

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ROSCOMMON**

CITIZENS FOR HIGGINS LAKE LEGAL LEVELS, ERIC OSTERGREN, STEVE RICKETTS, THOMAS THOMSON, CAROL THOMSON, GLENN R. FAUSZ, ROBERT OBRYAN, DRU OBRYAN, THOMAS THOMSON, CAROL THOMSON, and JANICE JAMESON as trustee of the JANICE JAMESON TRUST
Petitioners/Plaintiffs,

Case No.: 19-724711-AW
Hon. Robert W. Bennett

MOTION

v.

BOARD OF COMMISSIONERS OF THE COUNTY OF ROSCOMMON,
Respondent/Defendant

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PLAINTIFFS' MOTION TO STRIKE INTERVENOR EGLE'S MOTION FOR SUMMARY DISPOSITION AND DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

NOW COME Petitioners/Plaintiffs CITIZENS FOR HIGGINS LAKE LEGAL LEVELS, STEVE RICKETTS, ROBERT OBRYAN, DRU OBRYAN, THOMAS THOMSON, CAROL THOMSON, GLENN FAUSZ, JANICE JAMESON TRUST, and

ERIC OSTERGREN, by counsel, and moves to strike the motion for summary disposition filed by Intervenor Michigan Department of Environment, Great Lakes & Energy (MI-EGLE) and/or dismiss the said state agency for lack of subject matter jurisdiction in this Court. There is no claim pled against MI-EGLE. Moreover, this Court cannot allow MI-EGLE co-opt the claim between Plaintiffs and Roscommon County because all claims made against MI-EGLE are solely within the jurisdiction of the Court of Claims. In other words, its participation is improper. the state party is mis-joined, and this Court lacks jurisdiction over the same.

BACKGROUND

This lawsuit is filed on behalf of a non-profit advocacy group and various lake-front or nearby owners/users of property around Higgins Lake. This Court previously allowed the Michigan Department of Environment, Great Lakes & Energy (MI-EGLE) to intervene. The problem, however, is that Plaintiffs have not made any claim against t MI-EGLE.

This Court previously allowed MI-EGLE to intervene in this case. In response, it proffered an “answer” the singular mandamus claim made by Plaintiffs solely against Roscommon County. On March 20, 2020, Intervenor MI-EGLE then filed its own motion for summary disposition for failing to state a claim as between Plaintiffs and Intervenor MI-EGLE. That is seemingly true solely as to MI-EGLE because Plaintiffs never sued MI-EGLE—just Roscommon County. This motion now follows.

MEMORANDUM OF LAW

This lawsuit is about the actions and inactions of Roscommon County, not Intervenor MI-EGLE. A party must assert its own legal rights and interests and cannot

rest their claims to and arguments for relief on the legal rights or interests of third parties. *Fieger v Ins Comm'r*, 174 Mich App 467, 471; 437 NW2d 271 (1988).

Moreover, a grant of summary disposition is warranted pursuant to MCR 2.116(C)(4) for a lack of subject-matter jurisdiction. *Manning v Amerman*, 229 Mich App 608, 610; 582 NW2d 539 (1998). Subject-matter jurisdiction is the right of the particular court to exercise judicial power over a class of cases. *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992). As a general matter, a circuit court in Michigan has subject-matter jurisdiction in all civil matters unless exclusive jurisdiction over all matters in a complaint have not been specifically precluded or conferred on some other court by our Legislature or our Constitution. The *Court of Claims Act* provides that “the jurisdiction of the court of claims, as conferred upon it by [Chapter 600 of the Revised Judicature Act of 1991, is exclusive” and is set “[t]o hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments... notwithstanding another law that confers jurisdiction of the case in the circuit court.” MCL 600.6419(1), (1)(a); see also *O’Connell v Dir of Elections*, 316 Mich App 91, 98; 891 NW2d 240 (2016) (“At issue here is whether the Court of Claims can properly exercise subject-matter jurisdiction over such writs when mandamus is sought against a state officer or department” and concluding jurisdiction rested in the Court of Claims).

Challenges to subject-matter jurisdiction cannot be waived, and a court must entertain such challenges regardless of when they are raised, or even raise such challenges sua sponte. *In re Contempt of Dorsey*, 306 Mich App 571, 581; 858 NW2d 84

(2014); see also *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002) (“a court is continually obliged to question sua sponte its own jurisdiction over a person, the subject matter of an action, or the limits of the relief it may afford....”). “When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void.” *Fox v Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

ARGUMENT

Intervenor EGLE cannot seek summary disposition over a non-made claim when it is not sued; it would be resting their arguments for judicial relief on the legal rights or interests of third parties (i.e. Roscommon County) which it cannot do under *Fieger*. But if this Court treats the mandamus claim made against Defendant Roscommon County as being the same claim against Intervenor EGLE due to the intervention, this Court lacks jurisdiction per *O’Connell* and MCL 600.6419(1)(a). Either way, Intervenor EGLE cannot step into the shoes of the County or, likely more properly, any action involving EGLE is outside this Court’s jurisdiction. Dismissal is warranted.

RELIEF REQUESTED

WHEREFORE, the Court is requested to strike the summary disposition motion filed by the Michigan Department of Environment, Great Lakes & Energy and dismiss them from this lawsuit pursuant to MCR 2.116(C)(4) (or otherwise vacate the prior intervention order) for lack of subject matter jurisdiction.

Date: March 20, 2020

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document(s) was served on parties or their attorney of record by emailing the same to their business emails address(es) as disclosed by the pleadings of record herein on the

20th day of March, 2020.



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RESPECTFULLY SUBMITTED:



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