

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PAMELA G. FORTON,

Appellant,

v

File No. 2019035166AA
HON. KEVIN A. ELSENHEIMER

GRAND TRAVERSE COUNTY ELECTION
COMMISSION,

Appellee.

Christopher D. Tholen (P76948)
Attorney for Appellee

Appellant Acting in Pro Per

DECISION AND ORDER GRANTING APPELLEE'S MOTION FOR RECONSIDERATION

On November 8, 2019, a petition for the recall of Pamela G. Forton, a Traverse City Area Public Schools (TCAPS) board of education member, was filed with the Grand Traverse County Election Commission. The Grand Traverse County Election Commission issued a decision approving the petition language on November 26, 2019. On December 6, 2019, Forton filed a claim of appeal from the decision of the Grand Traverse County Election Commission approving the recall petition language. On January 13, 2020, the Court heard oral arguments on the claim of appeal. Subsequently, on January 17, 2020, the Court issued an Order After Appeal by Pamela G. Forton from Decision of Grand Traverse County Election Commission Decision, wherein the Court found that the language of the recall petition filed against Forton was factual and of sufficient clarity pursuant to MCL § 168.952, but that the petition was not timely filed under MCL § 168.951(1). On January 29, 2020, the Appellee filed a Motion for Reconsideration, arguing that the Court was misled¹ and therefore improperly applied MCL § 168.951(1) instead of MCL § 168.952b, when considering the timing issue. The Court having now reviewed all documents

¹ In File No. 2019035165AA, the attorney for Appellant Anderson briefed the timing issue, but failed to notify the Court as to MCL § 168.952b.

submitted, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order for the reasons stated herein.

Before addressing the underlying Motion for Reconsideration, the Court must first consider whether the timeliness of the petition issue is moot. An issue is moot when a subsequent event makes it impossible for the appellate court to grant relief.² A case that does not rest upon existing facts or rights and presents nothing but abstract questions of law is moot.³ Generally, an appellate court dismisses a moot case without reaching the underlying merits because reviewing a moot question would ordinarily be a purposeless proceeding; however, an exception exists when an issue is moot, but is one of public significance and is likely to recur, yet may evade judicial review.⁴ Essentially, an otherwise moot issue is nonetheless justiciable and appropriately addressed by a court when there is a reasonable expectation that the publicly significant alleged wrong will recur.⁵ In the matter at hand, the timing of the petitions is a matter of public significance that involves multiple members of the TCAPS Board of Education, with the potential for recurrence if additional board members are implicated. Moreover, if the original Order After Appeal by Pamela G. Forton from Decision of Grand Traverse County Election Commission Decision is permitted to stand, the Board of County Election Commissioners will be subject to that Order and legal conclusion. For these reasons, the mootness exception applies to the petition timing issue and the issue may be properly addressed by the Court.

With regard to the recall petition timing itself, under MCL § 168.951(1), each elective officer, except a judicial officer, is subject to recall by the voters of the electoral district in which the officer is elected. If an officer's term of office is 2-years or less, a recall petition shall not be filed against the officer until the officer has actually performed the duties of the office to which elected for a period of 6-months during the current term of that office and a recall petition shall not be filed against an officer during the last 6-months of the officer's term of office.⁶ If an officer's term of office is *more* than 2-years, a recall petition shall not be **filed** against the officer until the officer has actually performed the duties of the office to which elected for a **period of 1-year**

² *Gleason v Kincaid*, 323 Mich App 308; 917 NW2d 685 (2018).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

during the current term of office and a recall petition shall not be filed against an officer during the last 1-year of the officer's term of office.⁷ Whereas, MCL § 168.952b states:

A petition for the recall of an officer shall not be **submitted** to the board of state canvassers under section 951a or the board of county election commissioners under section 952 to determine if the petition is factual and of sufficient clarity until the officer has actually performed the duties of the office to which elected for a **period of 6-months** during the current term of that office. In addition, a petition for the recall of an officer shall not be submitted to the board of state canvassers under section 951a or the board of county election commissioners under section 952 to determine if the petition is factual and of sufficient clarity during the last 6 months of the officer's term of office.⁸

However, the terms “submitted” and “filed,” as used in the above statutes, are not defined within the Election Code. When a statute plainly and unambiguously expresses the legislative intent, the role of the court is limited to applying the terms of the statute to the circumstances of the particular case.⁹ Conversely, where the language employed by the Legislature is susceptible to more than one interpretation, judicial construction is justified.¹⁰ The goal of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute.¹¹ If a meaning of a statute is unclear, the court must consider the object of the statute and apply a reasonable construction that best accomplishes the Legislature’s purpose.¹² A court interpreting a statute applies the doctrine of *noscitur a sociis*, which stands for the principle that a word or phrase is given meaning by its context or setting.¹³

A review of both statutes, the related administrative guidance and publications by the Michigan Bureau of Elections indicate that the terms “submitted” and “filed” are not synonymous and a petition must be “submitted” before it can be “filed.” The Michigan Bureau of Elections summary, published in July 2013, denotes that the first step for recall of a local election officer requires that the petition language be “submitted” for approval, but not within the first or last six-months of an elected officer’s term. The second step is a clarity hearing between ten and 20-days after the petition language has been submitted. Depending on the outcome of the clarity hearing, the third step may be an appeal to the circuit court within ten-days of the hearing. Step four would

⁷ *Id.* Emphasis added.

⁸ Emphasis added.

⁹ *Dep’t of Transportation v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008).

¹⁰ *Rowell v Security Steel Processing Co.*, 445 Mich 347; 518 NW2d 409 (1994).

¹¹ *Id.*

¹² *Id.*

¹³ *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90; 754 NW2d 259 (2008).

be a final determination on appeal by the circuit court within 40-days of the filing of appeal. Step five is a finding that the recall petition language is valid and step six is circulation of the recall petition for signatures. Under step seven, the recall petition is then “filed.” When the elected officer’s term is great than 2-years, the signed/circulated petition cannot be filed during the first or last year of the term.¹⁴ Step eight is a determination, within 35-days of the date of filing, regarding the petition’s sufficiency or insufficiency. Finally, assuming the petition is sufficient, step nine is a recall election. A recall election is to be held at least 95-days after the recall petition is filed on either the next May or November election date. Given this summary, it is clear that a recall petition may be “submitted” to the board of county election commissioners after an elected officer has been in office for six-months and then may be “filed” against the officer after six-months or one-year (depending on whether the elected term is two years or greater).

In this case, Board of Education Members for TCAPS serve for four-year terms. Appellant Forton was elected in 2018 for a term beginning January 1, 2019, and running through the end of 2022. Thus, a petition for a recall of Forton could be “submitted” to the Grand Traverse County Election Commission after June 30, 2019, and a signed/circulated petition could “filed” against Forton on January 1, 2020.

The standard for reviewing motions for reconsideration is codified at MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, and reads in pertinent part, as follows:


Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

After reviewing the Appellee’s Motion for Reconsideration, the Court is persuaded that MCL § 168.952b governs when recall petitions may be submitted to the board of county election commissioners. The recall petition was submitted to the board of county election commissioners on November 8, 2019, at which time the Appellant had actually performed the duties of the office to which elected for a period of 6-months during the current term of that office, therefore, the petition was timely. Thus, the Court finds that Appellee has demonstrated palpable error and that

¹⁴ When the elected officer’s term is less than 2-years, the signed/circulated petition cannot be filed during the first or last 6-months of the term.

a different disposition of the appeal must result from the correction of an error.¹⁵ For the reasons stated herein, the Appellee's Motion for Reconsideration is granted. The Court's prior Order After Appeal by Pamela G. Forton from Decision of Grand Traverse County Election Commission Decision is modified to reflect that the recall petition was timely submitted.

IT IS SO ORDERED.



02/28/2020
01:41PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

¹⁵ MCR 2.119(F)(3).