

STATE OF MICHIGAN
COURT OF CLAIMS

MARENISCO TOWNSHIP and RICHARD
BOUVETTE,

Plaintiffs,

v

HEIDI WASHINGTON and MICHIGAN
DEPARTMENT OF CORRECTIONS,

Defendants.

OPINION AND ORDER

Case No. 18-000200-MZ

Hon. Stephen L. Borrello

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Pending before the Court is defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). Also pending before the Court is plaintiffs' motion for preliminary injunctive relief. Finally, the Court has pending before it defendants' motion for leave to file a brief in excess of the page limits provided by this Court's Local Court Rules, as well as plaintiffs' motion for leave to file an affidavit¹ by plaintiff Richard Bouvette. Both motions for leave are hereby GRANTED. In addition, defendants' motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(8) for the reason that plaintiffs failed to state a claim on which relief can be granted. As a result, plaintiffs' motion for preliminary injunctive relief is DENIED. Given the thorough and adequate briefing submitted by the parties, this matter is being decided without oral argument. See LCR 2.119(A)(5).

¹ Because the Court is deciding defendants' motion for summary disposition under MCR 2.116(C)(8), the Court accepts for filing, but does not consider the same in resolving the pending dispositive motion, Bouvette's affidavit.

I. BACKGROUND AND PLAINTIFFS' COMPLAINT

Plaintiff Marenisco Township is home to the Ojibway Correctional Facility (OCF), which is operated by defendant Department of Corrections (DOC). According to the allegations contained in plaintiffs' complaint, the OCF employs over 200 individuals on a full-time basis, many of whom are residents of Marenisco Township. On or about August 14, 2018, the DOC announced that it would be closing the OCF effective December 1, 2018. Plaintiffs—the township and the township supervisor, Richard Bouvette—allege that they had no prior notice or knowledge of the closure.

Plaintiffs allege that the DOC's decision to close the OCF runs afoul of 2018 PA 207, which is a public act establishing certain appropriations. Notably, the act requires a "Facility closure" for the 2018-2019 fiscal year. Section 944 of 2018 PA 207 provides that:

When the department is planning to close a correctional facility, the department shall fully consider the potential economic impact of the prison closure on the community where the facility is located. The department, when weighing all factors related to the closure of a facility, shall also consider the impact on the local community where the facility to be closed is located. [Emphasis added.]

Paragraph 26 of plaintiffs' complaint alleges that the DOC has publicly stated it complied with § 944 and that it weighed the requisite considerations during the process of planning a facility closure. However, ¶ 27 of the complaint alleges that "Plaintiff Marenisco disputes that the Director and the Department complied with Section 944 of 2018 PA 207." The complaint does not offer any additional details with respect to why the township "disputes" whether the DOC considered the pertinent economic impact. Rather, the complaint alleges that the DOC should have decided to close a different facility, and/or that any consideration given by the DOC to the economic impact of closing the OCF was inadequate.

Count I of plaintiffs' complaint asks this Court to declare that defendants failed to adhere to the requirements of § 944 with respect to the decision to close the OCF. Plaintiffs ask this Court to order defendants to halt the closure of the OCF until and unless defendants comply with § 944. Count II of the complaint alleges that plaintiff Bouvette has a right, protected by the due process clauses of US Const, Am XIV, and Const 1963, art 1, § 17, in having defendants comply with § 944. He further alleges that he has a property interest, protected by the aforementioned due process clauses, in the continued operation of the OCF.

II. SUMMARY DISPOSITION REVIEW

The matter is now before the Court on defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and summary disposition is appropriate "if the opposing party has failed to state a claim on which relief can be granted." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010) (citations, quotation marks, and alteration omitted). "When reviewing a motion brought under MCR 2.116(C)(8), the court considers only the pleadings. Moreover, the court must accept all factual allegations in the complaint as true, along with reasonable inferences or conclusions that can be drawn from them." *State ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 63; 852 NW2d 103 (2014). "However, conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action." *Id.*

III. STANDING

Defendants first argue that plaintiffs lack standing to assert a purported violation of § 944 of 2018 PA 207. "[A] litigant has standing whenever there is a legal cause of action." *Lansing*

Schs Ed Ass'n v Lansing Bd of Ed, 487 Mich 349, 372; 792 NW2d 686 (2010). In this case, the parties agree that § 944 does not expressly provide for a cause of action. Where a cause of action is not provided at law, the Court must look to whether “the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.” *Id.*

Under this test, the Court disagrees with the assertion that plaintiffs lack standing. Section 944 requires that consideration be given to the economic effects of closing a prison on “the community where the facility is located” and on “the local community where the facility to be closed is located.” In light of this focus—the effect on the locale of the to-be-closed facility—it is apparent that the community in which the facility is located has an interest distinct from the interests of the public at large. Indeed, the general public will not have the same interest in the closure as will the pertinent community where the to-be-closed facility is located. As such, the Court concludes that plaintiffs have standing to assert their claims. Compare *Lansing Schs Ed Ass'n*, 487 Mich at 374-375 (holding that teachers had standing to assert claims with respect to the enforcement of MCL 380.1311a), with *White v Highland Park Election Comm*, 312 Mich App 571; 878 NW2d 491 (2015) (concluding that the plaintiff did not have standing to assert a violation of MCL 168.674 because the plaintiff had no individualized interest in the enforcement of the statute).

IV. PLAINTIFFS HAVE FAILED TO STATE A CLAIM

A. DECLARATORY RELIEF IS NOT WARRANTED

However, the issue of whether a litigant has standing involves a distinct question from whether a litigant has pleaded a cause of action. And in that respect, the Court agrees with defendants' assertion that plaintiffs have failed to state a cause of action on which relief can be granted. The crux of Count I of plaintiffs' complaint—and related briefing—is that defendants violated § 944 by failing to make the requisite assessments. Paragraph 26 of plaintiffs' complaint acknowledges that the DOC has publicly stated and announced its compliance with § 944. Plaintiffs' only response is to state that plaintiff Marenisco Township "disputes" whether this indeed occurred. This statement is entirely conclusory and it is void of any allegations of fact on which it is based. Such a conclusory statement "will not suffice to state a cause of action." *CVS Caremark Corp*, 496 Mich at 63.

Indeed, the closest plaintiffs' complaint comes to making specific factual allegations is, in ¶ 22 of their complaint, to suggest that defendants violated § 944's requirements by failing to contact the plaintiffs before deciding to close the prison. However, plaintiffs do not expressly allege that failing to contact them before the closure of the prison violates § 944. Nor could they, for that matter, because the plain language of § 944 would not support such an allegation. Indeed, § 944 simply requires that the DOC "consider" economic impacts. Nowhere within its plain language does § 944 suggest any particular steps the Department must take when "consider[ing]" the economic impact. Nor does § 944 mandate any particular consideration that must be made, much less how to weigh any factors in its decision-making process.

Furthermore, and even assuming defendants failed to engage in any economic-impact analysis, plaintiffs' complaint fails to state a claim on which this Court could grant the requested relief of ordering a prison to remain open. Nothing in § 944 conditions the closure of a correctional facility on the DOC achieving any particular outcome in its economic-impact

assessment. Nor does § 944 even condition closure of a facility on an economic-impact assessment. Rather, § 944 only states that the Department “shall consider” the pertinent economic impact when it “is *planning* to close a correctional facility[.]” (Emphasis added). This is not a binding condition precedent on the recipient of an appropriation. Cf. *Kalamazoo v Dep’t of Corrections*, 229 Mich App 132, 139; 580 NW2d 475 (1998) (discussing the Legislature’s placement of a condition on the use of appropriations for certain facilities). And this Court cannot, based on a purported violation of § 944, interfere with the DOC’s discretionary decision to close the OCF in light of plaintiffs’ allegations suggesting that a different selection method and/or outcome could have been employed. See *Hackel v Macomb Co Comm’rs*, 298 Mich App 311, 336; 826 NW2d 753 (2012). Hence, Count I of plaintiffs’ complaint fails to state a claim.

B. PLAINTIFFS FAIL TO STATE A DUE PROCESS CLAIM

Turning to Count II, the Court concludes that plaintiffs have failed to state a claim because: (1) Bouvette does not have a property interest in the continued operation of a prison facility; and (2) § 944 did not create a liberty or property interest.

“No person may be deprived of life, liberty, or property without due process of law.” *Murphy-DuBay v Dep’t of Licensing & Regulatory Affairs*, 311 Mich App 539, 558; 876 NW2d 598 (2015), citing US Const Am V; US Const Am XIV; Const 1963, art 1, § 17. “While the meaning of the Due Process Clause and the extent to which due process must be afforded has been the subject of many disputes, there can be no question that, at a minimum, due process of law requires that deprivation of life, liberty, or property by adjudication must be preceded by notice and an opportunity to be heard.” *Bonner v City of Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014). “To have a protected property interest, one must possess more than a unilateral expectation to the claimed interest; the claimant must have a legitimate claim of

entitlement.” *In re BGP*, 320 Mich App 338, 343; 906 NW2d 228 (2017) (citation and quotation marks omitted). See also *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 209; 761 NW2d 293 (2008) (noting that “a reasonable expectation of entitlement” can give rise to a liberty or property interest). Without a life, liberty, or property interest at stake, the protections mandated by due process are not implicated. *In re BGP*, 320 Mich App at 343.

In this case, the pleadings reveal no liberty or property interest that is subject to protection. At most, any expectation in the continued operation of a DOC facility is a unilateral expectation. While the continued receipt of state aid—provided certain conditions are satisfied—can constitute a protected interest, see *Galien Twp Sch Dist v Dep’t of Ed*, 310 Mich App 238, 242; 871 NW2d 382 (2015), the same cannot be said of the continued operation of a DOC facility. Whether a particular facility remains open is, as acknowledged by § 944, within the sole discretion of the state, depending on need and budgetary concerns. A matter left wholly to the discretion of the government cannot form the basis of a protected property interest. *EJS Props, LLC v City of Toledo*, 698 F3d 845, 856 (CA 6, 2012). Without this property interest, there can be no due process claim. *In re BGP*, 320 Mich App at 343.

Likewise, any contention that § 944 gives rise to a liberty interest fails to state a claim on which relief can be granted. A statute or regulation may create a liberty interest protected by due process. See, e.g., *Vayda v Lake Co*, 321 Mich App 686, 693; 909 NW2d 874 (2017). “State law creates protected liberty interests only when (1) the state places substantive limitations on official conduct by using explicitly mandatory language in connection with requiring specific substantive predicates, and (2) the state law requires a specific outcome if those substantive predicates are met.” *Fields v Henry Co, Tenn*, 701 F3d 180, 186 (CA 6, 2012) (citation and quotation marks omitted). See also *Spruytte v Dep’t of Corrections*, 184 Mich App

423, 427; 459 NW2d 52 (1990) (same). “Procedural rights that do not require a particular substantive outcome cannot give rise to protected liberty interests.” *Fields*, 701 F3d at 186 (citation and quotation marks omitted).

In this case, § 944 does not require a particular outcome. At most, it requires the DOC to consider economic impacts during the “planning” phase of closing a facility. It does not require that the DOC reach any particular outcome with respect to a facility closure. As a result, § 944 cannot give rise to the liberty interest claimed by plaintiffs. See *Fields*, 701 F3d at 186. Plaintiffs have failed to state a claim on which relief can be granted.

V. INJUNCTIVE RELIEF NOT WARRANTED

Finally, and for the reasons stated above, plaintiffs are unable to prevail on the merits of their claim, such that injunctive relief is not warranted in this case. See *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648-649; 825 NW2d 616 (2012). And because such relief is not warranted, this Court need not expressly address the contention that ordering a prison to stay open violates the separation of powers doctrine; however, the Court nevertheless shares some of the concerns articulated by defendant about judicial intervention in such a situation.

VI. CONCLUSIONS

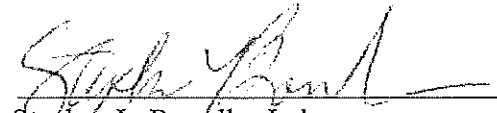
IT IS HEREBY ORDERED that defendants’ motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(8).

IT IS HEREBY FURTHER ORDERED that plaintiffs’ motion for leave to file an affidavit, as well as defendants’ motion for leave to exceed the page limits, are GRANTED.

IT IS HEREBY FURTHER ORDERED that plaintiffs' motion for injunctive relief is DENIED.

This is a final order that resolves the last pending claim and closes the case.

Dated: November 27, 2018


Stephen L. Borrello, Judge
Court of Claims