

G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BOARD OF COMMISSIONERS OF
LYCOMING COUNTY,
Plaintiff,

vs.

KRISTA B. RODGERS,
Defendant.

No. 21-0365
2021 JUL 20 11 AM
FILED
LYCOMING COUNTY
THOMAS J. HEALY
PROthonotary
CIVIL ACTION - LAW
Preliminary Objections/
Preliminary Injunction

OPINION & ORDER

AND NOW, following an evidentiary hearing initiated on April 18, 2021, and concluded on May 17, 2021, in consideration of Plaintiff's *Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531* and Defendant, *Krista B. Rogers' Preliminary Objections to Plaintiff's Complaint*, the Court hereby issues the following ORDER.

Plaintiff, Board of Commissioners of Lycoming County ("Commissioners" or "Plaintiff"), initiated this action on April 20, 2021 by the filing of a Complaint. As per the allegations in the Complaint, approximately two years ago, Defendant, Krista B. Rogers, the Lycoming County Controller ("Controller" or "Defendant"), approached the Commissioners and requested a change in organization based on her interpretation of an amendment to the County Code. Under her proposal, the Controller would assume responsibility for the County's general ledger, payroll, and accounts payable functions, which the County's Fiscal Office had previously handled.¹ The Commissioners agreed to this proposal and at the Controller's request, transferred four employees from the Fiscal Office to the office of the Controller.² However, finding the Controller's performance of these functions unsatisfactory, on April 13, 2021, the Commissioners took action to remove the general ledger, payroll, and accounts payable functions from the Controller's office and reassign those functions to the Office of Budget and Finance. In the process, the Commissioners reassigned four employees from the Controller's office to the Office of Budget and Finance.³

¹ Complaint ¶ 9 (April 20, 2021).

² Complaint ¶¶ 10, 14.

³ Complaint ¶ 6.

This reassignment of functions and staff resulted in friction between the Controller and the Commissioners. The Complaint alleges that the Controller upon learning of the reassignment, in contravention of her statutory duty, “threatened to hold County payroll and accounts payable hostage by refusing to perform the ministerial function of allowing her signature to be placed on approved County payroll and accounts payable checks.”⁴ The Complaint further alleges that the Controller, as an act of intimidation, threatened to withhold pay from the reassigned employees.⁵ The Complaint additionally alleges that the Controller directed that files be hidden or otherwise not be turned over to the County “with the intent to intervene with the orderly transition of the payroll, accounts payable, and general ledger functions and the reassignment of the employees in question.”⁶

The Complaint includes a Count I for Mandamus and Count II for Mandatory Injunction. The request for relief under each Count is identical, seeking an Order of Court directing:

- (1) the Controller to fulfill her statutory functions;
- (2) the Controller to execute payroll and accounts payable checks for payroll and accounts payable that have been properly authorized and processed;
- (3) that the Controller’s signature be placed on payroll and accounts payable checks that have been properly authorized and processed in the absence of the Controller’s authorization to do so;
- (4) that the Controller preserve and transfer to the County all documents reasonably necessary to the proper performance of the payroll, accounts payable and general ledger functions of the County, and directing that she not hide, destroy, or otherwise dispose of said documents;
- (5) that the Controller refrain from arbitrarily and capriciously attempting to use her office to interfere with the function of County Government and to include the issuance of payroll checks, accounts payable checks and general ledger functions; and

⁴ Complaint ¶¶ 21.

⁵ Complaint ¶¶ 22.

⁶ Complaint ¶¶ 23.

(6) awarding such other relief as is deemed necessary and proper under the circumstance to ensure the Controller properly performs this ministerial function.⁷

Simultaneously with the filing of the Complaint, on April 20, 2021, the Commissioners filed a *Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531* (“Petition for Preliminary Injunction” or “Petition”). Within the Petition for Preliminary Injunction, the County requests a Temporary Restraining Order be entered pending hearing due to “immediate and irreparable injury” that would result from the Controller’s refusal to allow her signature to attach to payroll or accounts payable checks.⁸ The Petition for Preliminary Injunction provided that the next run of account payable checks would be on Wednesday, April 21, 2021, and emphasized that the Controller’s refusal to perform her statutory functions would inhibit the County’s ability to timely issue accounts payable checks, resulting in harm to Lycoming County employees, vendors, suppliers, outside agencies, residents, and taxpayers.⁹

Following a review of the Petition, on April 20, 2021, the Court issued a Temporary Restraining Order. The Court thereby enjoined the Controller from refusing to permit her signature to appear on any duly authorized and processed payroll checks and accounts payable checks issued in the usual course of business. The Court further enjoined the Controller from interfering with the processing of payroll, accounts payable, and general ledger functions or the transition of the four reassigned employees. The Court finally directed the Controller to preserve documents necessary to the performance of payroll, accounts payable, and general ledger functions, and to transfer same to the Office of Budget and Finance. The Court scheduled an evidentiary hearing on the Petition for Preliminary Injunction for April 28, 2021. The Commissioners filed a *Brief in Support of Plaintiff’s Petition for a Preliminary Injunction* on April 28, 2021.

On April 26, 2021, the Court received the Commissioners’ *Motion for Contempt of April 20, 2021 Order* (“Motion for Contempt” or “Motion”). The Motion to Contempt alleges that the Controller interfered with the reassignment of two employees, who she

⁷ Complaint ¶¶ 73, 80.

⁸ Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531 (“Petition for Preliminary Injunction”) ¶ 3 (April 20, 2021).

⁹ Petition for Preliminary Injunction ¶ 4.

claimed chose “voluntarily” to remain in her office.¹⁰ The Motion also alleges that the Controller withheld files and documents necessary for the job duties of a reassigned employee, Heather Lehman, who was transferred to the Office of Budget and Finance.¹¹ Finally, the Motion alleged that the Controller refused to cease performance of payroll, accounts payable, and general ledger functions in her office as directed by the Court’s Temporary Restraining Order.¹²

On April 28, 2021, the Court received *Defendant, Krista B. Rogers’, Preliminary Objections to Plaintiff’s Complaint* (“Preliminary Objections”). The Controller’s First Preliminary Objection in the nature of a demurrer under Pa.R.C.P. 1028(a)(4) seeks to dismiss Count I for Mandamus on the basis that the Controller’s approval of payroll and accounts payable constitutes a discretionary, and not a ministerial function, and so does not fall within the appropriate scope of a mandamus action.¹³ The Controller’s Second Preliminary Objection in the nature of a demurrer asserts that while a court may issue a writ of mandamus to compel a specific act of an imperative duty, a court may not issue a writ of mandamus to compel the ongoing performance of a series of acts by a judicial officer.¹⁴ The Controller’s Third Preliminary Objection in the nature of demurrer seeks to dismiss Count II for Mandatory Injunction on the basis that while “[e]quitable relief is warranted in the absence of an adequate remedy of law[,]”¹⁵ mandamus is an adequate remedy at law in this case.¹⁶ Defendant’s Fourth Preliminary Objection for failure to exhaust a statutory remedy under Pa.R.C.P. 1028(a)(7) contends that there is a statutory process prescribed by 16 P.S. § 1752 under which county commissioners can petition for court approval of any transactions the controller has refused to sign off on. Defendant asserts the Commissioners have attempted to circumvent this statutory process by initiating the foregoing action.¹⁷ The Controller’s Fifth Preliminary Objection for failure of the pleading to conform to rule of law under Pa.R.C.P. 1028(a)(2) asserts

¹⁰ Motion for Contempt of April 20, 2021 Order (“Motion for Contempt”) ¶ 17 (April 26, 2012).

¹¹ Motion for Contempt ¶¶ 13-14.

¹² Motion for Contempt ¶ 12.

¹³ See Defendant, Krista B. Rogers’, Preliminary Objections to Plaintiff’s Complaint (“Preliminary Objections”) ¶¶ 5-18 (April 28, 2021).

¹⁴ See Preliminary Objections ¶¶ 19-30 (citing *Dorris v. Lloyd*, 100 A2d 924 (Pa. 1953)).

¹⁵ Preliminary Objections ¶ 34 (citing *Jostan Aluminum Prod. Co. v. Mt. Carmel Dist. Indus. Fund.*, 389 A.2d 1160, 1163 (Pa. Super. 1978)).

¹⁶ See Preliminary Objections ¶¶ 31-43.

¹⁷ See Preliminary Objections ¶¶ 44-53.

that pursuant to Pa.R.C.P. 1094, in mandamus actions seeking to compel the performance of a public duty by a political subdivision of the Commonwealth, the officers concerned should be named in their official capacity. The case-caption is therefore deficient for failing to name the Controller as Defendant (Defendant adds that her last name, Rogers, has been misspelled as “Rodgers” in the case caption).¹⁸

The evidentiary hearing on the Petition for Preliminary Injunction, having begun on April 28, 2021, ran beyond the scheduled time and was thereafter scheduled to resume on May 17, 2021. On May 14, 2021, the Court received *Defendant’s Answer to Plaintiff’s Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. No. 1531 and New Matter* (“Answer and New Matter”). Among the various defenses raised in New Matter, the Controller asserts that the Commissioners lacked legal authority “to create new positions” in transferring the four employees at issue, and the Salary Board lacked authority to ratify the creation of these positions.¹⁹ On May 17, 2021, the Controller filed a *Reply Brief of Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. No. 1531*. On the same date, the Commissioners filed *Plaintiff’s Brief Regarding Applicability of 16 P.S. § 1620*. In this latter Brief, the Commissioners assert that the Controller has improperly relied upon 16 P.S. § 1620 to support her argument that the Commissioners exceeded their authority in reassigning the four employees.²⁰

Once the evidentiary hearing concluded on May 17, 2021, the Court issued an Order directing the parties to file supplemental briefs regarding whether a preliminary injunction was warranted pending final determination of this issue. Having received and reviewed the various supplemental briefs, the Court finds it has sufficient information to

¹⁸ See Preliminary Objections ¶¶ 54-62; Pa.R.C.P. 1094(a) (“When an action is commenced to compel performance of a public act or duty by a political subdivision of the Commonwealth, it shall be sufficient to name as defendants such officers in their official capacities as are concerned in the act or duty.”).

¹⁹ Defendant’s Answer to Plaintiff’s Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. No. 1531 and New Matter ¶¶ 70-76 (May 14, 2021).

²⁰ The Controller specifically relies in the flowing language of 16 P.S. § 1620: “[T]he county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employe[e]s as may be vested in the judges or other county officers.” (emphasis added). The Commissioners argue that the hiring, firing, and supervisory powers of the Controller “are limited to the employees that are necessary for the execution of the functions her office is required to perform.” Plaintiff’s Brief Regarding Applicability of 16 P.S. § 1620 at pg. 2 (May 17, 2021) (citing *Eshelman v. Commissioners of County of Berks*, 436 A.2d 710 (Commw. 1981)) (emphasis in original).

address both the Plaintiff's Petition for Preliminary Injunction and Defendant's Preliminary Objections. The Court shall address Plaintiff's Motion for Contempt in a separate order.

A. Petition for Special Injunction (TRO) and Preliminary Injunction Pursuant to Pa.R.C.P. 1531

The proposed injunction in this matter has both mandatory and prohibitory provisions – the Controller is affirmatively directed to attach her signature to authorized transactions, and is prohibited from interfering with the transfer of staff or duties. Plaintiff must meet an especially stringent standard for the Court to enter a mandatory preliminary injunction. “Because a mandatory injunction compels the defendant to perform an act, rather than merely refraining from acting, courts will only grant a mandatory injunction upon a very strong showing that the plaintiff has a ‘clear right’ to relief.”²¹ “Where. . . a mandatory preliminary injunction is granted, greater scrutiny is applied to the grant than for a prohibitory injunction because it is an extraordinary remedy that should be utilized only in the rarest of cases.”²²

The six essential prerequisites that a moving party must demonstrate to obtain a preliminary injunction are as follows: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages; (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and, (6) the preliminary injunction will not adversely affect the public interest.²³

Having considered these factors, the Court finds that Plaintiff has failed to demonstrate an irreparable injury that would occur absent entry of a preliminary injunction. The Court may deem an injury irreparable if the extent of injury is inherently

²¹ *Sovereign Bank v. Harper*, 674 A.2d 1085, 1092 (Pa. Super. 1996) (citations omitted).

²² *Id.* (citing *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995 (Pa. 2003)).

²³ *SEIU Healthcare Pennsylvania v. Com.*, 104 A.3d 495, 501–02 (Pa. 2014) (citing *Warehime v. Warehime*, 860 A.2d 41, 46–47 (Pa. 2004)).

unascertainable and thus not compensable by money damages.²⁴ “The plaintiff’s claimed ‘irreparable harm’ cannot be based solely on speculation and hypothesis. Moreover, for purposes of a preliminary injunction the claimed harm must be **irreversible** before it will be deemed irreparable.”²⁵

To the extent that Plaintiff’s witnesses testified to the threat presented by the Controller’s failure to efficiently perform her statutory duties, the nature of the risk was characterized as that of a financial injury that could be specifically quantified. For example, Commissioner Tony Mussare testified on direct examination to the following:

Q: [F]rom an overall perspective, what is the implication to the fiscal operations of the county of the controller threatening to not just pay payroll or not pay accounts payable? What is the implication of that to the county?

A: [O]bviously, collective bargaining is an issue; and payroll is an issue. Vendors not receiving money contractually in the time is an issue. The last example where Children & Youth – we have what they call pass-through grants where the state will send the county money to – for a pass-through for Children & Youth, substantial amount of money normally. In this case it was 1.2 million – I don’t recall exactly. I know it was over a million dollars. And that was being held up about the controller.

Now, the downside to that is that the money from Children & Youth is borrowed on a line of credit[.] By her not paying that and passing that money through in a timely manner cost that organization, I believe, it was a little over \$10,000.00 – or. . .it may have been \$3,500.00.

Q: So it has financial consequence?

A: Yes. It cost them additional revenue.²⁶

As to the purported harm relating to the Controller’s continued handling of payroll, accounts payable, and general ledger duties, Commissioner Scott Metzger testified that the Controller had made some thirty-nine payroll mistakes during her tenure handling that function.²⁷ This included the Controller office’s erroneous issuance of at \$49,000.00 check to a part-time employee, although Commissioner Metzger acknowledged that the Controller had caught this mistake before the check had been

²⁴ *Sovereign Bank*, 674 A.2d at 1093.

²⁵ *Greenmoor, Inc. v. Burchick Const. Co.*, 908 A.2d 310, 314 (Pa. Super. 2006) (citations omitted).

²⁶ Transcript of Proceedings at pg. 20, Ins. 22-23; pg. 21, Ins. 1-18 (April 28, 2021).

²⁷ Transcript of Proceedings at pg. 77, Ins. 23-24 (April 28, 2021).

cached.²⁸ Commissioner Metzger also spoke to the Controller's request for an additional allocation of \$10,000.00 to hire an outside auditor to assist in the development of the Comprehensive Annual Financial Report ("CAFR"), which for decades prior had been completed in-house.²⁹ Brandy Clemens, the current director of the Office of Budget and Finance, related the Controller office's requests for several extensions in filing the 2019 CAFR. She averred that the failure to meet filing deadlines of the CAFR could affect the County's ability to qualify for grants or bonds.³⁰ However, Brandy Clemens acknowledged that the County had met the "drop-dead" deadline for filing the CAFR.³¹ Plaintiff presented no evidence that the County has, in fact, failed to qualify for a grant or bond, has lost a contract with a vendor, or is otherwise at immediate risk of same. In sum, the testimony as to prospective harm was speculative.

For this reason, the Court finds that there is insufficient basis for the entry of interim relief. Plaintiff's Petition for Preliminary Injunction is hereby DENIED. The Court's Order of April 20, 2021 entering a Temporary Restraining Order is hereby VACATED.

B. Defendant, Krista B. Rogers', Preliminary Objections to Plaintiff's Complaint

Defendant's First Preliminary Objection in the nature of the demurrer challenges Plaintiff's Complaint in mandamus on the basis that Plaintiff seeks to compel a discretionary act. "An action in mandamus seeks to compel a public official to perform a ministerial act which he is obliged to perform and which involves no exercise of discretion."³² However, a mandamus action may be used, "to compel action (when refused) in matters involving judgment and discretion. [However, it] is not used to direct the exercise of judgment or discretion in a particular way, nor to direct the retraction or reversal of an action already taken."³³

²⁸ Transcript of Proceedings at pg. 77 Ins. 8-24 (April 28, 2021).

²⁹ Transcript of Proceedings at pg. 76, Ins. 23-25; pg. 77, Ins. 1-6 (April 28, 2021).

³⁰ Transcript of Proceedings at pg. 140, Ins. 9-13; pg. 142, Ins. 5-15 (April 28, 2021).

³¹ Transcript of Proceedings at pg. 140, Ins. 14-21 (April 28, 2021).

³² *Edwards Eng'g Corp. v. Davis*, 29 Pa. D. & C.3d 630, 633 (Lacka. Pa. Com. Pl. 1982) (citing *Anderson v. Shalifer*, 396 A.2d 91 636 (Pa. Commw. 1979)).

³³ *Kuren v. Luzerne Cty.*, 146 A.3d 715, 751 (Pa. 2016) (quoting *Penn. Dental Ass'n v. Commw. Ins. Dep't*, 516 A.2d 647, 652 (Pa. 1986)).

Pursuant to 16 P.S. § 1702, it is the duty of the Controller to supervise County fiscal affairs, and to approve fiscal transactions unless it appears such transactions have not been undertaken according to law.³⁴ This means in effect that the Controller must attach her signature to all approved County transactions; per the testimony of Commissioner Matthew McDermott, banks will only process checks issued by the County with the signature of the three Commissioners and the Controller.³⁵ Provision 16 P.S. § 1705 provides that the Controller is to “maintain a full and regular set of financial records, including the general ledger[.]”³⁶ Whether “maintain” signifies that the office of Controller is to perform the duty of general ledger entries, or merely requires her to keep records of same, is a matter of dispute between the Controller and the Commissioners.³⁷ Under 16 P.S. § 1720, the Controller is to perform an annual audit of all county offices and then file a report with this Court.³⁸

Under 16 P.S. § 1750, the Controller is empowered to “scrutinize, audit, and decide on all bills, claims, and demands whatsoever against the [C]ounty[.]”³⁹ Pursuant to 16 P.S. § 1751, upon her approval, the Controller “shall forward the bills, claims or demands along with checks therefor to the [C]ounty [C]ommissioners for their approval or, if already approved by the [C]ommissioners, for their signatures.”⁴⁰ Pursuant to 16

³⁴ 16 P.S. § 1702(a)(1)-(2) (“Subject to the power and duty of the county commissioners to manage and administer the fiscal affairs of the county, the controller shall supervise the fiscal affairs of the county including the related accounts and official acts of all officers or other persons who shall collect, receive, hold or disburse, or be charged with the management or custody of, the public assets of the county. . . . The controller may only refuse to authorize any fiscal transaction which is, by law, subject to his or her supervision or control where it appears that such transaction is not authorized by law, or has not been undertaken according to law, or has not received approval according to law, or as to which the controller desires upon reasonable grounds to investigate for or has already discovered any fraud, flagrant abuse of public office or any criminal act or neglect of any officer or other person of the county relating to their public accounts and transactions.”).

³⁵ Transcript of Proceedings at pg. 89, Ins. 12-14 (April 28, 2021).

³⁶ 16 P.S. § 1705.

³⁷ Plaintiff’s Omnibus Motion at pg. 15 (June 9, 2021). A prior version of the County Code provided that the Controller was to “keep” a regular set of financial records, including the general ledger. A 2018 statutory amendment changing “keep” to “maintain” prompted the Controller to request a reassignment of functions to her office.

³⁸ 16 P.S. § 1720(a) (“The controller or auditors, as may be the case, shall, at the end of each fiscal year, complete the audit, settlement and adjustment of the accounts of all county officers. The controller or auditors shall, before the first day of July in every year, make a report, verified by oath or affirmation, to the county court of common pleas, unless upon due cause shown the court shall grant an extension of time, of all receipts and expenditures of the county for the preceding year, in detail, and classified by reference to the object thereof, together with a full statement of the financial conditions of the county.”).

³⁹ 16 P.S. § 1750.

⁴⁰ 16 P.S. § 1751(a).

P.S. § 1752, if the Controller does not approve a claim, bill, or demand, she shall within fifteen days forward it to the Commissioners along with a notice that she has disapproved the claim, bill, or demand, or is unable to approve the same, and the reasons therefor. If the Commissioners believe upon further consideration that the County should pay the claim, bill, or demand, they shall so notify the Controller. If the Controller persists in her refusal to approve payment, no payment shall be made thereon, and the Commissioners must seek a remedy through the Court.⁴¹ To remedy an ongoing dereliction of duty, the Commissioners may initiate impeachment proceedings against the Controller.⁴²

Pursuant to the well-pled facts within the Complaint, the Controller has threatened to withhold her signature from all weekly payroll and vendor checks due to the Commissioners' transfer of staff and duties to the Office of Budget and Finance.⁴³ While the Controller is within her discretion to disapprove individual transactions, the Commissioners statutory remedy under 16 P.S. § 1752 is only triggered upon receipt of the Controller's disapproval of a claim. If the Controller refuses to take any action upon submitted payroll and vendor checks, this would be a dereliction of a ministerial duty, thus falling within the scope of a mandamus action. Therefore, Defendant's First Preliminary Objection is OVERRULED.

Defendant's Second Preliminary Objection objects that the purpose of a writ of mandamus is to coerce the performance of single acts of specific and imperative duty, while the relief sought in Plaintiff's request for mandamus involves a series of ongoing acts. Defendant specifically cites to *Dorris v. Lloyd*, in which the plaintiff sought a writ of mandamus to compel defendants, commissioners of Luzerne County, to supervise local county elections and investigate for fraud or other irregularities. The Supreme Court affirmed on appeal that mandamus would not lie because of the continuing nature of the requested relief:

It is plain that where the court is asked to require the defendant to adopt a course of official action, although it is a course required by statute and imposed upon the official by law, it would be necessary for the court to

⁴¹ 16 P.S. § 1752.

⁴² See 16 P.S. § 450(a).

⁴³ See Complaint ¶¶ 42.

supervise, generally, his official conduct, and to determine in numerous instances whether he has, to the extent of his power, carried out the mandate of the court. It would in effect render the court a supervising and managerial body as to the operation and conduct of the activity to which the writ pertains, and so keep the case open for an indefinite time to superintend the continuous performance of the duties by the respondent. Accordingly, the writ will not issue to compel the performance of a series of acts by a judicial officer; [] nor to compel performance of other acts of a continuous nature.⁴⁴

Similarly, in *Germantown Business Ass'n v. City of Philadelphia*, an association of merchants appealed the dismissal of their action seeking both a mandatory injunction and mandamus relief to compel the city to enforce a city code provision prohibiting street vending. The Commonwealth Court first affirmed the trial court's holding that mandamus was not appropriate because the duty sought to be compelled was mandatory and not ministerial.⁴⁵ "The authority to enforce trade or commercial regulations does not deprive the authorized body of discretion as to when and how to enforce particular provisions at any given time."⁴⁶ The Commonwealth Court further held that appellant's requested relief, which would require License & Inspection officers to visit the business district twice daily for ninety days to ensure there were no violations of city code, exceeded the scope of mandamus relief. The Commonwealth Court provided that, "the purpose of mandamus is to compel the performance of a single ministerial act; it is not usually the appropriate remedy where the relief sought is a general course of official conduct or a series of actions. . . . Because Appellant seeks to compel a general course of official conduct, mandamus does not lie."⁴⁷

The courts have limited authority to enforce ongoing action through an order of mandamus, but an order of mandamus may include some element of ongoing

⁴⁴ *Dorris*, 100 A.2d at 927 (quoting 34 Am.Jur. 864, § 74); see also *Russell v. Osser*, 261 A.2d 307 (Pa. 1970) (holding a writ of mandamus could not compel county commissioners to supervise voting machines in future elections on the basis that a writ of mandamus cannot be used to regulate future conduct).

⁴⁵ *Germantown Bus. Ass'n v. City of Philadelphia*, 534 A.2d 553, 554 (Pa. Commw. 1987) (quoting *Flaherty v. City of Pittsburgh*, 515 A.2d 91, 92 (Pa. Commw. 1986)) ("A ministerial act is defined as one which a public officer is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed.") (internal quotations omitted).

⁴⁶ *Id.* at 555 (citations omitted).

⁴⁷ *Id.* (citation omitted).

enforcement if limited to a specific endpoint.⁴⁸ While Plaintiff argues that the sought relief in this action is limited as to scope, the requests for relief under in the Complaint are unrelated to specific transactions and unbounded in duration. For this reason, Defendant's Second Preliminary Objection is SUSTAINED. Count I of the Complaint is DISMISSED.

Defendant's Third Preliminary Objection asserts that because an adequate remedy at law in the form of mandamus is available, Plaintiff's claim for equitable relief under Count II for Mandatory Injunction must fail. Defendant again cites to *Germantown Business Ass'n*, this time for the proposition that that if mandamus would not lie, a party cannot prevail under an identical request for relief in the form of an action for an injunction:

Our review of the record reveals that the complaint for mandamus and petition for mandatory injunction request the exact same relief except for minor deviations. Because the duty sought to be compelled is not mandatory or ministerial, mandamus will not lie. To hold that equity may be invoked to compel the duty which mandamus will not compel would imply that when mandamus is not available because of failure to establish the prerequisites, then it is proper to proceed in equity to seek identical relief. Furthermore, although mandamus is an action at law, it is guided by equitable principles. Because both actions seek the same relief, we are persuaded that if the remedy of compelling Appellees to enforce the vending provisions of the Philadelphia Code were available, mandamus would provide that relief.⁴⁹

The Court finds *Germantown Business Ass'n* controlling precedent. Plaintiff asserts that the claims for a mandatory injunction and writ of mandamus seek distinct relief, with the mandamus action seeking to compel the Controller to allow her signature on all duly authorized checks, and the injunctive action seeking to estop the Controller

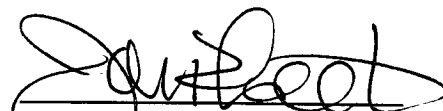
⁴⁸ See e.g., *Carroll Twp. Auth. v. Mun. Auth. of City of Monongahela*, 603 A.2d 243, 248 (Pa. Commw. 1992) (affirming trial court's entry of an order in mandamus requiring a municipal authority to pay past-due amounts on a judgment over the course of eight years, as ongoing action mandated was of limited duration and equitably accounted for the burden in requiring all payment at once).

⁴⁹ *Id.* at 555–56.

from interfering with the transfer of employees and function from her office.⁵⁰ However, this distinction is extrinsic from the pleadings; the requests for relief under both Count I and Count II of the Complaint are identical. Finding that mandamus does not lie in this action, Plaintiff cannot attempt to recast the same claim as one for injunctive relief. Therefore, Defendant's Third Preliminary Objection is SUSTAINED. The Court declines to address Defendant's Fourth and Fifth Preliminary Objections as moot. The Complaint is hereby DISMISSED.

IT IS SO ORDERED this 14 day of July 2021.

BY THE COURT,


John B. Leete, Senior Judge

ERL/cp

cc: J. David Smith, Esq. / J. Michael Wiley, Esq.
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Gary Weber, Esq. / Lycoming Reporter

⁵⁰ See Plaintiff's Omnibus Brief at pg. 37 (June 3, 2021). The Court notes that Plaintiff's brief actually references the Petition for Preliminary Injunction as requesting varying relief from the Complaint's Count I for Mandamus. However, the Court interprets this argument as intended to apply also to the Complaint's Count II for Mandatory Injunction, against which Defendant's Third Preliminary Objection is directed.