STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN MILITARY MOMS, Plaintiff-Appellant,	UNPUBLISHED January 24, 2013
v	No. 306553 Wayne Circuit Court
MAUREEN VANHOOSER, CAROLYN BELL, MERRILL GRIFFIN, TRACEY ROBERTS, and JOHN and JANE DOE, Defendant-Appellees.	LC No. 11-007146-CZ

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and BOONSTRA, JJ.

PER CURIAM.

This action arises out of a corporate governance dispute between competing groups of individuals claiming to be members of the governing board of directors of plaintiff, Michigan Military Moms (hereafter "plaintiff" or "the corporation"). Plaintiff appeals by right from a final order entered on September 23, 2011 in Wayne Circuit Court. The order states that as a result of an August 27, 2011 election of officers and directors, defendants are among the "duly elected legally recognized leadership" of plaintiff. The order further states that "Plaintiffs[1] [sic] shall fully cooperate with the Defendants regarding accounting and reporting all financial activity, including financial transactions and receipt of donations received as well as cooperate with [sic] by return [sic] corporate property or records as listed in the attached." Finally, the order dismissed plaintiff's claims against defendants, and closed the case. For the reasons stated below, we vacate this order and remand for further proceedings.

Plaintiff further appeals the trial court's grant of defendants' motion to hold four former board members of plaintiff in civil contempt, and its amendment of its final order on

[1] Although Michigan Military Moms, a corporation, is the only named plaintiff in this case, there are numerous references to "plaintiffs" throughout the lower court file. The use of the word "plaintiffs" appears to refer to the signers of the verified complaint filed on behalf of plaintiff, i.e., the following members of its 2009 board of directors: Pat Enderle, Barbara DaRonco, Evona LaPere, and Stella Webb.

December 2, 2011. We affirm the trial court's order of contempt; the issue of amendment is addressed by our vacating of the final order in this case.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff is a 501(c)(3) non-profit corporation incorporated in Michigan in 2007. The purpose of the corporation is to provide support for military families and friends of military families. Defendant Maureen L. VanHooser was listed in the articles of incorporation as plaintiff's sole incorporator and as its registered agent. The articles of incorporation identify the form of the corporation as a "directorship."

The parties agree that the individual defendants were directors and/or officers of the corporation from 2007 to 2009. According to the parties, new directors were elected to board positions in 2009 (hereinafter "the 2009 board"). Plaintiff asserts that the 2009 board was elected at a special executive board meeting on August 6, 2009. Defendants contend that these directors were elected by the voting members of the corporation, rather than by its board of directors. The minutes of the August 6, 2009 special executive board meeting do not indicate the manner in which the 2009 election was conducted.

At a meeting of the members of the corporation held on January 13, 2011, at which 21 members of the corporation were in attendance, a motion was made and carried to remove certain individuals from the then-existing board of directors and to elect certain other individuals to the board. Specifically, the record reflects that the membership of the corporation voted to remove Pat Enderle, Barbara DaRonco, Evona LaPere, and Stella Webb (and two other individuals) from the board, and to elect defendants VanHooser, Bell, Griffin and Roberts to the board. Further, defendant VanHooser was elected president, and defendant Bell was elected secretary. The motion further authorized defendant VanHooser to "conduct all business relating to any bank accounts in the name of Michigan Military Moms," including withdrawing funds and opening new accounts in her discretion, and additionally provided that defendants VanHooser and Bell, as well as attorney John W. Drury, were authorized to "act on behalf of the corporation in dealing with the former Board of Directors for the procurement of and return to the corporation of any and all books, accounts, records, documents, photos, funds whether deposited or not deposited, or any other documents, materials or records pertaining to Michigan Military Moms."

The referenced members of the 2009 board (Enderle, DaRonco, LaPere, and Webb) filed a verified complaint with the trial court in 2011 on behalf of the corporation, alleging that defendants had conducted the 2011 meeting without proper notice and authority and in contravention of the corporation's bylaws. The complaint further alleged that defendant VanHooser had converted funds belonging to plaintiff, and sought a declaration that defendants were not duly elected directors of plaintiff and did not have the authority to act on behalf of plaintiff, as well as injunctive relief and monetary damages for conversion.

The trial court granted a temporary restraining order (TRO) to plaintiff, which was extended by stipulation on two occasions. The TRO restrained defendants from using the name Michigan Military Moms and restrained them from using or transferring any funds, trademarks, and property belonging to the corporation.

The trial court heard plaintiff's motion for a preliminary injunction on August 5, 2011. At the motion hearing, the trial court granted plaintiff's request for a preliminary injunction, but also ordered that a new election be conducted on August 27, 2011. Defense counsel noted two issues with the holding of a new election: (1) determination of which version of the bylaws was the official version; and (2) determination of precisely who could vote in the election. The trial court stated that if the parties could not agree on which version of the bylaws was official, or on who could vote in the election, the trial court would rule on these issues.

The parties could not resolve these issues, and appeared again before the trial court on August 26, 2011. At that hearing, the parties agreed that the bylaws attached to plaintiff's complaint were the official bylaws.[2] As for who was entitled to vote in the election, the trial court ruled that all "Active Members" as defined by the bylaws could vote in the election. The trial court rejected plaintiff's argument that only directors (not members) could nominate and vote for board members.

The following day, the election was held; defendants were elected to board of director positions by a vote of the Active Members. Plaintiff filed a motion to hold a new election, which was denied by the trial court. At the motion hearing, plaintiff raised several procedural objections regarding "irregularities" in the election. However, the trial court found that the election was conducted according to its order. The trial court ordered plaintiff to turn over any financial records and documents to defendants, stating "Ok, give them the documents or you'll be in contempt. Give them the financial records, it's over."

The trial court entered a final order on September 23, 2011 requiring in part that "Plaintiffs [sic] shall fully cooperate with the Defendants regarding accounting and reporting all financial activity, including financial transactions and receipt of donations received as well as cooperate with [sic] by return [sic] corporate property or records as listed in the attached." On October 13, 2011, defendants moved the trial court for sanctions and an order to show cause why the signatories of plaintiff's complaint should not be held in contempt, alleging that they had failed to comply with the court's order, and failed to turn over any of the specifically enumerated documents in their possession. A show cause hearing was held on October 21, 2011, although the transcript for that hearing does not appear in the lower court record. That same day, the trial court entered an order of contempt, ordering that "Plaintiff's [sic] must produce the property, information, records or documents on the attached list by 5:00 p.m, [sic] October 24, 2011, or they shall be in contempt." The order further stated that "The individual Plaintiff's [sic]: Pat Enderle, Barbara DaRanco [sic], Evona Lapere [sic], and Stella Webb shall be fined $100 EACH per DAY for every day they have not complied with this court's order."

Several motion hearings took place following the entry of this order concerning modification of the court's order as well as other issues in the case; however no transcripts have been produced for these hearings. The record indicates that defendants filed a notice of presentment of a proposed order amending the September 23, 2011 order, as well as a contempt order, on November 22, 2011, and that plaintiff did not file objections within seven days as

[2] This version of the bylaws also is attached as Exhibit B to plaintiff's Brief on Appeal.

required by MCR 2.602(B)(3). On December 2, 2011, the trial court entered an order amending its final order. The amended order included a specific order to return a $1,500 donation that had been donated to Michigan Military Moms but that apparently had been deposited into an account under the control of the 2009 board. The trial court also issued an "Order of Contempt Monetary Fine" on the same day, ordering that "[t]he individual signatory Plaintiffs: Pat Enderle, Barbara DaRanco [sic], Evona Lapere [sic], and Stella Webb shall pay to Michigan Military Moms $500 in lieu of returning the personal property as listed on the attachment to the September 23, 2011 Final Order as amended." This appeal followed.

II. THE TRIAL COURT ERRED IN ALLOWING THE ACTIVE MEMBERS OF PLAINTIFF TO VOTE IN THE 2011 ELECTION

Plaintiff first argues that the trial court erred in ordering that the general membership[3] of plaintiff could vote in the August 27, 2011 election. Plaintiff contends that plaintiff's articles of incorporation and bylaws, and the Michigan Non-Profit Corporation Act, MCL 450.2101 *et seq.* ("MNCA"), provide that only the existing board could nominate and vote for the election of new board members. We disagree that the bylaws so provide, but find that the bylaws impermissibly conflict with the MNCA and the articles of incorporation.

We review a trial court's interpretation of statutory language and corporate bylaws de novo. *Slatterly v Malidol*, 257 Mich App 242, 250-251; 668 NW2d 154 (2003).

The organization of non-profit corporations in Michigan is governed by the MNCA. MCL 450.2101 *et seq*. The MNCA allows non-profit corporations to be organized on a stock or non-stock basis; corporations organized on a non-stock basis shall be further organized on either a "membership" or "directorship" basis. MCL 450.2302. The articles of incorporation of a non-profit, non-stock corporation are required to contain a statement that the corporation is organized as either a membership or directorship. MCL 450.2202. Plaintiff is correct that the articles of incorporation describe plaintiff as a non-profit, non-stock corporation, and as a "directorship." MCL 450.2305 provides:

> (1) A corporation organized upon a directorship basis may or may not have members. If a corporation organized upon a directorship basis has members, the members shall not be entitled to vote.
>
> (2) Unless the context of a provision of this act otherwise requires, all matters which are subject to membership vote or other action in this act in the case of a membership corporation shall be subject to duly authorized action by the board of directors of a directorship corporation.

The bylaws, however, are internally inconsistent. On the one hand, the bylaws provide that the organization "shall operate and have such powers as granted by the laws of a Non-Profit

[3] As noted, the trial court ordered that "Active Members" of the corporation (as defined in the bylaws) were entitled to vote.

Corporation as outlined by the State of Michigan[.]" As noted, applicable law provides that the members of a corporation organized on a directorship basis "shall not be entitled to vote." On the other hand, the bylaws provide for two classes of members, Active Members and Associate Members. "Active Members" are defined as members who pay dues and either (1) serve on the executive board, (2) serve as committee chair, (3) work on at least two committees or special events held each year, or (4) attend six meetings in a 12-month period. The bylaws provide, contrary to MCL 250.2305, that active members "will have voting rights." Further, Article Four of the bylaws provides that an annual meeting of the membership will be held, at which the election of executive board members will be on the agenda.

The bylaws further provide that an executive board member "may be removed when sufficient cause exists for such removal as deemed by the majority of the remaining Executive Board" and that vacancies in the board "shall be filled, by appointment, through a vote of the majority of the remaining members of the Board." This section comports with MCL 450.2511(1), which states: "Unless otherwise provided in the articles of incorporation or bylaws, a director or the entire board may be removed: . . . (b) With cause, by the vote of a majority of the directors then in office in the case of a corporation organized upon a directorship basis."

Thus, the plain language of the bylaws that provides voting rights to Active Members conflicts with the "directorship" designation found in the articles of incorporation and the directorship statute, which states that members of a directorship "shall not be entitled to vote." The words "shall not" indicates a prohibition. *1031 Lapeer, LLC v Rice*, 290 Mich App 225, 231; 810 NW2d 293 (2010). The bylaws therefore purport to allow conduct that is prohibited by the directorship statute. MCL 450.2231(2) provides that non-profit corporation bylaws "may contain any provision for the regulation and management of the affairs of the corporation *not inconsistent with law or the articles of incorporation.*" (Emphasis added.) This language of the bylaws is inconsistent with the MCL 450.2231(2) and with the articles' designation of the corporation as a directorship.

Bylaws are a contract between a corporation and its shareholders. *Cole v Southern Michigan Fruit Assn*, 260 Mich 617, 621-622; 245 NW 534 (1932). A contract that conflicts with a statute is void. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002). Therefore, bylaws that conflict with a statute or policy of the state are also void. See *People ex rel Pulford v Fire Dep't of Detroit*, 31 Mich 458, 466 (1875); see also *Dozier v Automobile Club of Michigan*, 69 Mich App 114, 132; 244 NW2d 376 (1976); see also MCL 450.2231(2). We conclude that the provisions of plaintiff's bylaws providing voting rights for members are void.

Additionally, neither the articles of incorporation nor the bylaws, by their plain language, provide for the filling of vacancies or the removal of directors by a vote of the membership, and no such privilege is granted by MCL 450.2511(b). Thus, even if we were to conclude that the grant of voting rights to members was permissible, we would not read the bylaws as permitting a membership vote on the removal of board members or the filling of vacancies on the board. We

therefore conclude that the trial court erred ordering the August 27, 2011 election and in ordering that Active Members be allowed to vote in that election.[4]

Defendants argue that *Campau v McMath*, 185 Mich App 724, 730-731; 463 NW2d 186 (1990), compels this Court to uphold an invalid bylaw against the signatories of plaintiff's complaint. In *Campau*, the defendants challenged a corporation bylaw that provided for the removal of directors by a majority vote of the shareholders. *Id.* at 730. This bylaw conflicted with the rural cemetery corporations act, MCL 456.101 *et seq.* This Court stated that "[a]lthough a bylaw may be invalid, it is nonetheless binding on stockholders who themselves, voluntarily and for their own benefit and protection, *enacted it*." *Id.* at 730-731, citing *Weiland v Hogan*, 177 Mich 626, 631; 143 NW 599 (1913), and *Allied Supermarkets, Inc v Grocer's Dairy Co*, 391 Mich 729, 736; 219 NW2d 55 (1974) (emphasis added). This Court further stated that since defendants "*participated in the enactment of the foregoing bylaw*, defendants are now estopped from challenging its validity." *Id.* at 731 (emphasis added).

Campau is not binding on this Court. MCR 7.215(J)(1). Further, it is distinguishable from the instant case in one crucial respect. In this case, this action on behalf of plaintiff was brought by Pat Enderle, Evona LaPere, Barbara DaRonco, and Stella Webb, each of whom individually signed the verification of plaintiff's complaint. The meeting notes of plaintiff indicate that the bylaws were approved on October 7, 2007, and list the members present at that meeting. None of the signatories to plaintiff's complaint were present at that meeting. Therefore, the signatories of the complaint did not "participate in the enactment" of the bylaws. Defendants argue that the previous board received their board positions in 2009 following a "popular vote of the voting members." While this is not apparent from the record before us, even assuming it to be true, the trial court was not asked to determine the validity of the 2009 election, and we decline to do so in the first instance. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Further, a finding that the 2009 election was invalid would not preclude a finding that the 2011 election was similarly invalid. We further decline to read *Campau* to state that if a member of a corporation ever receives any benefit from a bylaw, she is thereafter forever estopped from challenging its validity.

[4] We further note that none of the parties contend that the January 13, 2011 meeting (at which the signatories of plaintiff's complaint were purportedly removed from the board, and defendants were purportedly elected to the board) constituted the corporation's "annual meeting," which the bylaws provide is to be held on the third Saturday in October, and on the agenda of which is to be the following item: "Election of Executive Board members." Nor do the parties contend that the January 13, 2011 meeting was for such an election in due course of a new board. Rather, the record reflects that the vote that occurred at the meeting was in part to remove certain individuals from the board, and to elect certain other individuals to the board. Therefore, even assuming (which we reject) that the bylaws effectively provided voting rights to Active Members, the January 13, 2011 meeting was not an annual meeting for the election of a board under this provision of the bylaws; rather, it was for the removal and election of board members, outside of the context of an annual meeting, which privilege the bylaws provide falls to the board of directors itself.

Lastly, we do not find defendants' de facto corporation argument convincing. The de facto corporation doctrine allows a corporation to come into being, under certain circumstances, despite defects in incorporation. See *Duray Development, LLC v Perrin*, 288 Mich App 143, 155-156; 792 NW2d 749 (2010). Here, the validity of plaintiff's corporate status is not at issue. The doctrine thus is not applicable. We further reject defendants' suggestion that, by enforcing the articles of incorporation as written, in conjunction with the MNCA, we are elevating form over substance. There is a clear conflict between the bylaws and the articles of incorporation (and the MNCA), and the latter governs the former.

We conclude that the trial court erred in ordering the August 27, 2011 election and in ordering that Active Members be allowed to vote in that election. Because we reach this conclusion, we find it unnecessary to address plaintiff's arguments that the trial court improperly amended the final judgment after a claim of appeal was taken and improperly closed the case, as we vacate the trial court's final order and thus also vacate the amended final order. We note that, in any case, plaintiff has not supported its argument (with respect to the closing of the case) with any citation to authority, or identified any statute, court rule, or duty that the trial court allegedly violated. This Court is not obligated to search for authority to sustain or reject a party's position. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).

III. THE TRIAL COURT'S CONTEMPT ORDERS ARE VALID

Lastly, plaintiff argues that the trial court erred in holding the signatories to plaintiff's complaint in contempt. We disagree. Plaintiff maintains that the signatories could not be held in contempt as non-parties. However, "a corporation can act only through its officers and agents." *In re Moroun*, 295 Mich App 312, 332; 814 NW2d 319 (2012). "'When a court acquires jurisdiction over a corporation as a party, it obtains jurisdiction over the official conduct of the corporate officers so far as the conduct may be involved in the remedy against the corporation which the court is called upon to enforce.'" *Id.*, quoting *Stowe v Wolverine Metal Specialties*, 242 Mich 624, 628; 219 NW 714 (1928). "Because individuals who are officially responsible for the conduct of a corporation's affairs are required to obey a court order directed at the corporation, these same individuals may be sanctioned if they fail to take appropriate action within their power to ensure that the corporation complies with the court order." *Id.* at 331.

Here, the signatories of the complaint were responsible for the corporation's affairs until the trial court's September 23, 2011 order. The order directed "Plaintiffs" to cooperate with defendants in the transition to new leadership. Although the order perhaps should have specified the signatories by name, there is no serious argument that they were unaware that they had been ordered by the court to perform certain tasks. Although plaintiff also argues that *the corporation* was never served with the order, nor was an order to show cause issued, plaintiff does not argue that the signatories were unaware of the September 23, 2011 order or otherwise denied due process of law. The record reflects that defendants' motion, notice of hearing, and proof of service were filed with the trial court. Civil contempt requires the court to "hold a hearing to determine whether the alleged contemnor actually committed contempt." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 712; 624 NW2d 443 (2000). Although this hearing must follow the procedures of MCR 3.606, the court rule only requires a show cause order to issue following an ex parte motion by one of the parties. MCR 3.606(A). Here it appears that there was a contested motion hearing on October 21, 2011; plaintiff does not contend that the

signatories did not appear at the hearing.[5] From the record before this Court, it does not appear that the persons named in the contempt order were denied notice or the opportunity to be heard. See *In re Moroun*, 295 Mich App at 331.

Finally, the fact that we vacate the underlying order does not affect the trial court's order of contempt. "[A] trial court has the inherent and statutory authority to enforce its orders." *Davis v Detroit FRT*, 296 Mich App 568, 623-624; 821 NW2d 896 (2012). The signatories of plaintiff's complaint, as officers of plaintiff at the relevant times, were required to follow the trial court's orders. We remind plaintiff that "the validity of an order is determined by the courts, not the parties." *Id.*

The trial court's final order of September 23, 2011 and amended final order of December 2, 2011 are vacated, and this case is remanded for further proceedings consistent with this opinion. However we leave undisturbed the trial court's various contempt orders.

Vacated and remanded. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Mark T. Boonstra

[5] This Court's analysis of plaintiff's arguments on this issue is hampered by plaintiff's failure to produce transcripts for any contempt hearings. This Court may refuse to consider issues for which the appellant failed to produce the transcript. *PT Today, Inc v Comm'r of OFIR*, 270 Mich App 110, 152; 715 NW2d 398 (2006). We therefore refuse to consider plaintiff's arguments concerning the lack of factual basis for the trial court's findings of contempt at any of the contempt hearings.