STATE OF MICHIGAN

COURT OF APPEALS

CITY OF ECORSE, Plaintiff-Appellee,	UNPUBLISHED January 12, 2010
v	No. 286386
ECORSE BROWNFIELD REDEVELOPMENT AUTHORITY and ECORSE COMMUNITY DEVELOPMENT CORPORATION, Defendants-Appellants.	Wayne Circuit Court LC No. 08-104027-CZ

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Defendant[1] appeals by leave granted an order denying its motion for reconsideration or rehearing. We reverse.

At issue is whether plaintiff's city counsel had the power to dissolve defendant. The order from which defendant appeals denied reconsideration or rehearing of an oral ruling on defendant's motion for a preliminary injunction. The trial court denied that motion, concluding that defendant had failed to comply with the Brownfield Redevelopment Financing Act, MCL 125.2651 *et seq*, and the resolution authorizing defendant's creation because it did not submit a Brownfield Plan for approval, so the court reasoned the city council had a rational basis to dissolve defendant.

Significantly, by the date of defendant's motion for rehearing or reconsideration, defendant had established that it *had* submitted a Brownfield Plan, and in fact the plan had been approved by the Ecorse City Council on December 21, 2004, as evidenced by Resolution No. 499.04. The resolution stated, inter alia, that (1) in accordance with the Brownfield Act, a public hearing had been held on November 23, 2004, at which "all persons, including any affected taxing jurisdictions, were allowed an opportunity to comment on the plan," and (2) the city council determined that the plan constituted a public purpose and met the requirements of

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[1] Most of the allegations involve Ecorse Brownfield Redevelopment Authority, and therefore, it will be referred to as "defendant."

Section 13 of the Brownfield Act. The trial court, however, refused, without comment, to revisit its decision.

We review interpretation of statutes de novo as questions of law. *Polkton Township v Pellegrom*, 265 Mich App 88, 98; 693 NW2d 170 (2005). We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Woods v SLB Property Management, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). Generally, it is not an abuse of discretion for the trial court to deny a motion for rehearing based upon facts that could have been previously argued, *id*., and defendant mistakenly conceded at the original motion hearing that it had not submitted a plan to plaintiff.

Defendant argued that plaintiff had confiscated its records, so it did not have access to those records with which to prove its submission – and the subsequent approval – of its Brownfield Plan. We note that counsel resolutions are matters of public record, so defendant could have argued that a Brownfield Plan had been submitted to and approved by the city council even without its own records. However, plaintiff not only had access to the public record, but its own records, and it was complicit in the inaccuracy – in fact, it affirmatively argued in its complaint for recission and at the first motion hearing that there was no plan, no hearing, and no approval of the plan.[2] In its response to defendant's motion for rehearing, however, plaintiff admitted that a plan had been submitted, though it criticized the content of the plan and asserted that the city council retained the inherent right to dissolve defendant. Under these egregious circumstances, it is clear that the trial court's first decision was the product of a palpable error, and its refusal to correct that error was outside the principled range of outcomes.

Plaintiff also contended that it nevertheless has the inherent power to dissolve defendant. We disagree, and instead we agree with defendant's argument that plaintiff is barred from dissolving defendant until it "completes the purposes for which it was organized," and because defendant has a development agreement to remediate two or three of several brownfields in Ecorse, it cannot be said to have completed its purpose.

In interpreting statutes, a court may not legislate. *Janssen v Holland Township Zoning Board of Appeals*, 252 Mich App 197, 200; 651 NW2d 464 (2002). "The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate." *White v Harrison-White*, 280 Mich App 383, 387; 760 NW2d 691 (2008).

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[2] Also troubling is the fact that the city council's resolution of March 11, 2008 (the resolution that dissolved defendant), incorrectly stated that defendant (1) had not developed a plan in compliance with the Brownfield Act, (2) had not submitted the plan to taxing entities, (3) failed to request a public hearing and a determination regarding whether the plan constituted a public purpose, and (4) failed to obtain approval.

The provision of the Brownfield Act that addresses dissolution, MCL 125.2669, provides: "(1) An authority that completes the purposes for which it was organized shall be dissolved by resolution of the governing body. Except as provided in subsection (2), the property and assets of the authority remaining after the satisfaction of the obligations of the authority shall belong to the municipality or to an agency or instrumentality designated by resolution of the municipality." In making its argument that the city council had no authority to dissolve defendant for reasons other than the completion of its purpose, defendant relies on *Risk v Lincoln Charter Twp Bd of Trs*, 279 Mich App 389, 398; 760 NW2d 510 (2008),[3] which in turn cited *Cain v Brown*, 111 Mich 657, 661; 70 NW 337 (1897), for the proposition that only the state legislature has the power to dissolve a brownfield authority.

Risk involved the dissolution of a township park commission and cited an opinion of the Attorney General, which addressed the same issue, finding: "Although not directly on point, the Michigan Supreme Court in *Cain* [, *supra* at 661], quoted with approval the rule regarding dissolution of municipal corporations: *'As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision.' This rule, being applicable to other types of public entities, has been applied to consolidated drain districts; to county hospitals; and to local transportation authorities*." *Risk, supra* at 398, quoting OAG 1999-2000, No 7039, p 80 (December 9, 1999) (emphasis added). This Court noted that attorney general opinions are not binding, but found the quoted material to be persuasive. *Id*.

Observing that, "[t]he township parks act does not provide for the dissolution of a voter-established township park commission," and further, "certain other statutes explicitly provide for both the establishment and dissolution of various commissions, boards, and programs by the qualified electors of a local unit of government," this Court then concluded that, "[i]n light of these statutes – all of which provide for both establishment and dissolution by popular vote – *we must view as intentional the Legislature's failure to provide for the dissolution of township park commissions*. *There is simply no statutory mechanism for dissolving a voter-established township park commission*, and we may not read into the township parks act a provision that was not included by the Legislature." *Id*. at 400-404 (internal citations omitted).

Although *Risk* addresses a township park commission, as discussed above, the attorney general opinion cited with approval in *Risk* noted that the reasoning in *Cain* had previously been applied to a local transportation authority created pursuant to the Public Transportation Authority Act, MCL 124.451 *et seq*. The PTAA provides for the creation of a public transportation authorities by "[a] political subdivision or a combination of 2 or more political subdivisions," MCL 124.454(1), but contains no mention at all whatsoever of a method of dissolution. The opinion thus concluded, "the dissolution of a transportation authority organized under the Public Transportation Authority Act requires an act of the Legislature and may not be accomplished by the unilateral action of the city in which it was established." OAG, 1997-1998, No 7003, p 214, 216-218 (December 23, 1998). In the case at bar, the relevant statute gives a governing body the

[3] This case was decided on June 26, 2008, after the motion for rehearing.

power to create a brownfield authority and the power to dissolve the authority when it has completed the purposes for which it was created; it provides no other grounds for dissolution.[4] Because this Court has found *Cain*'s reasoning persuasive beyond application to a municipal corporation, we conclude that, pursuant to the Brownfield Act, the city council did not have the power to dissolve defendant for any "rational basis."

Plaintiff seemingly concedes the point that a "rational basis" is not reason enough to dissolve an authority and argues on appeal that because the plan submitted by defendant did not conform to the Brownfield Act, defendant could not fulfill its purpose, and therefore, the city council was obligated to effect defendant's dissolution. Plaintiff further asserts that defendant engaged in other wrongdoing, as evidenced by an independent auditor. The plain language of the statute does not support plaintiff's position.

First, regarding what constitutes defendant's purpose, on August 17, 2004, the city council passed resolution 361.04, which established defendant, after "having determined that [it] is in the best interest of the public to facilitate the implementation of Brownfield Plans relating to the identification and treatment of environmentally distressed (including functionally obsolete and/or blighted) areas so as to promote revitalization within the municipal limits of Ecorse . . . ." The resolution further provided that defendant "shall exercise its power within the city of Ecorse" and "shall have the powers and duties to the full extent as provided by and in accordance with the [Brownfield] Act. Among other matters, [in] the exercise of its powers, the Board [of defendant] shall prepare a Brownfield Plan for eligible property, pursuant to Section 13 of the Act [MCL 125.2663], and submit the plan to Council for consideration pursuant to Section 14 [MCL 125.2664] of the Act." Thus, defendant's purpose is to implement brownfield plans for eligible property in the city.

Second, regarding a brownfield plan and what it must contain, the Brownfield Act, in Section 13 (MCL 125.2663) states that an authority "*may* implement a brownfield plan" after which "[e]ach plan or an amendment to a plan shall be approved by the governing body of the municipality" and "*shall*" meet several requirements, including an estimate of captured taxable value and tax increment revenue, MCL 125.2663(1)(c)[5]. Further, even if there were no plan, Section 7 of the Brownfield Act, which addresses the powers of a brownfield authority, states that "[t]he authority *shall determine* the captured taxable value of each parcel of eligible property. The captured taxable value of a parcel shall not be less than zero." MCL 125.2657(2).

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[4] Similar provisions, requiring dissolution by the governing body upon completion of purpose but silent regarding dissolution in other circumstances, are found in Downtown Development Authority Act, MCL 125.1680, and the Tax Increment Finance Authority Act, MCL 125.1827.

[5] MCL 125.2663(1)(c) provides, in relevant part, that a brownfield plan *shall* contain "[a]*n estimate of the captured taxable value and tax increment revenues for each year of the plan from the eligible property*. The plan may provide for the use of part or all of the captured taxable value, including deposits in the local site remediation revolving fund, but the portion intended to be used shall be clearly stated in the plan . . . ."

In the case at bar, it is true that defendant did not entirely comply with these provisions, as evidenced by the relevant section of defendant's plan:

> Tax Increment Financing will be utilized as part of the project described in this plan. *Estimates of captured taxable value and tax increment revenue will be added to this plan as a subsequent amendment*. It is anticipated that the Authority will capture all tax increment revenue available after the date of the amendment to this plan and will use it to reimburse the costs listed in the Table contained in section 3.1(C) of this Plan. The base value of the property shall be the taxable value listed on the tax roll for which equalization is completed on the date the city council adopts the initial resolution approving this plan.

Thus, defendant intended to amend its plan to include the required information, and MCL 125.2664(2) allows for amendment: "Except as provided in this subsection, amendments to an approved brownfield plan must be submitted by the authority to the governing body for approval or rejection following the same notice necessary for approval or rejection of the original plan. Notice is not required for revisions in the estimates of captured taxable value or tax increment revenues."

Finally, should members of defendant be engaged in wrongdoing or otherwise not fulfill their duties, MCL 125.2655(6) provides that "[a]fter notice and an opportunity to be heard, a member of the board appointed under subsection (1)(e) may be removed before the expiration of his or her term for cause by the governing body. Removal of a member is subject to review by the circuit court." Additionally, pursuant to MCL 125.2670, "[t]he state tax commission may institute proceedings to compel enforcement of the requirements of this act." Thus, nowhere does the Brownfield Act say that a governing body can dissolve a brownfield authority based on a faulty plan, failure to amend a plan, or wrongdoing by a member of the authority. "[P]rovisions not included by the Legislature should not be included by the courts." *Polkton*, supra at 103. As noted, the statute provides only one reason for dissolution – the completion of the authority's purpose, and therefore, pursuant to *Risk*, the city council did not have the power to dissolve defendant.

Reversed.

/s/ Alton T. Davis
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto