

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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SHERRY LOAR and DAWN IVES,

Court of Appeals No: 294087

Plaintiffs,

V

MICHIGAN DEPT. OF HUMAN SERVICES  
and ISMAEL AHMED, in his official  
Capacity as Director of the Michigan Dept.  
Of Human Services,

Defendants.

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**DEFENDANTS' MOTION TO DISMISS**  
**PURSUANT TO MCR 2.116(C)(8) AND (C)(4)**

**ORAL ARGUMENT REQUESTED**

Respectfully submitted,

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Division  
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Dated: October 7, 2009

Defendants, Michigan Department of Human Services and Ismael Ahmed, move to dismiss Plaintiffs' Complaint pursuant to MCR 2.116 (C)(4) and (C)(8) and state as follows:

1. On September 16, 2009, two home-based child care providers filed an original action in this Court seeking a writ of mandamus to stop the Department of Human Services (DHS) from deducting union dues from their subsidy payments.

2. Plaintiffs' lawsuit stems from a 2006 interlocal agreement between Mott Community College and DHS that created the Michigan Home Based Child Care Council (Council). (Complaint ¶ 18). The Council's stated purpose is to coordinate the provision of effective, efficient, and stable child care; to offer training to day care providers; and provide public sector payments to providers (Complaint, Exhibit 8, Interlocal Agreement, § 2.01, p 6).

3. Also in 2006, the Michigan Employment Relations Commission (MERC) certified a union to represent child care providers, called Child Care Providers Together Michigan (Union) (Complaint, ¶ ¶ 22-26).

4. Later, the Council and the Union entered into a collective bargaining agreement. In the agreement, the parties agreed to have DHS withhold union dues from members' subsidy checks they receive for providing child care (Complaint, ¶ ¶ 27-30).

**Plaintiffs have failed to state a claim upon which relief can be granted.**

5. While Plaintiff's title their Complaint as a "Complaint for Writ of Mandamus," they fail to plead specific facts warranting such extraordinary relief. Plaintiffs fail to allege facts showing what clear legal right they assert, or what clear legal duty DHS is required to perform. Nor does the Complaint establish the ministerial nature of DHS's action, or the lack of any adequate legal or equitable remedy.

6. Because Plaintiffs' Complaint fails to allege the elements of mandamus and fails to allege specific facts that establish a basis for mandamus relief, their claim must be dismissed pursuant to MCR 2.116(C)(8).

**This Court lacks jurisdiction over Plaintiffs' claims.**

7. Moreover, the allegations and underlying facts control the nature of the action rather than the label placed on the case by Plaintiffs. Here, despite Plaintiffs' labeling of the Complaint as one seeking a "Writ of Mandamus," their underlying cause of action truly seeks declaratory and injunctive relief.

8. This Court's jurisdiction over original actions, however, is very limited and does not extend to declaratory or injunctive relief. MCR 7.203.

9. Because this Court plainly does not have jurisdiction over an action for declaratory judgment or a request for an injunction, especially regarding entities who have not been named as parties and where Plaintiffs' have not exhausted their available remedies, this case must be dismissed pursuant to MCR 2.116(C)(4).

10. Plaintiffs failed to join parties whose interests make indispensable to this Court's ability to render complete relief. These parties—the Council, the Union, members of the Union and MERC—are thus necessary to this litigation. MCR 2.205(A). Accordingly, those parties must be joined so that they can litigate their interests. MCR 2.205(B).

11. This Court's jurisdiction is based on MCR 7.203(C)(2) and MCR 3.305(A)(1), which grant this Court jurisdiction over an original action for mandamus action against a state officer. If the action involves a party other than a state officer, however, it "must be brought in the Circuit Court." MCR 3.305(A)(2).

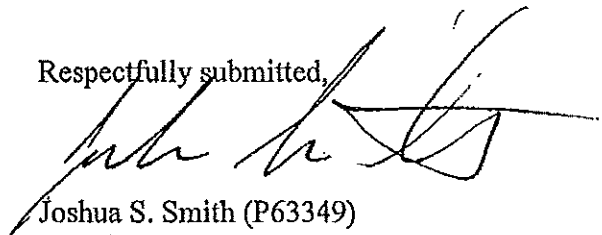
12. Accordingly, once the necessary parties have been joined, this Court will no longer have jurisdiction pursuant to MCR 3.305(A)(2), mandating dismissal under MCR 2.116(C)(4).

13. To the extent that Plaintiffs, who are members of the Union, are actually making a claim that the deduction of dues somehow constitutes an unfair labor practice or that the union breached its duty of fair representation, they were required to file their claim six months after discovering it. *Silbert v Lakeview Education Ass'n, Inc*, 187 Mich App 21, 25; 466 NW2d 333 (1991). Such actions must be brought either before MERC or in Circuit Court. *Demings v City of Ecorse*, 423 Mich 49; 377 NW2d 275 (1985).

14. Plaintiffs failed to exhaust their available remedies. Accordingly, their claim must be dismissed pursuant to MCR 2.116(C)(4).

WHEREFORE, Defendants Michigan Department of Human Services and Ishmael Ahmed respectfully request that this Court dismiss Plaintiffs' Complaint for the reasons stated above.

Respectfully submitted,



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