up.</p> <p>14 THE COURT: In this case -- the Supreme 15 Court just came down with a decision of when courts 16 can require people to be in person and when they can 17 allow by Zoom. This continues to be an issue. So I 18 am going to require the attorneys and the parties 19 appear in person so that I don't have to keep going 20 through this. And in that regard, why don't I put the 21 attorneys into a breakout room, we're very busy down 22 here, we're digging out from under, but we'll pick a 23 time and date and you can come on in, and that way you 24 can see that when my mouth is open and I'm speaking, 25 that's not the time for you interrupt me, and also</p>

<p style="text-align: right;">Page 26</p> <p>1 when I'm trying to get an answer to a specific 2 question, maybe this will assist us in doing that. So 3 if you could, let's put the attorneys into a breakout 4 room and then we'll go to the 11:30 docket and they'll 5 pick a time they can be here in person. 6 MR. HOMIER: Your Honor, this is Mike 7 Homier. Can I ask one question? 8 THE COURT: Sure. 9 MR. HOMIER: You indicated that you wanted 10 the attorneys and the parties, and because I represent 11 the board, I assume that you are not suggesting that I 12 bring the rest of the board members? 13 THE COURT: You know what, I'm fine with 14 that. I just need the attorneys. I just need the 15 attorneys in person so that I can get direction. It 16 would seem to me you may want your parties there in 17 case you want to consult with them. That's up to you. 18 In addition, I know there's multiple observers. Those 19 observers are free to come on in and they're free to 20 do it by Zoom. That does not matter to me. But I 21 just can't get anywhere like this. This is very -- 22 and I don't quite understand why, you talk about this 23 counsel, literally, I've been doing this by Zoom for 24 two and-a-half years. I've not had this repeated 25 problem with other attorneys. So let's get in here</p>	<p style="text-align: right;">Page 28</p> <p>1 CERTIFICATE OF NOTARY 2 STATE OF MICHIGAN) 3) SS 4 COUNTY OF MACOMB) 5 6 7 I, CAROLYN GRITTINI, certify that this 8 proceeding was transcribed by me on the date 9 hereinbefore set forth; that the foregoing proceeding 10 was recorded by me stenographically and reduced to 11 computer transcription; that this is a true, full and 12 correct transcript of my stenographic notes so taken; 13 and that I am not related to, nor of counsel to, 14 either party nor interested in the event of this 15 cause. 16 17 18 19 <i>Carolyn Grittini</i> 20 21 22 CAROLYN GRITTINI, CSR-3381 23 Notary Public, 24 Macomb County, Michigan. 25 My Commission expires: July 15, 2024</p>
<p style="text-align: right;">Page 27</p> <p>1 and we'll clear it up. If it's something about the 2 way this is connecting in for you, we'll clear that up 3 and you come on into the courtroom. So we'll put them 4 in a breakout room and they'll go to the 11:30 docket. 5 (Proceedings concluded at 12:36 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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EXHIBIT C

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JESSICA FLINTOFT, as Clerk of
Scio Township,

Plaintiff,

vs.

Case No. 22-000414-CZ

Hon. Timothy P. Connors

SCIO TOWNSHIP BOARD OF TRUSTEES,
Defendant.

Proceedings taken before the
Honorable Timothy P. Connors
Taken at 101 E. Huron Street
Ann Arbor, Michigan
Commencing at 1:30 p.m.
Wednesday, September 21, 2022
Transcribed by Carolyn Grittini, CSR-3381

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1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
3
4 JESSICA FLINTOFT, as Clerk of
5 Scio Township,
6 Plaintiff,
7 vs. Case No. 22-000414-CZ
8 Hon. Timothy P. Connors
9 SCIO TOWNSHIP BOARD OF TRUSTEES,
10 Defendant.
11
12

13 Proceedings taken before the
14 Honorable Timothy P. Connors
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MARK J. MAGYAR</p> <p>4 Dykema Gossett</p> <p>5 201 Townsend Street</p> <p>6 Suite 900</p> <p>7 Lansing, Michigan 48933</p> <p>8 66.776.7523</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 MICHAEL HOMIER</p> <p>12 Foster Swift Collins & Smith</p> <p>13 1700 East Beltline, N.E.</p> <p>14 Suite 200</p> <p>15 Grand Rapids, Michigan 49525</p> <p>16 616.726.2238</p> <p>17 Appearing on behalf of the Defendant.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 And the first is, what is it specifically you want me</p> <p>2 to do, I don't need the history of the case, but what</p> <p>3 you want me to do today, how I can do it legally, and</p> <p>4 obviously, I'm very familiar with the court rules on</p> <p>5 MSDs, but there is some case law that you cited and I</p> <p>6 think it's helpful if you are very specific about the</p> <p>7 case and the language and why you think it's supported</p> <p>8 and tell me why. With that, counsel go right ahead.</p> <p>9 MR. MAGYAR: Thank you, Your Honor. And in</p> <p>10 an effort to try to construct a presentation in</p> <p>11 exactly the manner that you've described, I have, and</p> <p>12 if Your Honor will let me approach, I have both a</p> <p>13 proposed order and the eight documents that if we have</p> <p>14 time, I hope to go through it chronological order.</p> <p>15 THE COURT: I'm going to give you all the</p> <p>16 time you want, sir.</p> <p>17 MR. MAGYAR: Every document I have</p> <p>18 provided, Your Honor has, been submitted as an exhibit</p> <p>19 to the briefing today, and I can reference when</p> <p>20 necessary what exhibit it is, and I have highlighted</p> <p>21 the copies jut to streamline it, as well as the copy I</p> <p>22 brought for counsel so that we're all looking at the</p> <p>23 same thing here.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. MAGYAR: Those are the eight documents</p>
<p style="text-align: right;">Page 3</p> <p>1 Ann Arbor, Michigan</p> <p>2 Wednesday, September 21, 2022</p> <p>3</p> <p>4 COURT CLERK: We are on the record in the</p> <p>5 matter of Flintoft versus Scio Township Board for a</p> <p>6 Motion for Summary Disposition.</p> <p>7 THE COURT: Again, good afternoon. Could</p> <p>8 we have appearances on the record, please?</p> <p>9 MR. MAGYAR: Good afternoon, Your Honor.</p> <p>10 Mark Magyar for the plaintiff.</p> <p>11 MR. HOMIER: Good afternoon, Your Honor.</p> <p>12 Mike Homier on behalf of Scio Township Board.</p> <p>13 THE COURT: We were having difficulty with</p> <p>14 Zoom, and go ahead, that's why I asked that you come</p> <p>15 in live, and thank you for being patient and flexible</p> <p>16 on the scheduling. As you probably both know, we're</p> <p>17 pretty backed up with the courts opening up and</p> <p>18 getting backed up on jury trials and Judge Brown left</p> <p>19 early and we don't have a replacement until January</p> <p>20 1st. So in addition to this docket, I'm also carrying</p> <p>21 the entire business docket. So we just have to fit</p> <p>22 people in where we can. So I appreciate your</p> <p>23 flexibility.</p> <p>24 With that, I have read the briefs, I always</p> <p>25 appreciate if you focus on three rhetorical questions.</p>	<p style="text-align: right;">Page 5</p> <p>1 and this is the proposed order.</p> <p>2 THE COURT: All right.</p> <p>3 MR. MAGYAR: So Your Honor, as mentioned I</p> <p>4 think the chronological order of going through these</p> <p>5 things will be helpful, but first I want to in summary</p> <p>6 fashion go through the proposed order, because I do</p> <p>7 think -- I agree, it's important to get right to what</p> <p>8 we're asking for.</p> <p>9 Of course, in paragraphs 1 and 2 of our</p> <p>10 order, we would like our motion granted and</p> <p>11 Defendant's motion denied. Paragraphs 3 and 4, we are</p> <p>12 asking for two specific resolutions that the board</p> <p>13 passed to be vacated. And we're asking for that</p> <p>14 because the contents include provisions that directly</p> <p>15 violate by usurping duties that belong by statute</p> <p>16 exclusively to the clerk.</p> <p>17 Besides those two resolutions being</p> <p>18 vacated, and what those resolutions were specifically</p> <p>19 used for, that was an extreme violation, was that the</p> <p>20 clerk needs to be the exclusive enterprise</p> <p>21 administrator for the BS&A modules of the township,</p> <p>22 minus two that go outside of her duties that we'll get</p> <p>23 to.</p> <p>24 And the reason I say that is, the BS&A</p> <p>25 modules are the books and records of the township.</p>

<p style="text-align: right;">Page 6</p> <p>1 Everything is electronic now. It's not hard copies. 2 And so when we talk about being the exclusive 3 enterprise administrator, we are talking about the 4 statutory requirement that the clerk be the one who 5 shall have, shall have custody of all the records, 6 books and papers of the township. That's the first 7 sentence of MCL 41.65. 8 And now we are through the first five 9 paragraphs of my proposed order, and I would 10 respectfully submit, Your Honor, that those five 11 paragraphs, other than paragraphs 1 and 2 just dealing 12 with the grant and denial of motions, are what refer 13 to Count I of the Complaint. 14 Count II of the Complaint begins at 15 paragraph 6. In the resolution that we're asking be 16 vacated, the township board changed what was the 17 existing process and gave to the supervisor the, 18 quote, ability to oversee the hiring of the finance 19 director and to recommend such hiring for approval by 20 the Scio Township Board. That's not my language, 21 that's the language that the board passed on August 22 17th. It moved that responsibility historically given 23 to the clerk and it moved it by resolution, because to 24 accomplish what the board was trying to accomplish, 25 they had to change what was the existing process and</p>	<p style="text-align: right;">Page 7</p> <p>1 they shifted that to the supervisor. 2 And Your Honor, under the Wayne County case 3 that we're going to talk about, as well as some 4 secondary, the secondary source that we've relied 5 upon, which of course is not binding on the court but 6 we think is very persuasive written by Mr. Verburg; 7 when a board makes decisions that traditionally I'll 8 be the first to admit are policy decisions that 9 wouldn't require them to do anything one way or the 10 other, but when you start to make decisions in such a 11 way that you prevent an elected official from being 12 able to perform statutory duties, that's where under 13 the Wayne County case and the Verburg interpretation 14 of it, that the court can order the township to at 15 least put back in the right sphere of authority who 16 gets to make decisions regarding the hiring of finance 17 staff. 18 So again, instead of it being the 19 supervisor, who the board changed it to being the one 20 to oversee the hiring of the finance director, we want 21 it to be the clerk to oversee that. And instead of it 22 being the supervisor who recommends the hire of the 23 finance director and other finance staff to the extent 24 that it's approved to be larger than just a finance 25 director, that that recommendation for hire go from</p>	<p style="text-align: right;">Page 8</p> <p>1 the clerk to the board, not from the supervisor to the 2 board. 3 Paragraph 7 in our proposed order is a 4 remedy that comes directly from the McKim versus Green 5 Oak Township Board case, which is that this court may, 6 if it grants relief in our favor, retain continuing 7 jurisdiction to see to it that the things that it 8 orders are complied with, that the clerk is not 9 prevented from doing her statutory duties and that we 10 don't have continual finance staffing problems going 11 forward. 12 You can question is continuing jurisdiction 13 necessary versus filing another suit if something 14 happens. We are asking for it as a streamlined way to 15 keep the parties in order here but, of course, there 16 are avenues if that were not awarded. 17 And then finally, paragraph 8 also comes 18 directly from McKim versus Green Oak Township Board, 19 and what the court noted, it wasn't a new holding, but 20 what it noted in that case is that an exception to the 21 American Rule for attorney's fees, when it's not 22 authorized by contract or statute, is that if a public 23 official files a suit to enforce and defend its 24 statutory duties, recognizing that that's an onerous 25 burden for an individual, which is very much the case</p>	<p style="text-align: right;">Page 9</p> <p>1 here, the court may in its discretion grant fees for 2 the prevailing official who brought that. So that is 3 what we're seeking under the complaint and on our 4 motion. 5 THE COURT: And since they also, the other 6 side represent and is seeking attorney fees, 7 presumably then it's actually the taxpayers that would 8 be paying the attorney fees. 9 MR. MAGYAR: Unfortunately, Your Honor, I 10 think that is the case, and I think one of the 11 considerations that really weighed heavily on the 12 clerk in this case was taxpayer money versus the 13 eroding of the checks and balances that she's 14 concerned that's happening here and the eroding of the 15 clerk's office and what is really for the ultimate 16 greater good of the citizens of the township, and if 17 it's to spend money now to safeguard those things, 18 that was a calculated decision. 19 THE COURT: I take it that you're all -- 20 I'm cognizant of it because the opinion came down last 21 week, but I know the individuals in Scio Township, 22 both elected officials and people in Scio Township are 23 very interested in the Gelman litigation, which has 24 been going on for decades. And the Court of Appeals 25 pretty clearly indicated, and we'll see what the</p>
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<p style="text-align: right;">Page 10</p> <p>1 Supreme Court if they take it, but pretty clearly 2 indicated that I've overstepped my bounds, including 3 Scio Township as an intervenor. I make these comments 4 because you're asking me to take over jurisdiction and 5 start micromanaging in my opinion difficulties between 6 elected officials within Scio Township. So are you 7 familiar with that? I mean, it's pretty well clear 8 from the Court of Appeals what authority at all, and 9 really, they're saying you don't have any unless 10 asked. So I'm cognizant of that. Anything you wanted 11 to say in that regard as to why this case is even more 12 important that the Gelman pollution case that's been 13 taking decades? 14 MR. MAGYAR: Yes, Your Honor, and thank you 15 for giving me that opportunity. I am aware of that 16 litigation, I've spoken with my client about it, and I 17 think everything involving public officials and 18 politics, there is that fine line, and I'm not making 19 comment on the Court of Appeals' order or the 20 relative -- 21 THE COURT: Except I have to follow it. So 22 you're asking me to do something that they pretty well 23 clearly told me, keep your nose out of it. Go ahead. 24 MR. MAGYAR: And I think, although that's a 25 fair sort of general takeaway from the opinion, that</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. MAGYAR: Your Honor, respectfully, if 2 it pleases the court, because they've brought a 3 pleadings-based motion, I would just as soon go 4 through in a little bit more detail through my nine 5 documents of exactly how we have established the 6 violation because ours is a C(10). 7 THE COURT: Go right ahead. 8 MR. MAGYAR: Thank you, Your Honor. And 9 the first thing I would point Your Honor to in the 10 packet, I think we can pretty quickly go through 11 these, it's not as thick as it looks because I'm 12 really only concerned I think with the highlighted 13 portions but I wanted to give complete documents. 14 The first page is just a copy of the 15 statute that we're dealing with that says in the first 16 sentence, that the clerk shall have custody of all the 17 records, books and papers of the township when no 18 other provision for custody is made by law. And I 19 certainly don't mean to imply that the rest of her 20 duties are not important, but if we jump to the very 21 last sentence, it's the township clerk who shall 22 prepare and maintain the journals and ledgers 23 necessary to reflect the assets, liabilities fund -- 24 and Your Honor, I don't have to read every word -- 25 that's really what we're talking about here, is</p>
<p style="text-align: right;">Page 11</p> <p>1 it doesn't apply here, and that's because here, we're 2 trying to narrowly focus on what the clerk's duties 3 are under the statute and if, in fact, those duties 4 were interfered with or usurped or otherwise taken 5 from her and given to someone else on the board, then 6 that is a clear and direct jurisdiction and authority 7 of this court to vacate any such action. And that is 8 the main relief I would say of all the relief we're 9 seeking in Count I when we're asking to vacate two 10 resolutions for specific reasons that the board is 11 interfering and displacing the clerk's statutory 12 duties in favor of giving them to the supervisor or in 13 some cases the township administrator who is an 14 employee overseen by the board. 15 So respectfully, Your Honor, I don't think 16 that recent decision in any way impedes the court's 17 authority to vacate when it finds that a statutory 18 duty of the clerk has been taken to vacate any such 19 action. And that's the McKim case. 20 THE COURT: I do admit, you can take as 21 much time as you want, they have a response, but 22 they're also asking under I(2) that I grant a motion 23 for Summary Disposition in the township's favor. How 24 would you like to proceed? Do you want to wait and 25 have them argue and then you rebut?</p>	<p style="text-align: right;">Page 13</p> <p>1 custody of the papers as stated in sentence one, and 2 preparing and maintaining the journals and ledgers as 3 stated in the last sentence. And notably, and I know 4 we've briefed this, but it bears reminding that there 5 are very few offices, there's the treasurer and the 6 clerk, maybe others I'm not as familiar with, that 7 have to put up personal bonds for the safekeeping of 8 these records. It is their duty and their duty alone, 9 and the statutory law is clear that unless they 10 affirmatively consent to change that, then it's a 11 violation to take that duty away. 12 Moving to the second document, unless 13 there's any questions about how those duties relate to 14 our case, it's an August 12, 2021 e-mail from -- and 15 this is five days before the first resolution that 16 we're talking about was passed, from Attorney James 17 Fink, who is the township attorney, directly to my 18 client, the clerk, answering questions of the clerk 19 and finding that from his legal opinion, that it is 20 the clerk, as we just saw in the statute, that is the 21 person to maintain the ledgers and other financial 22 records, and that it's the clerk who must have the 23 authority to grant or deny access to manipulate -- and 24 now we're talking about electronic records, so when we 25 talk about using a read/write function, that means you</p>

<p style="text-align: right;">Page 14</p> <p>1 have certain limitations of your authority in the 2 document; you can either just read it or you can be 3 someone who can actually go in and change the numbers 4 or you can edit the document.</p> <p>5 THE COURT: If I may, he also says on that 6 specific question, does the clerk have the authority 7 to grant, deny access to manipulate, use, read/write 8 functions, the records. He does say, I find no 9 specific case law. And it's an attorney's opinion 10 that it's yes. So have you found the specific case 11 law that he could not find?</p> <p>12 MR. MAGYAR: Well, I think the reason 13 perhaps, and I'm speculating because I haven't had 14 this exact conversation with him, is because from the 15 most literal sense, he may be saying that there's 16 never been a case to say read/write functions in an 17 electronic database. But the authority that we're 18 relying on in McKim dealt with incoming mail. And my 19 adversaries have argued that that case should be 20 limited to its facts. And respectfully, Your Honor, I 21 think there's more than clear language in the McKim 22 portion, it starts at page 204 where McKim recited the 23 language having custody of the papers, and then after 24 the McKim court cited the language of the statute, 25 they went on to define custody as immediate charge and</p>	<p style="text-align: right;">Page 16</p> <p>1 called, it wasn't a regular meeting. And that's the 2 next document we have, and this is one of the 3 resolutions that we're asking be vacated. It's August 4 17th 2021, it's resolution 2021-31.</p> <p>5 And what it did is it passed a new job 6 description for the township supervisor as well as the 7 township administrator. So there's two job 8 descriptions that are attached and that were approved 9 by this resolution. And it's really those, other than 10 the resolution resolving that those things are being 11 adopted, it's really the job descriptions that we're 12 interested in.</p> <p>13 So on the first one, on the supervisor, we 14 see right on the top bullet point in the highlighted, 15 that one of the supervision items that the supervisor 16 gave to himself and the board gave to him is that he 17 would be overseeing the finance director. So that is 18 the first really big alarm bell change that we're 19 seeing with this, is that it's no longer the clerk 20 supervising the finance director, even though all of 21 the finance directors's duties are to support what the 22 clerk's statutory duties are under the statute that we 23 just looked at, the journals and ledgers and the 24 papers and the accounts of the township.</p> <p>25 On the same page in the highlight again, we</p>
<p style="text-align: right;">Page 15</p> <p>1 control and that paper is defined as any writing or 2 printed document.</p> <p>3 And then after going through the statute 4 and after going through the definition of paper, McKim 5 said, so it is clear that this law bestows upon the 6 clerk, quote, "the responsibility to exercise control 7 overall township papers including mail and bills." 8 And so the court didn't limit its analysis to mail and 9 bills. It did a very fulsome analysis of the law and 10 said, the clerk has responsibility and exclusive 11 control over all papers, which in that case included 12 mail, and here we would say the clerk has exclusive 13 control over all township papers, including these 14 read/write functions over the journals and ledgers.</p> <p>15 So I respectfully disagree on that portion 16 of Mr. Fink's opinion, in that I do think this is 17 specific and controlling case law that was not related 18 to mail in McKim.</p> <p>19 THE COURT: Thank you. Go ahead, sir.</p> <p>20 MR. MAGYAR: Thank you, Your Honor. So 21 that was the opinion Mr. Fink gave, and my 22 understanding is there was a similar conversation held 23 between the clerk and the supervisor and Mr. Fink, but 24 then we go to the day of the meeting, five days later, 25 and it was a special meeting that the supervisor</p>	<p style="text-align: right;">Page 17</p> <p>1 see this is a marked change from existing process, 2 that the supervisor now has the oversight of the 3 finance director and oversees the hiring of the 4 finance director and makes that recommendation.</p> <p>5 And how we've seen that play out briefly, 6 and I don't want to get in the weeds, because I think 7 just the change is important enough, but how we've 8 seen that play out is that neither the clerk nor the 9 former township administrator, David Rowley, have been 10 able to have any of their recommendations for 11 supremely qualified candidates be hired; and instead, 12 it's been a patchwork of part-time, no relevant 13 finance degree employees, that the clerk believes is 14 not supportive of her role and not frankly competent 15 to support her in the various or complex financial 16 needs of the township.</p> <p>17 And on the next page of that same job 18 description for the supervisor, we see now it's going 19 to be the supervisor who is the lead of the finance 20 committee. Turning to the same resolution but now 21 instead of the supervisor, we're on the township 22 administrator's job description, and there's only one 23 point I want to draw to the attention right now to the 24 court on the second page, and it was put in bold even 25 to show the change, is that now it's going to be the</p>

<p style="text-align: right;">Page 18</p> <p>1 township administrator, who is an employee, not an 2 officer of the board, who is going to have control 3 over related financial reports. That's that bold 4 language highlighted. And it's not just me making a 5 big deal of this, because there was a lot of debate at 6 that meeting, and that's the next document we're going 7 to look at, about what this phrase really means, what 8 having control over related financial reports, what 9 does that really mean.</p> <p>10 And so in the next document that I 11 highlighted, it's just a couple of pages of the 12 transcript of the meeting that day, that night. And 13 again, it's Attorney Fink who's helping opine for the 14 board, and he says, who's responsible for finance in a 15 township? He says, I will repeat what I said before, 16 it's clearly and soundly to me the responsibility of 17 the clerk who is responsible for the general ledger 18 and the books and records in conjunction with the work 19 that the treasurer does, so that there's checks and 20 balances. He says, that does not mean that the 21 supervisor can't prepare a budget or have the 22 administrator assist the supervisor in preparing these 23 things, but then he says, the question comes up, what 24 do we mean by related financial reports? That was the 25 question.</p>	<p style="text-align: right;">Page 20</p> <p>1 interpretation would be incorrect, he said. But if 2 you interpret it as I do, said Mr. Fink, is that the 3 supervisor will be preparing the budget with the 4 administrator and the related financial reports that 5 go with the budget, not just any financial report, but 6 related financial reports to the budget. We're not 7 quibbling with that. Such as, he says, getting 8 information from the clerk and treasurer. Then Mr. 9 Fink says, I don't see how it is a conflict between 10 the two roles or that it would be illegal.</p> <p>11 So he's saying, if we look back at that 12 language of the actual job description, is budget and 13 related financial report -- or those financial reports 14 have to be related to the budget, and if they need 15 financial information for purposes of that, they go 16 and get it from the clerk or the treasurer; they don't 17 assume authority over it themselves.</p> <p>18 And then so on the next page of the same 19 document, Mr. Hathaway, the supervisor, gets involved, 20 and he says, okay, I think -- I'm paraphrasing, but he 21 says, all right, we've had the question answered. And 22 what it comes down to is, people can disagree on their 23 interpretations of a document, they can read it 24 different ways. And then we can tell everyone what we 25 mean is the intent of the language. That's the top of</p>
<p style="text-align: right;">Page 19</p> <p>1 THE COURT: Before you jump to that, you 2 have highlighted for my review the statement from Mr. 3 Fink at that meeting that says -- I know Mr. Davis is 4 listening, and he will correct me on anything later. 5 And there he is. So I'm sure he'll correct me as well 6 if he thinks there's something different. I just find 7 it humorous that you highlighted that and he's staring 8 at me in the front row. Go ahead now to your legal 9 point.</p> <p>10 MR. MAGYAR: Okay, thank you. You're 11 right, that is the very next thing I highlighted. It 12 says, there is a way to interpret this language as not 13 being a problem. But there's -- and why we're here 14 is, there's apparently multiple ways to interpret this 15 language. And I want to go through this, but when the 16 board starts interpreting it in the way it said it 17 wasn't going to, that's where we get the problem. And 18 if you have a resolution that gives more than one 19 interpretation and one can violate the law, I think it 20 needs to be vacated and go back to the drawing board 21 to it can't be interpreted that way.</p> <p>22 So Mr. Fink said if someone interprets and 23 related financial reports to mean that the board is 24 saying the clerk is not responsible for the general 25 ledger and would have authority over it, then that</p>	<p style="text-align: right;">Page 21</p> <p>1 page 59. And he says, that could happen, that's 2 possible, and if that happens, if that interpretation 3 is, you know, there's a conflict with, you know, 4 statute, then we can clarify that, oh no, that's not 5 what it meant. That's what the supervisor convinced 6 everyone. Don't worry about this sort of gray 7 language, we'll make sure that we're clear that we 8 didn't intend to violate the law.</p> <p>9 And then Mr. Fink responds, he says, well, 10 my answer to that is you can have your administrator 11 prepare and administer any report you want, as long as 12 it doesn't infringe upon the statutory authority of 13 the treasurer or the clerk. And the supervisor I 14 assume would be delegating some responsibility and 15 authority there.</p> <p>16 So, I mean, you can probably guess where 17 I'm going with that, is that what we saw in practice, 18 and we're going to give exact examples, that it was 19 not later interpreted to be compliant with the law; it 20 was an exact 180 of what the supervisor said right 21 here. It was interpreted so that it could be used as 22 a sword to take away financial authorities that are 23 the clerk's statutory authorities.</p> <p>24 And a few months go by and there's another 25 resolution and now this is the resolution that we're</p>

<p style="text-align: right;">Page 22</p> <p>1 asking be the second out of two resolutions that be 2 vacated. It's the February 22, 2022 resolution, and 3 it's resolution 2022-05. And apparently the board 4 didn't think that it went as far as it needed to go 5 with the earlier resolution because it adopted yet 6 another definition of the -- or a new job description 7 for the township administrator just some five months 8 after the last one they did. And they did say in the 9 resolution that this new one updates, that's the words 10 on page 2 of the resolution, updates the township 11 administrator's job description and authority from 12 that earlier one that we looked at. 13 And boy, did it ever. Because in addition, 14 under the heading finance, in addition to now using 15 that related financial reports language that we just 16 went over, they added that now it's going to be the 17 administrator, and this is bold, this is again bold to 18 show the changes on page 2 of the job description, 19 that now it's going to be the administrator that 20 oversees and prioritizes the allocation of finance 21 staff work to accomplish tasks. 22 So the clerk, who has the statutory 23 obligation to put up a personal bond to oversee the 24 finances of the township is not the one having to 25 prioritize the allocation of the finance staff's work</p>	<p style="text-align: right;">Page 24</p> <p>1 we're going to look at, there was a lot of debate 2 about these very provisions, and the minutes of that 3 meeting, they're lengthy, they're 19 pages, I only 4 want to look at pages 12 and 13, and there are 5 highlights there. 6 The clerk asked the township's attorney, 7 Mr. Homier, who is here today on behalf of the board, 8 could you please comment on the words "ultimate 9 authority", that's twice in the job description, whose 10 words were those. And Mr. Homier said he didn't write 11 it and he didn't think it would be an issue unless 12 somebody deprives anybody access what they need to 13 carry out their statutory duties. We're going to see 14 that that's exactly what happened. 15 And where I guess I depart from Mr. 16 Homier's opinion and that we're going to see here and 17 later, is that there really wasn't a problem giving 18 the administrator enterprise authority and access as 19 long as the clerk could still do her functions within 20 the software. And the reason that's a problem is 21 because the clerk then no longer has the control over 22 who is going into the program. And once the 23 administrator has that right as the enterprise 24 administrator, he can give that authority to anyone 25 and that's exactly what happened. And they've tried</p>
<p style="text-align: right;">Page 23</p> <p>1 and to accomplish their tasks. And in addition, and 2 also in bold, the township administrator is newly 3 given the power to hold, quote, "ultimate authority 4 over BS&A administration and accessibility." That's 5 the journals and ledgers, that's the papers of the 6 township, the BS&A administration and accessibility, 7 the ultimate authority -- I'm sorry. 8 THE COURT: You're all right. 9 MR. MAGYAR: The ultimate authority now 10 over what the statute gives the clerk unequivocally is 11 under this resolution given to the township 12 administrator, an employee who reports to the board. 13 That's a violation of the law. 14 And if that wasn't clear enough to this 15 board, we go further down on the next page under 16 Information Technology and Data Management, they 17 repeat, using the same phrase, that it's the 18 administrator who, quote, "holds ultimate authority 19 over administration of all software, including 20 assignment of access." That is saying administrator, 21 you get to control who has access to the papers of the 22 township. Not you, clerk. That's a change or else we 23 wouldn't have to do -- they wouldn't have had to do 24 this resolution. 25 And as you might expect, the next document</p>	<p style="text-align: right;">Page 25</p> <p>1 since we filed the amended complaint to reverse some 2 of those actions, but it doesn't change the problem of 3 the structure that's currently in place that allows 4 that to happen. 5 On the next page of those minutes, there 6 were questions including by one of the trustees, 7 trustee Knoll, saying that she had read the McKim 8 decision and she interpreted that the clerk must have 9 custody or control over township papers and that it 10 seemed to trustee Knoll, who is legally trained, that 11 the clerk cannot fulfill her duty of safekeeping of 12 these records unless she has that control. 13 And I'll spare going through all of the 14 highlighted language, but Mr. Homier candidly told 15 them, I was not asked to opine on that question and I 16 haven't. 17 So there were issues here and there. The 18 clerk tried to not run to court every time she was 19 having an issue. Real quickly, I won't spend a lot of 20 time on, there were issues of trying to get a finance 21 director appointed once that position went vacant. 22 It's still vacant since November. They've been 23 operating without a finance director. And we resisted 24 coming to court every single time we believed there 25 were violations of her duties, but everything came to</p>

<p style="text-align: right;">Page 26</p> <p>1 a head on May 10th, and we amended our complaint days 2 later. 3 When on May 10th, the clerk was out with 4 COVID, and while the clerk was out with COVID, the 5 board appointed James Merte, who I understand is in 6 the court today at counsel table as the interim 7 township administrator, and they appointed Sandra 8 Egeler as the deputy supervisor, who is already 9 serving as the deputy treasurer. And I'm not 10 contending this wouldn't have passed if the clerk had 11 been present, maybe she was in a minority of the vote, 12 but she wasn't there. 13 And the first thing that happens with her 14 not being present is that the supervisor and Mr. Merte 15 come up with a plan to contact Netsmart, which is the 16 township's vendor for this BS&A software, and say, the 17 administrator is now the enterprise administrator with 18 authority and control over all of the software, not 19 the clerk; and if you need authority to make that 20 change, here's the job description that we passed in 21 February as updated from the August. They're using 22 the resolutions that we want vacated as the authority 23 to make these changes. 24 And the next document I provided is a 25 printout of a Netsmart report covering those first two</p>	<p style="text-align: right;">Page 28</p> <p>1 We have also provided in the next document 2 a screen shot of that happening. This is now, I think 3 what we just looked at was 4:55 p.m. on Friday, so 18 4 minutes later -- no, it's 5:19 p.m., so 24 minutes 5 later with this newfound authority after five p.m. on 6 a Friday, Mr. Merte goes in, modifies Sandy Egeler's 7 access from the old value being set access meaning 8 read only, to new value administrator access. So now 9 the supervisor's deputy has the ability to edit the 10 journals and ledgers, including the general ledger of 11 the township under this action. And that's without 12 any input from the clerk or the treasurer or anyone 13 else. She's got that authority and access. 14 You might guess that that didn't sit well 15 with my client, and she rose all heck about it. And 16 within -- that's the last e-mail that I've presented 17 to Your Honor as an e-mail chain, and the e-mail chain 18 includes -- I'm not going to go through every 19 e-mail -- but it includes the opinion of the attorney 20 immediately to my left, who's now asking for the 21 clerk's whole lawsuit to be thrown out, where he is 22 agreeing that this action that was done, that we just 23 looked at, was not proper, was not valid. The exact 24 language is that, I agree with the clerk that they -- 25 meaning these other employees of the township --</p>
<p style="text-align: right;">Page 27</p> <p>1 weeks of May, and we see that on May 11th, and this is 2 Netsmart talking now, they're making notes in their 3 own journals the way that companies do when clients 4 contact them, saying, I spoke with Jim Merte and 5 confirmed with Christie Aiken that Jim has returned to 6 Scio Township. Will's e-mail -- this is supervisor 7 Will Hathaway -- was concerning since we have not yet 8 had very much interaction. I have enabled Jim's 9 access on the servers and in exchange 365. 10 Now if we jump to page 12 of that same 11 report, on Friday, May 13th, right before the close of 12 business at 4:55 p.m., heading into a weekend, 13 Netsmart says: Called Jim Merte and remoted into his 14 commuter. Logged into BS&A using admin for Scio 15 credentials. Enabled James Merte in BS&A and enabled 16 enterprise administrator access. Removed Jessica 17 Flintoft's enterprise administrator's access. Logged 18 out of BS&A. Disabled David Rowley's access -- he's 19 the now retired -- I mean, it couldn't be any more 20 clear what happened and it's not in dispute. The 21 clerk's out, she's got COVID. The board hires an 22 interim employee who then immediately calls the 23 Netsmart and says, out with Jessica, in with the 24 administrator and he's going to control the papers of 25 the township.</p>	<p style="text-align: right;">Page 29</p> <p>1 should have read access. Because what Mr. Merte had 2 provided was administrator access. And it was only 3 after we amended our complaint and brought all of this 4 into this court in a pleading, that my client was 5 given back her, not administrator access, but at least 6 her ability to, what we've been using manipulate, 7 that's not meant to be a derogatory term, manipulate, 8 just meaning being able to edit the documents in BS&A. 9 And the township now takes the position oh, 10 don't worry about it, Your Honor, we messed up, she's 11 got her authority back. She doesn't have her 12 authority back, because what remains true under these 13 resolutions that we're asking be vacated, is that at 14 any time as the enterprise administrator, Mr. Merte or 15 anyone else they bestow with that power as the 16 administrator, can change it right back to the way 17 they had it or give anyone else access. 18 And again, going back to the statute, that 19 directly violates the notion and the law that the 20 clerk has to have the sole custody of the papers and 21 has to be at all times the custodian, the one able to 22 vouch for at threat of personal liability of these 23 records. And so even in this e-mail that we looked 24 at, even though Mr. Homier did agree that she should 25 have -- that some of those employees should only have</p>

<p style="text-align: right;">Page 30</p> <p>1 read access, I still disagree and think that it's</p> <p>2 violative of the law.</p> <p>3 Well, let me be clear in the very first</p> <p>4 sentence he said, I am not concerned about who has</p> <p>5 enterprise access to the software. We're very</p> <p>6 concerned about that, for all the reasons we've said;</p> <p>7 the enterprise access has to be the, the control and</p> <p>8 custody has to be with the clerk by law.</p> <p>9 And so a couple of points to make before</p> <p>10 moving to Count II. All of that was Count I, and the</p> <p>11 primary authority we rely on for that, Your Honor, is</p> <p>12 the McKim decision as well as the statute that we've</p> <p>13 been talking about.</p> <p>14 Before we move on to Count II, I just want</p> <p>15 to make two observations. One is, we've been saying</p> <p>16 all along that because of the board's action, the</p> <p>17 township is in financial risk. And I understand the</p> <p>18 reasoning, and I'm not quibbling or disputing even</p> <p>19 when we were here earlier on a TRO that the court</p> <p>20 denied, but the issue that we raised was that the</p> <p>21 clerk was trying to get some emergency services from</p> <p>22 Raymond Robson and other groups to perform financial</p> <p>23 services and the board was saying no, we don't want</p> <p>24 that contract.</p> <p>25 Again, I'm not quibbling with the decision</p>	<p style="text-align: right;">Page 32</p> <p>1 THE COURT: Let me -- I know I'm</p> <p>2 interrupting you, but on that point, I looked at that.</p> <p>3 McKim came down May 6, 1987. That's 35 years ago.</p> <p>4 There's nothing -- you have found nothing else since</p> <p>5 then? This is the decision that you think is on</p> <p>6 point? This is the decision you think is the best</p> <p>7 case for you?</p> <p>8 MR. MAGYAR: I do believe it's controlling,</p> <p>9 Your Honor.</p> <p>10 THE COURT: How do you think all these</p> <p>11 other townships kept out of the Court of Appeals for</p> <p>12 35 years?</p> <p>13 MR. MAGYAR: Well, hopefully there has been</p> <p>14 a little bit more of an ability to come to a gathering</p> <p>15 table and resolve some of the things. And I do think</p> <p>16 a lot of times it is a policy or a ballot question</p> <p>17 that doesn't belong in the court. And when it comes</p> <p>18 to specific duties, I think hopefully it's well known</p> <p>19 enough that you cannot be doing this, that this is a</p> <p>20 pretty rare case indeed that we're having to enforce</p> <p>21 what is clear by statute.</p> <p>22 And one other point to answer your</p> <p>23 question, because Your Honor rightfully pointed out</p> <p>24 the year of the decision, there is a court rule that</p> <p>25 the board cited saying that because in some un-</p>
<p style="text-align: right;">Page 31</p> <p>1 that that wasn't for the court to decide, but for the</p> <p>2 board to now take the position in its papers that</p> <p>3 there's a recent S&P downgrade and that the clerk is</p> <p>4 incompetent, is really just an alternative fact,</p> <p>5 alternative universe where we've been pounding our</p> <p>6 fists all along saying, this is exactly what's going</p> <p>7 to happen. You've got the clerk and you've got</p> <p>8 township administrator Rowley advising the board, we</p> <p>9 should have a robust finance staff with the kind of</p> <p>10 revenue we're dealing with, and we should have someone</p> <p>11 with a Master's degree or that is in the finance</p> <p>12 director, and we submitted, I'm not going to go</p> <p>13 through it all, all kinds of papers of what David</p> <p>14 Rowley submitted as his support for his</p> <p>15 recommendation, and every time it's been no, no, we're</p> <p>16 not doing that. Brick wall. There's still no finance</p> <p>17 director from November. The staff that has been</p> <p>18 patchworked together are not qualified. And then they</p> <p>19 say in their papers, look at this S&P downgrade, oh,</p> <p>20 for shame, clerk. This is what we have been concerned</p> <p>21 about because of these measures. So yes, there has</p> <p>22 been a downgrade; the fears are happening.</p> <p>23 And McKim is obviously a really important</p> <p>24 case to us because this issue just hasn't been before</p> <p>25 the Court of Appeals very many times, and --</p>	<p style="text-align: right;">Page 33</p> <p>1 published Court of Appeals recent case, where the</p> <p>2 township -- the board lost in that case as well but</p> <p>3 for different facts. The Court of Appeals invicta</p> <p>4 mentioned that under a court rule saying that the</p> <p>5 Court of Appeals is not bound by opinions before 1990,</p> <p>6 that McKim falls under that rule.</p> <p>7 My understanding, I don't think that</p> <p>8 applies to Your Honor. That's a Court of Appeals rule</p> <p>9 in terms of what's binding precedent. I think McKim</p> <p>10 on all fours here squarely applies and governs.</p> <p>11 THE COURT: Thank you.</p> <p>12 MR. MAGYAR: I already talked about, so I</p> <p>13 won't repeat that McKim is broader than just the mail.</p> <p>14 Count II I'm going to spend really little time on,</p> <p>15 except to say that the Wayne County case we've cited</p> <p>16 is a county case, it's not township case. And in that</p> <p>17 court, the court says, where the legislature has</p> <p>18 statutorily imposed on public officials various duties</p> <p>19 and obligations, budgeted sums must be sufficient to</p> <p>20 allow such officers to carry out their duties and</p> <p>21 obligations.</p> <p>22 So to be clear, we're not asking for</p> <p>23 minimum staffing, we're not asking to invade the sort</p> <p>24 of general province of the board from a policy</p> <p>25 standpoint, but what we are saying is, don't</p>

<p style="text-align: right;">Page 34</p> <p>1 intentionally and arbitrarily and capriciously strip</p> <p>2 the finance staff including leaving vacant the finance</p> <p>3 director position, leaving the whole finance team so</p> <p>4 barren that the clerk can't perform her statutory</p> <p>5 required duties, and then when she doesn't perform</p> <p>6 them, say, look at how bad the clerk is. Which is</p> <p>7 what's happening here.</p> <p>8 And what we cited, and again, as I</p> <p>9 mentioned before, it's not controlling authority, but</p> <p>10 it is what's kind of considered the Bible of township</p> <p>11 management called the Managing the Modern Michigan</p> <p>12 Township by Kenneth Verburg, there is a section on</p> <p>13 this very issue citing that Wayne County case. And</p> <p>14 the author said that because the law holds these</p> <p>15 officers, meaning the clerk and the treasurer,</p> <p>16 responsible for their duties, that short of their own</p> <p>17 gross improprieties, others in the township may not</p> <p>18 interfere with their performance. And this author</p> <p>19 concluded that this Wayne County case may very well in</p> <p>20 these circumstances apply and should apply to township</p> <p>21 officials, not just county officials, for the same</p> <p>22 legal reasoning that was in the Wayne County cases;</p> <p>23 that these township officials, like county officials,</p> <p>24 also have statutorily prescribed duties that when not</p> <p>25 provided with sufficient resources, impede their</p>	<p style="text-align: right;">Page 36</p> <p>1 statutorily mandated functions." And because township</p> <p>2 officers like county officers have statutory and</p> <p>3 constitutional duties, the author says, the principles</p> <p>4 of this decision may apply to township boards. We're</p> <p>5 suggesting that they should under Count II.</p> <p>6 And then finally, the last sentence of I</p> <p>7 think this author's opinion is I think particular apt</p> <p>8 here. A clerk or treasurer may be fair game in the</p> <p>9 political arena but not to the point that these</p> <p>10 officials cannot carry out their statutory</p> <p>11 responsibilities.</p> <p>12 Obviously, we really agree and we hope the</p> <p>13 court does with that author's conclusion and its</p> <p>14 application of the Wayne County case from the county</p> <p>15 context to the township context.</p> <p>16 And just to reiterate going back to the</p> <p>17 proposed order that I handed to you first, when it</p> <p>18 comes to Count II and under that authority that I just</p> <p>19 discussed, we would be asking that it be -- that the</p> <p>20 finance director and the finance staff, anyone</p> <p>21 reporting under the finance director, that they report</p> <p>22 to the clerk, not as set up in this newly concocted</p> <p>23 job description that they now report to the</p> <p>24 supervisor, and that it be the clerk who oversee the</p> <p>25 hiring of the finance team for approval to submit for</p>
<p style="text-align: right;">Page 35</p> <p>1 ability to perform those functions.</p> <p>2 And just a couple provisions that I</p> <p>3 highlighted here. It says, in view of these rulings,</p> <p>4 including the Wayne County case, can the township</p> <p>5 board set minimum qualifications and establish working</p> <p>6 conditions for employees in the offices of elected</p> <p>7 officials. Certainly it can if the officer concurs.</p> <p>8 But boards that do so in the face of opposition by the</p> <p>9 clerk may be treading on thin ice.</p> <p>10 And actually, what I meant to then get into</p> <p>11 the next section is, similarly, in the matter of</p> <p>12 budget appropriations, the township board must</p> <p>13 exercise some care. In a Wayne County case, which is</p> <p>14 the one I've been talking about, a circuit court ruled</p> <p>15 that the county board could not make an across the</p> <p>16 board funding cut of 15 percent for all county</p> <p>17 departments, and elected officers were mandated to</p> <p>18 provide certain services and the board of county</p> <p>19 commissioners was obligated to appropriate funds</p> <p>20 sufficient to carry out those duties. The judge in</p> <p>21 that case, this author notes, did not say you just</p> <p>22 have to give an elected official whatever they ask</p> <p>23 for, and that's not what we're asking for, but the</p> <p>24 cuts cannot be quote, "so severe as to render the</p> <p>25 office unable to perform the constitutionally and</p>	<p style="text-align: right;">Page 37</p> <p>1 approval to the board, just as how they now have it</p> <p>2 the set up that the supervisor submits it for approval</p> <p>3 to the board under that resolution. We think under</p> <p>4 the law it should be flip-flopped which is how it was</p> <p>5 before and we want that right back.</p> <p>6 And finally, Your Honor, the fees.</p> <p>7 Certainly, we don't like to sit here asking for</p> <p>8 taxpayer money. My client didn't like putting a</p> <p>9 target on her back and filing this suit. My client</p> <p>10 didn't like getting the ire of the entire board and in</p> <p>11 some cases negative media attention. But I think</p> <p>12 we've established that the violation here was real,</p> <p>13 substantial and egregious. And when that happens, a</p> <p>14 public servant like the clerk, who has been her entire</p> <p>15 life, took the hard gulp and says, whatever the</p> <p>16 consequences may be, we need to right this wrong. And</p> <p>17 the board is being insured. And so they don't feel</p> <p>18 this litigation as much as the clerk does, but she did</p> <p>19 what she thought was right to correct this, and we're</p> <p>20 asking that she not shoulder that burden alone, that</p> <p>21 she did a service to the township to make sure that</p> <p>22 the powers were adequately set where they're supposed</p> <p>23 to be by constitution and statute, and therefore, that</p> <p>24 the court exercise its discretion and we would submit</p> <p>25 our bill of costs if fees were awarded at whatever</p>

<p style="text-align: right;">Page 38</p> <p>1 date the court determines.</p> <p>2 THE COURT: Thank you. I do have a</p> <p>3 question about your proposed order.</p> <p>4 MR. MAGYAR: Yes, Your Honor.</p> <p>5 THE COURT: How do you reconcile your</p> <p>6 request in paragraph 7 that quote, the court retains</p> <p>7 continuing jurisdiction to ensure that the clerk is</p> <p>8 not prevented from performing her statutory duties or</p> <p>9 interfered with in the performance of her statutory</p> <p>10 duties with your proposed last sentence of the order,</p> <p>11 this is a final order deciding all issues between all</p> <p>12 parties and providing complete relief as between all</p> <p>13 parties and closes this case.</p> <p>14 MR. MAGYAR: Your Honor, I think</p> <p>15 procedurally, you're correct and I'm incorrect. I</p> <p>16 understand that that language is required to have a</p> <p>17 final order, but if retaining continued jurisdiction</p> <p>18 means that it's not final, then I think that would be</p> <p>19 incorrect. So I think one of the two would have to</p> <p>20 give.</p> <p>21 THE COURT: My point is, it's highly</p> <p>22 possible, I think you would agree, that whatever I do</p> <p>23 decide, you'll probably ask a panel from the Court of</p> <p>24 Appeals (inaudible) and we'll have a new decision 35</p> <p>25 years later one way or the other.</p>	<p style="text-align: right;">Page 40</p> <p>1 employees. That is textbook statutory letter. That's</p> <p>2 what it says. The clerk wants to expand that to say</p> <p>3 somehow, because I'm responsible for preparation of</p> <p>4 the journals and ledgers, that somehow now I get to</p> <p>5 decide who we hire as a township board, as an entity.</p> <p>6 And I want to come back because the</p> <p>7 exhibits that were mentioned. First, we've filed a</p> <p>8 motion to strike Exhibits 1 and 7. They're attorney-</p> <p>9 client privilege, they belong to the township, the</p> <p>10 township board has not waived privileged. They were</p> <p>11 used knowingly that they are attorney-client</p> <p>12 privileged communications. So the court cannot</p> <p>13 consider those in its ruling because they were</p> <p>14 improperly disclosed.</p> <p>15 As I understand it, the clerk is looking</p> <p>16 for three things, really. Vacate the resolutions,</p> <p>17 restore enterprise authority over BS&A and that the</p> <p>18 clerk have sole province, as counsel used at the last</p> <p>19 hearing, sole province to recommend hiring and that</p> <p>20 the board must hire from those recommended.</p> <p>21 So let's break this down into actual</p> <p>22 authority, okay? So we've got vacate the resolutions,</p> <p>23 we'll talk about that in a minute. But as it pertains</p> <p>24 to restore enterprise authority over BS&A, my</p> <p>25 understanding is that the clerk is arguing that</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. MAGYAR: Your Honor, I think you are</p> <p>2 very much potentially on to something there, and I</p> <p>3 don't think it's our position that we want to prevent,</p> <p>4 if that be one of the parties' desires, letting that</p> <p>5 court review this. So in terms of, if continuing</p> <p>6 jurisdiction impedes that, I think we could remove</p> <p>7 paragraph 7 from this proposed order. Because as I</p> <p>8 alluded to at the beginning, I think there are other</p> <p>9 ways to get back to the court even if we didn't have</p> <p>10 that provision.</p> <p>11 THE COURT: Thank you. Response?</p> <p>12 MR. HOMIER: Good afternoon, Your Honor.</p> <p>13 Mike Homier on behalf of the Scio Township Board.</p> <p>14 Obviously, the judiciary is not the place to settle</p> <p>15 political scores or grievances, and that's exactly</p> <p>16 what this is. There's a disagreement between the</p> <p>17 clerk and majority of the board about how resources in</p> <p>18 the township should be allocated. I think really, the</p> <p>19 avoidance of naming or discussing statutory authority</p> <p>20 is important here. For instance, 41.75(A), 41.75(A)</p> <p>21 says, the township board may employ a township manager</p> <p>22 and other employees as are necessary. Not the clerk.</p> <p>23 There's no authority for the clerk to employ anybody</p> <p>24 except for the deputy clerk under 41.69. Otherwise,</p> <p>25 it's the board that has the authority to employ</p>	<p style="text-align: right;">Page 41</p> <p>1 41.56(A), which deals with custody of records, books</p> <p>2 and papers, somehow now means exclusive. And yet,</p> <p>3 that's not how public records are ever treated. So,</p> <p>4 for example, there are public records that are in the</p> <p>5 fire department; there are public records that are</p> <p>6 held by the utility department; there are public</p> <p>7 records held by the treasurer's office, the</p> <p>8 supervisor's office, in fact, there are public records</p> <p>9 all over the township.</p> <p>10 Nobody has deprived the clerk of custody of</p> <p>11 those. She still has an obligation under 41.65 to</p> <p>12 have custody of all records, books and papers of the</p> <p>13 township. In fact, they don't allege that she's ever</p> <p>14 been deprived of that custody. And if you look at</p> <p>15 their complaint, they have 13 declarations, and yet,</p> <p>16 it's all anticipated behavior, it's all speculative;</p> <p>17 well, what if, what if this happens. What if the</p> <p>18 administrator locks the clerk out of BS&A? Hasn't</p> <p>19 happened, mind you. Wouldn't happen. In fact, when</p> <p>20 the interim administrator was with the township as the</p> <p>21 assessor, he then had enterprise access over BS&A when</p> <p>22 the clerk was there, and she had no problem with it</p> <p>23 then. Now she has a problem with it, trying to expand</p> <p>24 what is statutorily her obligation under 41.65.</p> <p>25 41.65 also says the township clerk shall be</p>

<p style="text-align: right;">Page 42</p> <p>1 responsible for the detailed accounting records of the</p> <p>2 township, utilizing the uniform charts of accounts</p> <p>3 prescribed by the state treasurer. The township clerk</p> <p>4 shall prepare and maintain the journals and ledgers</p> <p>5 necessary to reflect the assets, liabilities, fund</p> <p>6 equities, revenues and expenditures for each fund of</p> <p>7 the township.</p> <p>8 So in terms of software administration,</p> <p>9 which the board rightfully gave to the interim</p> <p>10 administrator, even though I understand the clerk</p> <p>11 disagrees with that decision, her statutory ability is</p> <p>12 not hampered. We're talking about prepare and</p> <p>13 maintain those records. If, and I don't disagree, if</p> <p>14 the interim township administrator walked into the</p> <p>15 office, picked up what he believed to be the journals</p> <p>16 and ledgers and carried them away, we might have a</p> <p>17 case here. But that's not what happened.</p> <p>18 What happened is, the township board</p> <p>19 decided they were going to hire an administrator. The</p> <p>20 administrator was going to be responsible not only for</p> <p>21 the BS&A software but all other software of the</p> <p>22 township. There is no prohibition against that</p> <p>23 anywhere in statute dealing with township government.</p> <p>24 I've been practicing municipal law for 23 years,</p> <p>25 represent a hundred different townships around the</p>	<p style="text-align: right;">Page 44</p> <p>1 definitions under the statute and allege that somehow</p> <p>2 the clerk's obligations under statute are somehow</p> <p>3 impeded. And yet, they don't actually allege in their</p> <p>4 complaint actual interference. Nowhere. And that's</p> <p>5 because the clerk has the same read/write access that</p> <p>6 she would otherwise have, even if she had enterprise</p> <p>7 access. The only issue is, now she's construing that</p> <p>8 prepare and maintain to say something other than what</p> <p>9 it says, which is prepare and maintain.</p> <p>10 So they want to construe prepare and</p> <p>11 maintain to be something like, nobody else can have</p> <p>12 read access to BS&A, because she has an obligation to</p> <p>13 prepare and maintain. Statute doesn't say that. Now,</p> <p>14 albeit, the statute didn't contemplate electronic</p> <p>15 records probably either. But nonetheless, nobody has</p> <p>16 interfered with that ability to prepare and maintain.</p> <p>17 The second one, or I should say the third</p> <p>18 relief that they ask for is that the clerk has sole</p> <p>19 province to recommend employees and the board has to</p> <p>20 hire them. Regardless of whether or not the court</p> <p>21 believes that maybe the board should allocate more</p> <p>22 resources, maybe they shouldn't, that is in the sole</p> <p>23 discretion of the township board pursuant to 41.75(A).</p> <p>24 It delegates that authority only to the township</p> <p>25 board, not to the clerk, not to the treasurer, not to</p>
<p style="text-align: right;">Page 43</p> <p>1 state. You will not find in statutes governing either</p> <p>2 general townships or charter townships a restriction</p> <p>3 on the ability for the board to either hire employees</p> <p>4 or assign duties to those employees that are hired.</p> <p>5 Which is exactly what happened here. Not necessarily</p> <p>6 to the detriment of the clerk's obligation to prepare</p> <p>7 and maintain. Nothing the board has done has stopped</p> <p>8 her from doing that.</p> <p>9 I want to talk about Mr. Rowley just</p> <p>10 briefly, because Mr. Rowley was charged with putting</p> <p>11 together a plan to deal with the finance department.</p> <p>12 And he actually put together two plans. One where</p> <p>13 they hired somebody to do it and the other was to</p> <p>14 utilize existing staff. And do you know what</p> <p>15 happened? The board decided option two was the better</p> <p>16 option.</p> <p>17 Now Your Honor may not agree with that, the</p> <p>18 clerk certainly doesn't agree with that, Mr. Magyar</p> <p>19 doesn't agree with that, but it's not our role to</p> <p>20 second guess. You can hardly characterize that as</p> <p>21 arbitrary or capricious where you have actual</p> <p>22 resolutions that the board not only moved to adopt,</p> <p>23 debated and then voted on to do. And there's nothing</p> <p>24 in the law that prevents them from doing that.</p> <p>25 Now Mr. Magyar wants to expand the</p>	<p style="text-align: right;">Page 45</p> <p>1 the supervisor, to the board itself. And the board</p> <p>2 has to make that decision.</p> <p>3 And if the court were asked as they are for</p> <p>4 it to step in, how in the world is the court supposed</p> <p>5 to manage that to begin with? Is the court going to</p> <p>6 sit on interviews then and decide who is, say,</p> <p>7 qualified according to the clerk, or is the board</p> <p>8 given that authority pursuant to statute. I think</p> <p>9 it's pretty clear that pursuant to the statute, the</p> <p>10 board has the sole authority. It's not even a</p> <p>11 question.</p> <p>12 The last thing I want to talk about is this</p> <p>13 McKim case, because that's where we really get into</p> <p>14 trying to expand what custody means of the township</p> <p>15 records. And the clerk cites to McKim and says that's</p> <p>16 our best case, that's it. As the judge mentions, it's</p> <p>17 35 years ago and, in fact, there was a decision</p> <p>18 recently that called into question the precedential</p> <p>19 value.</p> <p>20 Now we could, I suppose, sit here and argue</p> <p>21 about whether that is binding or not on the circuit</p> <p>22 court, but if the Court of Appeals itself is calling</p> <p>23 the authority of McKim into question, then I think the</p> <p>24 court probably should pay attention to that. That's</p> <p>25 what you would do. Look to see what is binding</p>

<p style="text-align: right;">Page 46</p> <p>1 precedent and look to see what is not.</p> <p>2 THE COURT: I'm going to interrupt you if I</p> <p>3 may, because I was going to ask you some specific</p> <p>4 questions about McKim. When we look at McKim, and the</p> <p>5 appellate court did vacate two resolutions. The first</p> <p>6 resolution -- in light of the statute. The first</p> <p>7 resolution had to do with mail procedures, mail coming</p> <p>8 in and bills; and the second part was really getting</p> <p>9 to the chase of it, allowing the clerk to have records</p> <p>10 in their home so they could work on it. So location</p> <p>11 of the records and custody and who's going to open the</p> <p>12 mail.</p> <p>13 And they have an explanation of how that</p> <p>14 would impede a duty, in the analysis of McKim. Again,</p> <p>15 it's -- well, I'll comment later in my ruling. It's</p> <p>16 amazing to me that we have appellate review who opens</p> <p>17 the mail and whether he can (inaudible) records. But</p> <p>18 we do.</p> <p>19 Tell me how you think, even -- because it</p> <p>20 is the published decision, it is the one that I have,</p> <p>21 tell me why you think that there is no -- and you kind</p> <p>22 of, you really did kind of address that in your</p> <p>23 argument, no one's impeding, this isn't exclusive</p> <p>24 control, no one's barring it, no one's saying you</p> <p>25 don't have access, but tell me then, even if we're</p>	<p style="text-align: right;">Page 48</p> <p>1 binding because it was issued before November 1st,</p> <p>2 1990, and then cited the Court Rule MCR 7.215(J)(1).</p> <p>3 Further, the Brinkley court limited McKim's holding</p> <p>4 reasoning that, quote, "Neither McKim nor MCL41.65</p> <p>5 expressly gives a township clerk authority to open all</p> <p>6 mail that is delivered to the township. Rather, the</p> <p>7 authorities give a clerk custody over the mail. It is</p> <p>8 not apparent that custody means a clerk can open mail</p> <p>9 addressed to anyone regardless of the subject of the</p> <p>10 mail." Closed quote.</p> <p>11 That's instructive here only inasmuch as</p> <p>12 again, we're not talking about prohibiting anybody</p> <p>13 from accessing the records. That's exactly what McKim</p> <p>14 was addressing in those resolutions. The resolutions</p> <p>15 here that we're talking about, one, are job</p> <p>16 descriptions and saying okay, you're going to do these</p> <p>17 functions administrator, right, this is within your</p> <p>18 job duties. For example, when it comes to BS&A,</p> <p>19 you're going to have enterprise access over BS&A to</p> <p>20 determine who can have access to the various</p> <p>21 components of BS&A.</p> <p>22 So for example, there are clearly some</p> <p>23 areas, like assessing, for instance, where the clerk</p> <p>24 would have no authority to have access to those</p> <p>25 modules; not by statute and not by practical practice</p>
<p style="text-align: right;">Page 47</p> <p>1 both wrong and McKim is controlling, how I get around</p> <p>2 that.</p> <p>3 MR. HOMIER: So McKim is completely</p> <p>4 different than this case because in McKim, the board</p> <p>5 actually precluded the clerk from accessing those</p> <p>6 records. Here, the board has done no such thing. In</p> <p>7 fact, the clerk still has read/write access to all of</p> <p>8 those records, all of them. It's just that she</p> <p>9 believes she should be able to control who else has</p> <p>10 access to those records under some theory that prepare</p> <p>11 and maintain the journals and records mean to the</p> <p>12 exclusion of everybody else even looking at them.</p> <p>13 THE COURT: And I think McKim was talking</p> <p>14 about the fact why the clerk needed those things so</p> <p>15 that they're available to the public, that these</p> <p>16 records are available to the public. It was really</p> <p>17 pointing out the idea it's ultimately these are</p> <p>18 public records.</p> <p>19 MR. HOMIER: That's exactly right.</p> <p>20 Ultimately, these are the public records. Now, I will</p> <p>21 say in McKim -- and we cited this in our brief -- in</p> <p>22 2017, there was a case, Charter Township of Royal Oak</p> <p>23 versus Brinkley, and it's an unpublished decision, but</p> <p>24 it's important because in that case, the court noted</p> <p>25 that the decision in McKim could be considered non-</p>	<p style="text-align: right;">Page 49</p> <p>1 in terms of talking about checks and balances. Right.</p> <p>2 There would be no reason to give the clerk access to</p> <p>3 assessing. And yet, that's exactly what they're</p> <p>4 asking for is, we ought to, by law, have enterprise</p> <p>5 access. The problem is, "by law" is missing here.</p> <p>6 There is no such law. There is no law that says the</p> <p>7 township cannot decide that an administrator, like a</p> <p>8 township manager, allocates the resources of the</p> <p>9 township. In fact, that is their function as the</p> <p>10 administrator. And the board debated that and passed</p> <p>11 a motion. They disagree with it. I understand that.</p> <p>12 But again, it's a policy issue, it's not a legal</p> <p>13 right. And that's why their complaint fails, because</p> <p>14 it does not state a cause of action. There is no</p> <p>15 cause of action certainly that I have ever come across</p> <p>16 where the circuit court would maintain or retain</p> <p>17 jurisdiction for the purpose of determining who the</p> <p>18 township board wants to hire. And I don't think Your</p> <p>19 Honor wants to fill that role. I mean, you can</p> <p>20 imagine all -- first of all, it's a separation of</p> <p>21 powers issue, I mean, on its face.</p> <p>22 When we talk about the finance</p> <p>23 staff, and the township board debated whether or not</p> <p>24 they could meet the needs with existing staff, the</p> <p>25 problem is, the clerk believes that those staff are</p>

<p style="text-align: right;">Page 50</p> <p>1 not qualified, and yet, it's some of those staff, like 2 the deputy treasurer, who are being used to reconcile 3 the books so they can get their audit done. So you 4 can't have to both ways. You can't on one hand say, 5 well, I've got a personality dispute with the deputy 6 treasurer and I don't want her working on my stuff and 7 she's 8 not qualified, but yeah, okay, fine, I'll use her and 9 she's now qualified to do some of those 10 reconciliations. 11 Again, this amounts to policy 12 disputes within the township, and there are remedies 13 for that. Obviously, the election cycle is two years 14 away; that's when voters get to decide who they're 15 going to keep and who's going to go. I'm not 16 certainly contending in the policies here who's right 17 and who's wrong. What I look at, what I have looked 18 at are the actions of the township board. The actions 19 of the township board, a majority of the board was to 20 pass a resolution or move that resolution, debate that 21 resolution and then adopt that resolution. That could 22 hardly be characterized as arbitrary and capricious. 23 Now, we may disagree with the policy choices, but 24 that's for the voters to decide, not the judiciary. 25 So McKim is not on point here at all.</p>	<p style="text-align: right;">Page 52</p> <p>1 were, we cited the law why they would still be 2 considered -- be able to be considered by this court. 3 So as much as Mr. Homier might not want the 4 court to consider or take the side of the clerk and 5 now is in conflict of interest saying her case should 6 be dismissed, the exhibits we provided are perfectly 7 acceptable to consider and should be by the court. 8 Second, this is not the first case nor will 9 it be the last that the Scio Township Board, when in a 10 tumultuous situation hangs its hat on policy. This is 11 not a policy dispute. I don't see how McKim could be 12 any more clear on point why we're here. And Your 13 Honor made the correct observation that that was also 14 a case where the court vacated two resolutions. Not 15 the public, not on a vote, a judicial vacating of 16 violative resolutions. 17 And I've been accused of trying to expand 18 the legislative language, but I think what's actually 19 happening here, what I know is happening is the board 20 is unlawfully restricting the language of the statute. 21 And we know that because McKim already said what 22 custody means. McKim said custody is, quote, 23 "immediate charge and control exercised by a person or 24 an authority." And they defined paper as any writing 25 or printed document and so on and so forth. I won't</p>
<p style="text-align: right;">Page 51</p> <p>1 The clerk still has read/write access, the interim 2 township administrator when he was the assessor at the 3 township had enterprise access then. The board gave 4 it back to the township administrator now. There's 5 nothing in there that violates any statute or law. 6 Period. And to suggest otherwise, it's just not 7 supportable. There's no claim, there's no cause of 8 action. And that's why we filed a motion in lieu of 9 an answer under C(8). I'm happy to answer any more 10 questions 11 THE COURT: I understand. Thank you. 12 Anything else you wanted to say, sir? 13 MR. MAGYAR: Yes, Your Honor. I think just 14 a couple of points really must be addressed that are 15 just not accurate at all. 16 First of all, I would encourage the court, 17 if the board is sticking by their position that they 18 filed a motion to strike, to actually see what that 19 motion looks like, because it's not a standalone 20 motion, it's the very last page of a C(8) motion that 21 spans about four sentences without citation to 22 authority, not even a court rule on striking. And we 23 were very thorough in our response to why these 24 e-mails outside of any board setting responding to the 25 clerk's questions are not privileged, and even if they</p>	<p style="text-align: right;">Page 53</p> <p>1 say it again. 2 So Mr. Homier stands up and says I'm 3 expanding what custody means, he's exactly ignoring 4 the definition our Court of Appeals in a published 5 decision gave to that word for this statute. And it 6 was control, immediate control. 7 And a part that I didn't talk about from 8 McKim earlier is that the board in that case pointed 9 out that the supervisor and the treasurer -- there are 10 specific statutes where certain papers are given to 11 those offices specifically. And the court said, but 12 we have found no other statutory provision which 13 authorizes a person other than the clerk to have, 14 quote, "control", there's the word again in this 15 decision, "control of the township's papers." 16 So McKim said if you're the clerk and you 17 have control over the papers, you have control over 18 the papers unless another statutory provision gives 19 somebody else that control. And we didn't hear from 20 Mr. Homier what provision they're relying on for 21 taking all of the control over the papers and giving 22 it to Mr. Merte as the township administrator. 23 I have also been criticized for having my 24 one case from 1987. Yes, it's a great case for us. 25 There's no getting around that, and I haven't heard</p>

<p style="text-align: right;">Page 54</p> <p>1 one case from the board that they're relying on. So I 2 would say one case to zero is a win for the clerk's 3 side. 4 And the McKim court went on again, as I 5 mentioned, I don't want to belabor the point, but 6 after talking about control, they again repeat that 7 under MCL 41.69, it's the clerk, not the general 8 township secretary or anyone else, that has to file a 9 bond especially for the safekeeping of the records, 10 books and papers of the township in the manner 11 required by law. 12 When you are a clerk and someone else has 13 the authority to grant any other employee the power to 14 edit the journal, you are no longer able to safe keep 15 the records and the books subject to your personal 16 liability, and that's exactly the status of Scio 17 Township. 18 There was a comment earlier that Mr. Merte 19 has had access before to BS&A enterprise 20 administrator. Yeah, he absolutely did, because he 21 was the assessor and the IT director, he came back as 22 the administrator. The new IT director is Netsmart, 23 and they, of course, have enterprise administrator. 24 So there's nothing significant about that. 25 Now another thing, there was an assertion</p>	<p style="text-align: right;">Page 56</p> <p>1 still happen at any time. 2 Now again, the unpublished decision that 3 the board relies on did not call into question McKim. 4 In fact, the only thing that was on appeal was whether 5 the board's pleadings were so frivolous that there 6 should have been frivolous filing sanctions in that 7 case. That was the only issue there. And again, it 8 was just noted of what year the decision was. 9 I think -- I want to just address a couple 10 points that there was a violation and what custody 11 means, but I think Your Honor has heard enough from 12 both of us and those were the main points and, of 13 course, this is not a policy dispute. Thank you. 14 THE COURT: Thank you. Counsel, anything 15 else you wanted to say? 16 MR. HOMIER: Yes, just briefly. The clerk 17 wants to equate custody with enterprise access, even 18 control, and yet, they're different things. So, for 19 example, let's suppose for a minute that custody means 20 immediate access to those. Nobody's -- the clerk 21 today can go and get those records. That's access. 22 What the clerk is saying, that I have exclusive 23 access, I get to determine who else has access, I get 24 to determine who the township board hires, I get to 25 determine what finance staff are qualified, I get all</p>
<p style="text-align: right;">Page 55</p> <p>1 that we haven't alleged an (inaudible) violation, and 2 frankly, I'm floored to hear that. Because the entire 3 fight over e-mail in the exhibits I've provided Your 4 Honor, were that immediately upon Mr. Merte being made 5 the administrator, he granted access to another 6 employee, Sandy Egeler, to actually write over and 7 edit and manipulate the general ledger. There's no 8 dispute, even by this side of the table, that that's a 9 violation that did occur. And apparently, by stopping 10 that behavior and returning her to read only, as all 11 attorneys agreed was the right -- that had to happen, 12 that that somehow erases the violation that admittedly 13 without dispute occurred. 14 But the problem is, until the authority 15 that allowed that to happen is vacated, it can happen 16 any time again. It can happen as soon as we walk out 17 of this courtroom, if Mr. Merte decides under the 18 authority he still possesses to assign read/write 19 access to any township employee he wants to in 20 Netsmart, and all he's got to do like he did last time 21 is call up Netsmart and say, here's the resolution 22 that gave me in my job description the authority to do 23 that. So let's not lose sight of the fact that this 24 screen shot that we looked at before when Mr. Merte 25 gave her that access, that was a violation and it can</p>	<p style="text-align: right;">Page 57</p> <p>1 these powers that you won't find in any statutory 2 provision, you won't find in McKim and you won't find 3 in the Wayne County case either. So there is no 4 authority for the position that the clerk has this 5 sole and exclusive custody of those records. 6 It's not sole and exclusive, as Your Honor 7 noted, these are the public records. All you have to 8 do is file a FOIA request and say, I'd like these 9 documents. And then what happens? Either the FOIA 10 administrator needs to compile those documents and 11 then turn them over. It's never exclusive. There are 12 public records throughout the township at their 13 various different departments. Yes, the clerk is 14 charged with custody of those, but it's never been 15 exclusive and will never be exclusive, it can't be. 16 And so in the end, what they're advocating 17 for is this huge expanse of authority under the 18 statute, and you see that when they talk about the 19 sole province to hire people. I mean, you won't find 20 that anywhere. Look at their proposed order. The 21 finance director in paragraph number 6, finance 22 director and any additional staff of Scio Township 23 shall report to the clerk. There's no statutory 24 authority for that. There's not even a case that says 25 that. That's just made up. What the statute actually</p>

<p style="text-align: right;">Page 58</p> <p>1 says, 41.69, is that it's only the deputy clerk that 2 serves at the pleasure of the clerk, and even then, 3 the board gets to decide what compensation is and the 4 scope of the duties performed of the deputy clerk; 5 unless the clerk is absent by reason of sickness, 6 death, disability. That's what the statute allows. 7 There's no other statute that says finance director 8 shall report to the clerk. The board decided 9 otherwise. That's a policy dispute. 10 The clerk shall have exclusive enterprise 11 access and authority over BS&A modules. Again, 12 there's no authority for any of this. The statutes 13 say otherwise. When they say they're not calling for 14 minimum staffing, that's exactly what they're calling 15 for, and 41.3(A) says any minimum staffing 16 requirements are void as a matter of public policy. 17 Now, the legislature changed that in 2011, 18 post Wayne County case, post McKim, in 2011. And they 19 did it not only for general townships but for charter 20 townships as well. So there is no minimum staffing 21 requirement. The board can't be compelled to hire 22 particular staff. It's not within the province of the 23 clerk to determine who gets hired. Pursuant to 24 41.75(A), that authority rests with the board. Thank 25 you, Your Honor.</p>	<p style="text-align: right;">Page 60</p> <p>1 can't point to, am I asking for one employee, two 2 employees, three employees. What minimum staffing am 3 I asking for? There's not -- you can't point to a 4 single one because it's much more -- it's not so black 5 and white as that. It's the Wayne County case, it's 6 that if the board has prevented her from doing her 7 duties, then she at least has, as we've asked for 8 using her language, the right to be the one having the 9 finance staff, when hired, when approved by the board, 10 report to her, under her recommendation, because it's 11 her position and her statutory duties that are 12 affected. So I would challenge counsel to support 13 that assertion about minimum staffing with where have 14 we asked for that. 15 Respectfully, Your Honor, I think 16 everything we've asked for is legally required under 17 the authority as we've provided. 18 THE COURT: Thank you. In this matter, the 19 clerk of Scio township has submitted a request of 20 eight paragraphs for specific relief, which would 21 include continuing jurisdiction by this court. I 22 appreciated the reference to a FOIA request because 23 those types of cases I routinely hear all the time, 24 and I just had the Court of Appeals weigh in on one. 25 So I'm very familiar with that and it's absolutely the</p>
<p style="text-align: right;">Page 59</p> <p>1 THE COURT: I can see you're nervous as a 2 cat there. Do you want to say something else? 3 MR. MAGYAR: I wouldn't say nervous, Your 4 Honor. 5 THE COURT: Agitated as a dog, how's that? 6 MR. MAGYAR: That's better. I'll keep it 7 really brief. I don't think I need to go to the 8 podium. Your Honor, there's a lot of blanket 9 statements about not authority this, no authority 10 that. McKim is the authority. When he say we want 11 exclusive authority as an enterprise access, it's no 12 different than saying we want exclusive custody, i.e. 13 control as McKim says over the papers of the township. 14 That is what we are saying. That is what the statute 15 says. 16 When we say -- when he says it's made up in 17 Count II, I copied the language from the board's 18 resolution. If anyone made it up, it's the board. 19 Because it comes from the August 17, 2021 resolution 20 when they said the supervisor -- the finance director 21 reports to the supervisor. That was a change from 22 when the finance team reported to the clerk. And I've 23 already established and already explained why we think 24 the Wayne County and the Verburg authority, he says we 25 are exactly asking for minimum staffing; yet, counsel</p>	<p style="text-align: right;">Page 61</p> <p>1 ability of anyone to receive public documents. 2 In terms of this record, the exhibits that 3 consist of various e-mails that Scio Township argues I 4 should not consider, should not be part of this record 5 as privilege and they haven't waived the privilege, I 6 go back to my underlying observation that all of us, 7 meaning me as a judge and the clerk and the board of 8 trustees are all elected public officials. 9 And so I am going to consider it as part of 10 the record, because all I have to do is look at the 11 courtroom and pick up that no matter what I decide, 12 one side or the other probably would like to get 13 relief from the Court of Appeals to weigh in and 14 sounds like we're going to give them another 15 opportunity since McKim 35 years ago. 16 Since McKim is cited as controlling and as 17 the best case for the plaintiff, I would like to start 18 with the last statement of the Court of Appeals on 19 that. And granted, it comes at the request to vacate 20 the award of attorney fees, where they said the trial 21 court judge didn't have enough of a record, they could 22 look at it. 23 They did say, as a general rule, attorney 24 fees may be awarded only when authorized by statute or 25 court rule. Under certain circumstances, the</p>

<p style="text-align: right;">Page 62</p> <p>1 appellate courts of the state, this state have 2 recognized an exception to this general rule when a 3 public official incurs attorney fees in connection 4 with asserting or defending the performance of his or 5 her legal duty. They also indicate the decision to 6 award attorney fees is discretionary. Which is always 7 something we talk about, is the law shall or may. So 8 they acknowledge it was discretionary, they 9 acknowledge they can be awarded in certain occasions 10 but the record wasn't clear here. 11 But when I say I want to go back to the 12 last comment of McKim, it's because I actually think 13 it perhaps is the most profound observation. The last 14 paragraph of McKim is: Finally, we wish to register 15 our dismay that as a result of what can best be 16 characterized as a squabble between township officers, 17 the parties have expended approximately 15,000 dollars 18 for legal representation before appeal and have no 19 doubt burdened the resources of the trial court. We 20 view this as an affront to the legal system and the 21 township's taxpayers and an embarrassment to the 22 parties. We hope that in the future, such divisive 23 conduct can be set aside in favor of more productive 24 behavior. 25 Perhaps that's why we don't have an opinion</p>	<p style="text-align: right;">Page 64</p> <p>1 legally to vacate the decision of Scio Township Board. 2 I take no position as to whether it's wise, not wise, 3 whether I agree or whether I disagree. It's frankly 4 none of my business. It's the business of the elected 5 officials and the public that has elected them to 6 perform their duties. 7 Because the rest of the relief requested in 8 the seven point proposed order really derives out of a 9 determination that these resolutions overstepped the 10 bounds and, in fact, impeded the clerk from performing 11 function, I see no basis to consider those as well. 12 Therefore, on behalf of the Scio Township, would you 13 please, sir, submit an order saying the case is 14 dismissed for the reasons stated on the record, it is 15 a final order of this case, and close it so that both 16 sides can get appellate review. And I am more than 17 happy to reopen the case and do whatever the Court of 18 Appeals tells me to do because that's their province. 19 Thank you very much. 20 MR. MAGYAR: Thank you, Your Honor. 21 MR. HOMIER: Thank you, Your Honor. 22 (Proceedings concluded at 3:01 p.m.) 23 24 25</p>
<p style="text-align: right;">Page 63</p> <p>1 in the last 35 years. Maybe somebody actually 2 listened to, that's a pretty strong statement. 3 In this case on the proposed motion in 4 Count I and Count II of Plaintiff's Complaint, it 5 starts with a request to vacate two resolutions of the 6 board as violating or impeding the clerk's statutory 7 responsibilities. The first one was dated August 8 17th, 2021, the second was dated February 22nd, 2022. 9 The rest of the relief requested really emanates from 10 a decision that those resolutions under McKim must be 11 vacated, and as the township indicated, it speaks of 12 things like restoring enterprise's authority over BS&A 13 and that the clerk have the sole province of 14 recommending certain people for hiring by the board. 15 I think the township's point that the 16 language of a statutory responsibility to maintain 17 custody of records, again, so that they're there and 18 available for things like FOIA requests for the 19 public, I do not read into that language that this is 20 exclusive. And the relief that's being requested I 21 think is asking me to read something into the 22 responsibility and statute that I don't see. 23 Unlike McKim, I don't think these two 24 resolutions impede the clerk from performing statutory 25 responsibilities, and therefore, I don't see a basis</p>	<p style="text-align: right;">Page 65</p> <p>1 2 3 4 5 6 7 8 9 10 11 CERTIFICATE OF NOTARY 12 STATE OF MICHIGAN) 13) SS 14 COUNTY OF MACOMB) 15 16 17 I, CAROLYN GRITTINI, certify that this 18 proceeding was transcribed by me on the date 19 hereinbefore set forth; that the foregoing proceeding 20 was recorded by me stenographically and reduced to 21 computer transcription; that this is a true, full and 22 correct transcript of my stenographic notes so taken; 23 and that I am not related to, nor of counsel to, 24 either party nor interested in the event of this 25 cause.</p>

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Carolyn Grittini

CAROLYN GRITTINI, CSR-3381
Notary Public,
Macomb County, Michigan.

My Commission expires: July 15, 2024

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EXHIBIT D

2017 WL 2200609

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

CHARTER TOWNSHIP OF
ROYAL OAK, Plaintiff–Appellee,

v.

Janice BRINKLEY, Defendant–Appellant,
and

Charter Township of Royal Oak Clerk, Defendant.

No. 331317

I

May 18, 2017

Oakland Circuit Court, LC No. 2013–136281–AW

Before: Riordan, P.J., and Ronayne Krause and Swartzle, JJ.

Opinion

Per Curiam.

*1 Defendant Janice Brinkley, the former Royal Oak Township Clerk, appeals as of right the trial court's order denying her motion for costs and attorney fees under [MCR 2.114\(D\) and \(E\)](#). Because we conclude that the trial court's findings were not clearly erroneous, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This matter is before this Court following remand to the trial court by a prior panel. Defendant originally sought costs and attorney fees following an entry of summary disposition in her favor. Defendant's motion contended that plaintiff's complaint was frivolous and that certain identified documents were signed in bad faith. The trial court ruled on the motion but only with regard to whether the complaint was frivolous. On appeal to this Court, the panel affirmed the trial court's order with regard to whether the complaint was frivolous, but it remanded for the trial court to address “the fact-specific inquiry concerning whether the identified documents were signed in bad faith.” *Charter Twp. of Royal Oak v. Brinkley*, unpublished opinion per curiam of the Court of Appeals,

issued December 3, 2015 (Docket No. 324197), p 3 (*Brinkley I*). The instant case concerns the trial court's denial of defendant's motion on remand.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews the trial court's factual findings on a motion for sanctions for clear error. *Kaeb v. Kaeb*, 309 Mich. App. 556, 564; 873 N.W.2d 319 (2015); *Edge v. Edge*, 299 Mich. App. 121, 127; 829 N.W.2d 276 (2012). “A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Kitchen v. Kitchen*, 465 Mich. 654, 661–662; 641 N.W.2d 245 (2002).

B. MCR 2.114

Defendant argues that she was entitled to sanctions under [MCR 2.114\(D\) and \(E\)](#). [MCR 2.114\(D\)](#) provides that a party's or attorney's signature on an affidavit, pleading, motion, or other document certifies:

- (1) he or she has read the document;
- (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
- (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

[MCR 2.114](#) imposes “an affirmative duty to conduct a reasonable inquiry into the factual and legal viability” of documents before they are signed. *LaRose Market, Inc. v. Sylvan Ctr., Inc.*, 209 Mich. App. 201, 210; 530 N.W.2d 505 (1995). “The reasonableness of the inquiry is determined by an objective standard and depends on the particular facts and circumstances of the case.” *Id.*

In this case, defendant's allegations implicate [MCR 2.114\(D\) \(2\)](#) because, although defendant argues that certain identified documents were signed in “bad faith,” the crux of her allegations is that those documents were not well grounded

Treasury did not require the submission of monthly reports until April 2013. Hence, according to defendant, any assertion by Squalls that the failure to submit monthly reports to the Department of Treasury caused plaintiff to lose EVIP funding was false.

We decline to find clear error on this claim. Defendant admitted that she failed to timely attach certain unidentified documents to the EVIP application at issue, thereby resulting in the loss of \$50,000 in funds. At most, defendant is arguing that plaintiff potentially misidentified the documents she failed to submit in her application for EVIP funding. This does not demonstrate clear error by the trial court.

C. CLAIMS PERTAINING TO SQUALLS'S AFFIDAVIT

Next, defendant takes issue with Squalls's statement in ¶ 7 of her affidavit that defendant was “shredding public records without the knowledge of the Board.” According to defendant, this statement was false because the Township Board knew, by way of a resolution it passed, that defendant would be shredding documents. And defendant notes that Squalls admitted in her deposition that she did not know whether the documents were required to be kept by law. According to defendant, this admission shows that ¶ 7 was not well grounded in fact and was made in bad faith.

We decline to find clear error on the record before us. Throughout the trial court proceedings, defendant freely admitted that she shredded township documents. She only disputed whether she was required by law to keep the documents. Squalls's affidavit, meanwhile, merely states that, instead of attending a township meeting, "it was discovered the Township Clerk was at the Township shredding public records without the knowledge of the Board." Squalls did not allege that defendant shredded documents that were required to be kept. She merely asserted that defendant shredded documents without the knowledge of the Township Board. In her deposition, Squalls testified that she knew defendant shredded township documents, but she testified that she did not know the substance of the documents or whether defendant shredded anything she should have kept pursuant to record retention policies. In other words, Squalls testified that she knew defendant shredded documents, but Squalls, who was a Board member, did not know what those documents were. In light of this testimony, we are not left with a definite and firm conviction that the trial court made a mistake. Indeed, this testimony supports the notion that

4. As part of her statutory duties, the Township Clerk was to properly submit these monthly reports in accordance with the State EVIP guidelines and has to date failed to do so.

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defendant shredded at least *some* documents without the Board's knowledge.

3. ACCESS TO THE FUND BALANCE SOFTWARE PROGRAM

*3 Next, defendant argues that Squalls made false assertions in her affidavit with regard to the issue of “read access” and “write access” to the township's “Fund Balance” software program. Defendant argues that Squalls's affidavit falsely claimed that defendant “failed to give [Squalls] read and write access to all of Fund Balance contrary to her authority and a resolution passed by the Township Board allowing such access.” However, Squalls's affidavit does *not* state that defendant acted contrary to the resolution. Rather, Squalls's affidavit simply states that defendant denied Squalls access *and* that the Township Board passed a resolution regarding Fund Balance access. There does not appear to be any dispute that defendant blocked *some* access to Fund Balance before the resolution was passed. Thus, the record before this Court does not support the conclusion that the trial court clearly erred.

4. DIRECTIONS TO THE TOWNSHIP DEPUTY CLERK

Defendant next argues that Squalls falsely asserted in ¶ 10 of her affidavit that defendant directed the deputy clerk not to act in her absence. Paragraph 10 of the affidavit provides that “the Township Clerk's deputy has been directed not to comply with her statutory duties to act in the stead of the Township Clerk” Defendant cites an affidavit from a former deputy clerk, Ida Reynolds, who averred that defendant never instructed her not to act. Citing Reynolds's affidavit, defendant argues that Squalls's assertions to the contrary were false and that they were made in bad faith. Defendant also argues that Squalls admitted she could not recall any instance when the deputy clerk refused to act.

On the record before this Court, defendant cannot show clear error. When asked about ¶ 10 of her affidavit, Squalls testified at her deposition that:

There was one time—and I can't recall what it was now—but [the deputy clerk] said, “[defendant] told me not to do”—I can't recall what it was, but [the deputy clerk] did tell me to my face that [defendant] told her not to do

something that I asked her. I asked for information and “[defendant] told me not to give it to”—or something.

Squalls also testified that she could not recall the specific subject matter of the refusal. Contrary to defendant's suggestions on appeal, Squalls did not testify in her deposition that she did not know whether the averment was true; rather, she testified that she could not recall the subject of the refusal to act. In sum, other than Reynolds's denial, defendant has not presented any evidence suggesting that Squalls knew her averment in ¶ 10 was false. The conflicting accounts of Squalls and Reynolds do not demonstrate a clearly erroneous factual finding by the trial court.

5. APPOINTMENT OF TRUSTEE AS ACTING CLERK

The final statement with which defendant takes issue from Squalls's affidavit is the averment in ¶ 11 in which Squalls stated that “unless Plaintiff is permitted to appoint a Trustee to act as the Township Clerk in the interim, the Township will be unable to function and operate.” Defendant argues that there is no evidence that she failed to perform her duties as clerk. Moreover, she argues that there is no evidence that the deputy clerk refused to act; thus, according to defendant, even if she failed to perform her duties as clerk, the township could still function without the appointment of a trustee as an interim clerk.

The record before this Court does not demonstrate clear error. As it concerns defendant and her refusal to take certain actions, the record reveals that defendant admittedly failed to sign certain township resolutions that she deemed were not ready for implementation for one reason or another. Squalls's affidavit expressly mentioned defendant's failure to sign resolutions as one of the reasons why plaintiff requested the appointment of an interim clerk. Moreover, defendant admittedly failed to attach documentation to an application for EVIP funding, and, as noted above, Squalls testified that she had at least some reason to believe that defendant had instructed the deputy clerk not to act.

D. CLAIMS PERTAINING TO PLAINTIFF'S COMPLAINT

*4 According to defendant, plaintiff's complaint was not well grounded in fact because “[t]he record is clearly contrary” to certain allegations set forth in the complaint.

Defendant lists six allegations, without expressly citing the complaint, and concludes, in cursory fashion, that plaintiff knew or should have known that the allegations were false. Given defendant's cursory treatment of her claims, we consider the claims to be abandoned. See *Peterson Novelties, Inc. v. City of Berkley*, 259 Mich. App. 1, 14; 672 N.W.2d 351 (2003) (“An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.”). Moreover, on our review of the record, we are not left with a definite and firm conviction that the trial court's factual finding was mistaken.

E. CLAIMS PERTAINING TO PLAINTIFF'S APRIL 16, 2014 SHOW-CAUSE MOTION

Defendant next argues that plaintiff's April 16, 2014 show-cause motion was signed in bad faith because it advocated a position that was not warranted by existing law. This motion concerned defendant's alleged failure to call two special meetings that Squalls had requested. Squalls requested the first special meeting with approximately 22 hours' notice, rather than the 24 hours required by MCL 42.7. Squalls requested the second special meeting via text message, which the trial court in this case found did not satisfy MCL 42.7's requirement that such requests be made “in writing.” According to defendant, had plaintiff's attorney reviewed MCL 42.7 before filing the show-cause motion, he would have realized that the claims made therein were not warranted by existing law.

As it concerns special meetings of a township board, MCL 42.7(2)–(3) provide:

(2) A special meeting of the township board shall be called by the township clerk pursuant to subsection (3) on the *written request of the supervisor* or of 2 members of the township board and *on at least 24 hours' written notice to each member of the township board*. The notice shall designate the time, place, and purpose of the meeting and shall be served personally or left at the member's usual place of residence by the township clerk or someone designated by the township clerk.

(3) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the

manner required by Act No. 267 of the Public Acts of 1976. [Emphasis added.]

Defendant is correct that a township meeting “shall” be called on 24 hours' notice to the township board members, though the provision is silent on whether a member can waive the requirement that advanced notice be given to him or her. That waiver may be permitted is suggested by the fact that public notice of a special meeting under the open meetings act must be posted only “at least 18 hours before the meeting.” MCL 15.265(4). Given this shorter requirement for public notice, it is arguable that the 24-hour requirement could be waived, and that a valid meeting could be held as long as the 18-hour public notice requirement of the open meetings act was met. Here, the 22-hour notice given by Squalls fits within that timeframe. That a legal position does not prevail does not mean that the argument was not warranted by existing law.¹ *Sprenger v. Bickle*, 307 Mich. App. 411, 424; 861 N.W.2d 52 (2014).

As it concerns the special meeting that Squalls requested by text message, MCL 42.7(2) provides that a meeting request must be “in writing,” without defining the phrase “in writing.” Neither party has directed this Court's attention to binding authority on the interpretation of the phrase “in writing” as it is used in this statute. Thus, there could be an argument made that a text message would qualify as written notice. In fact, the prior panel in this case, in addressing arguments raised by plaintiff's cross-appeal, expressly declined to resolve the question of whether a text message constituted written notice under MCL 42.7(2). *Brinkley I*, unpub. op. at 7–8. In doing so, the panel noted that there was a “lack of clarity concerning where emerging technology such as text messages fits into existing statutory definitions concerning ‘written requests’ or ‘writings.’ ” *Id.* The concern identified by the prior panel highlights that there is arguable merit to the claim that a text message would satisfy the “in writing” requirement of MCL 42.7(2). That the trial court denied plaintiff's motion to hold defendant in contempt for failing to call a meeting pursuant to a text message request does not mean that plaintiff's motion was not warranted by existing law. See *Sprenger*, 307 Mich. App. at 424.

F. CLAIM PERTAINING TO PLAINTIFF'S RESPONSE TO SUMMARY DISPOSITION

*5 Defendant next argues that plaintiff's assertion concerning defendant's adherence to a township resolution

regarding mail protocol in its response to her motion for summary disposition was made in bad faith. As context for this claim, trial counsel for plaintiff, who also served as plaintiff's general counsel, had previously provided an opinion to Squalls and other board members in March 2013 regarding "the Township Clerk's legal duties as they relate to the receiving and opening of mail addressed to the Charter Township of Royal Oak and mail addressed to individuals at the Township's business address." After reviewing pertinent authorities, counsel opined that the township clerk was "legally authorized to accept and open all mail addressed to the Charter Township of Royal Oak and any mail addressed to individuals at the Township's business address." Shortly after receiving counsel's letter, the Township Board passed a resolution requiring defendant to refrain from opening mail addressed "to a specific person or office other than the Township." In an October 30, 2013 deposition, defendant testified that she was aware of the resolution, but she nevertheless opened all mail she received "because it's my statutory duty." She testified that she would open all mail that was delivered to the township offices, regardless of whether it was addressed to another individual and regardless of whether it was marked personal or confidential. She testified that she would not follow the resolution regarding mail protocol.

As it concerns defendant's instant claims, she argues that, given counsel's opinion, as well as MCL 41.65 and this Court's decision in *McKim v. Green Oak Twp. Bd.*, 158 Mich. App. 200; 404 N.W.2d 658 (1987), it "was bad faith" for plaintiff to allege that defendant breached her duties by violating the township resolution that was "clearly contrary" to the March 2013 letter from counsel.

In pertinent part, MCL 41.65 provides that "[t]he township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law." In *McKim*, 158 Mich. App. at 205, this Court held that the term "papers" as used in that section includes mail delivered to the township. "Hence, it seems clear that MCL 41.65 ... bestows a township clerk with the responsibility to exercise control over all township papers, including mail and bills, unless otherwise provided for by law." *Id.* At issue in *McKim* was whether a township could enact a resolution permitting the township secretary, rather than the clerk, to receive all incoming mail. *Id.* at 201–202. This Court held that a resolution bypassing the township clerk entirely deprived the clerk of his or her duty under MCL 41.65 to have "custody of all ... papers of the township" *Id.* at 205.

Turning to the instant case, the trial court did not clearly err in finding that the accusation made in plaintiff's response regarding defendant's lack of compliance with the mail protocol ordinance was not made in bad faith. At the outset, regardless of any opinion given by the township's general counsel, the Township Board passed a resolution requiring defendant not to open mail she received if it was addressed to someone else, and defendant openly defied that resolution. As plaintiff argues, the township has an interest in seeing that resolutions passed by its board are followed. Moreover, the law cited by defendant is not as clear as defendant represents it to be. As it concerns the instant case, neither *McKim* nor MCL 41.65 expressly gives a township clerk authority to open all mail that is delivered to the township. Rather, the authorities give a clerk "custody" over the mail. It is not apparent that "custody" means a clerk can open mail addressed to anyone, regardless of the subject of the mail. Furthermore, there is little caselaw interpreting MCL 41.65, and the decision in *McKim* could be considered nonbinding because it was issued before November 1, 1990. See MCR 7.215(J)(1). Contrary to defendant's assertions, plaintiff's position regarding mail protocol was at least arguably warranted by existing law, and defendant fails to establish clear error.

G. CLAIM PERTAINING TO AN ALLEGED "FAILURE TO DISMISS"

For her final claim, defendant argues that plaintiff should be sanctioned "pursuant to MCR 2.114 for failing to dismiss" when it knew it had no case against defendant. Defendant failed to preserve this claim for appellate review because she did not raise it before the trial court. See *Hines v. Volkswagen of America, Inc.*, 265 Mich. App. 432, 443; 695 N.W.2d 84 (2005). We decline to address this issue raised for the first time on appeal. *City of Fraser v. Alameda Univ.*, 314 Mich. App. 79, 104; 886 N.W.2d 730 (2016). Moreover, we have reviewed the claim and found it to be without merit.

III. CONCLUSION

*6 Defendant failed to show that the trial court's factual findings were clearly erroneous. Accordingly, we affirm the trial court's order denying defendant's motion for costs and attorney fees.²

Affirmed.

All Citations

Not Reported in N.W.2d, 2017 WL 2200609

Footnotes

- 1 Because the question of whether a member can waive the right to 24-hour advanced notice need not be answered for proper resolution of this appeal, we will decline to address it further.
- 2 We note that, in passing, plaintiff appears to argue that defendant should be sanctioned for filing a vexatious appeal. Given the cursory attention plaintiff gives to this matter, we find it to be abandoned. See [Peterson Novelties](#), 259 Mich. App. at 14. Moreover, because this cursory request is made in plaintiff's brief, rather than in a separate motion, "the request is ineffectual" and should not be considered at this time. [Fette v. Peters Constr. Co.](#), 310 Mich. App. 535, 553; 871 N.W.2d 877 (2015).

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STATE OF MICHIGAN

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