

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. C5-07-129

City of Maplewood Confidential &
Supervisory Association and John Banick,

Plaintiffs,

ORDER DENYING MANDAMUS
AND CONTINUING MOTION
TO AMEND

Vs.

City of Maplewood, a Municipal
Corporation,

Defendant.

On March 27, 2007, the above-referenced matter came before the Undersigned upon Plaintiff Banick's motion for a writ of mandamus and Plaintiffs' motion to amend the complaint

Robert Fowler, Esq., appeared on behalf of Plaintiffs, and Pamela VanderWiel, Esq., appeared on behalf of Defendant.

Based on all the file, records and proceedings herein, the Court makes the following

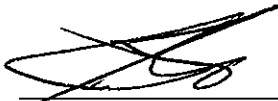
ORDER:

1. Plaintiffs' motion to amend the complaint is continued to May 8, 2007, at 1:30 p.m. Counsel shall notify the Court no later than May 1, 2007, to indicate whether a hearing is necessary.

2. Plaintiff Banick's motion for a writ of mandamus is denied.

3. The attached Memorandum is incorporated herein.

BY THE COURT:



J. Thomas Mott
Judge of District Court

Dated at St. Paul, Minnesota

This 28 day of March 2007

MEMORANDUM

The motion to amend the complaint was continued by agreement of counsel on the record.

Mandamus is appropriate where:

1. There is a clear duty to act — so clear and complete as to not admit any reasonable controversy. State ex rel. Anderson v. Bellows, 179 N.W.2d 307 (Minn. 1970), and
2. There is no adequate remedy at law. Pole v. Trudeau, 516 N.W.2d 217 (Minn. App. 1994). Neither of these two required factors has been established.

Adequate Remedy at Law

Plaintiff has an adequate remedy at law by proceeding in this case to seek a legal determination by order or summary judgment or otherwise that he be reinstated pursuant to the requirements of the Civil Service provisions cited in the current motion.

Clear Duty to Act

Here the duty of the Defendant to act to reinstate Plaintiff Banick pursuant to the actions of the Police Civil Service Commission (“PCSC”) is not sufficiently clear because there has yet to be a legal determination on the extent of Defendant’s authority to “reorganize” an individual out of the police department by eliminating the position that

individual holds. Now that the PCSC has acted, further proceedings are required to determine whether there is a clear duty of Defendant to act. Trial and summary judgment are but two vehicles to resolve this issue.

The McCauley and Spurck cases (citations omitted) cited by Plaintiff merely stand for the proposition that mandamus is appropriate once the duty to act is clear.

JTM

JTM/dl