STATE OF MICHIGAN

COURT OF APPEALS

RED RIBBON PROPERTIES, LLC,

Plaintiff-Appellee,

v

BRIGHTON TOWNSHIP, LIVINGSTON COUNTY DRAIN COMMISSION, LIVINGSTON COUNTY ROAD COMMISSION, LOT 255 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 256 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 257 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 258 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 259 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 265 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 266 GRAND RIVER LAKE COLONY SUBDIVISION 3, LOT 267 GRAND RIVER LAKE COLONY SUBDIVISION 3, RAND CONSTRUCTION ENG, LADEV #1 LLC, TITUS & ASSOCIATES, LLC, SOMMERWOOD CENTER, INC., RONALD M. KELLY, BRIAN LAVEY, and JENNIFER MONASTER,

Defendants,

and

ADLER ENTERPRISES COMPNAY, LLC, MSM MANAGEMENT, LLC, WANKO INDUSTRIAL CENTER, LLC, KRG-CITATION, LLC, SJS DEVELOPMENT COMPANY, INC., and EDWARD H. AKIN,

Defendants-Appellants,

and

UNPUBLISHED
June 26, 2007

No. 259563
Livingston Circuit Court
LC No. 02-019264-CH

DEPARTMENT OF TREASURY, LOT 260
GRAND RIVER LAKE COLONY
SUBDIVISION 3, DEPARTMENT OF
NATURAL RESOURCES, DEPARTMENT OF
TRANSPORTATION, STEVEN J. LAMANEN,
and DIANE M. LAMANEN,

Defendants-Appellees.

Before: Fort Hood, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting plaintiff's motion for summary disposition and denying their motion for summary disposition in this property dispute addressing the vacating of a plat in accordance with the Land Division Act (LDA), MCL 560.101 *et seq*. We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Defendants first allege that the trial court erred in assuming jurisdiction of this matter. We disagree.

In 1990, the township, acting in response to a petition filed by a defendant in this case, passed a resolution that provided for the vacating of the plat at issue. Indeed, a resolution was recorded on August 16, 1990. This resolution provided that Cushing Drive of Grand River Lakes Colony No. 3 was platted and dedicated for public use. However, the drive had not been opened or used by the public and the discontinuance of the plat was necessary for the general welfare of the subdivision. Consequently, the resolution awarded the southern thirty-three feet to become a part of the abutting real estate to the south, specifically, Grand River Lakes Colony No. 3, and the northern thirty-three feet was to become a part of the abutting real estate to the north.[1] In May 2001, plaintiff petitioned the township to amend the resolution to vest the title to the whole of Cushing Drive to the Grand River Subdivision property owners. This resolution was not recorded.

In light of this history, it is asserted that the circuit court did not have jurisdiction to hear this dispute. However, MCL 560.222 provides as follows:

> Except as provided in section 222a, to vacate, correct, or revise a recorded plat or any part of a recorded plat, a complaint shall be filed in the circuit court by

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[1] After this resolution was executed and recorded, the property at issue was sold and conveyed. The conveyance of the property in 1998 included the northern thirty-three feet. When plaintiff purchased its rights in 1999, it included the southern 33 feet, but did not include the northern 33 feet.

> the owner of a lot in the subdivision, a person of record claiming under the owner, or the governing body of the municipality in which the subdivision covered by the plat is located.

Appellate review of a summary disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id*. To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id*. Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion, shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail do not satisfy the burden in opposing a motion for summary disposition. *Quinto, supra*.

Issues of statutory construction present questions of law that are reviewed de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent – the words of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the statutory language is unambiguous, appellate courts presume that the Legislature intended the plainly expressed meaning, and further judicial construction is neither permitted nor required. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402; 605 NW2d 300 (2000). Under the plain meaning rule, "courts should give the ordinary and accepted meaning to the mandatory word 'shall' and the permissive word 'may' unless to do so would frustrate the legislative intent as evidenced by other statutory language or by reading the statute as a whole." *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982).

The plain language of the statute at issue provides that the modification of a recorded plat "shall" be altered by the filing of a complaint in the circuit court. Consequently, the trial court had jurisdiction to entertain this matter.[2]

Although we hold that the trial court properly had jurisdiction to vacate the plat, the trial court did not consider the import of its decision in conjunction with two other provisions of the LDA. Specifically, MCL 560.226(1)(c) provides that the court has jurisdiction to vacate a recorded plat "upon trial and hearing" of the action, provided that the township with jurisdiction over the part of the vacated street adopts a resolution. The trial court did not address the validity of the 1990 resolution and whether any resolution had to occur concurrently with the trial court's

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[2] Defendants also assert that it was erroneous for the trial court to exercise jurisdiction where the relevant utility companies were not named as parties to the action. This issue was not decided by the trial court, and therefore, is not preserved for appellate review. The propriety of the proper parties to the action should be addressed on remand.

decision.[3] Moreover, the trial court ruled in favor of plaintiff by relying on MCL 560.227a(1). However, MCL 560.227a(1) contains language indicating that it applies to lots within the subdivision of the plat. MCL 560.227a(2) then further addresses the situation where the lots abutting a vacated street belong to the same proprietor or different proprietors. However, this subsection does not contain language to address whether the lots must fall within the subdividion of the plat. In light of these deficiencies, we remand to the trial court for consideration of these provisions of the LDA.

Lastly, and perhaps more importantly, defendants allege that the trial court erred in failing to consider equitable defenses before ruling. To the contrary, plaintiff asserts that defendants are precluded from raising equitable defenses based on the LDA. We agree with defendants. In *Martin v Beldean*, 469 Mich 541, 550 n 21; 677 NW2d 312 (2004), the Supreme Court acknowledged that actions to declare a plat "null and void" were required to file the claim under the LDA. However, the Court also held that actions to maintain the status quo of the rights or use of a plat are not limited to filing a lawsuit pursuant to the LDA. Additionally, case law provides that when presented with a petition to vacate a plat, the objecting party has the burden of raising a reasonable objection to the petition. *In re Gondek*, 69 Mich App 73, 74-77; 244 NW2d 361 (1976). A reasonable objection is premised on the facts and circumstances of each individual case and may be based on the use of the property. See *In re Vacation of Cara Avenue*, 350 Mich 283, 291-292; 86 NW2d 319 (1957).

The facts and circumstances of this case present the unique scenario where the township was presented with a request to vacate the plat in 1990. The township vacated the plat, but then proceeded to divide the plat and designate ownership of the parcel by awarding thirty-three feet to the ownership to the north and the remaining thirty-three feet to the owners of the parcel to the south. In the late 1990s, the subsequent sales of both parcels to the north and south included the thirty-three feet that had been divided by the township. It is unclear whether the property owners were subsequently taxed for the additional land that was included as a result of the township's

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[3] We recognize MCL 560.226(1) provides that "Upon trial and hearing of the action, the court may order a recorded plat or any part of it to be vacated … with the following exceptions … (c) a part of a street … shall not be vacated, corrected, or revised under this section except by both a resolution or other legislative enactment duly adopted by the governing body of the municipality and by court order. However, neither this section nor any other section shall limit or restrict the right of a municipality … to vacate the whole or any part of a street, alley, or other land dedicated to the use of the public." This section does not deprive the circuit court of jurisdiction because it contemplates that the case will be in the process of being heard ("upon trial and hearing of the action…") before the acts necessary to vacate a plat occur. In light of our conclusion that remand is necessary, whether a proper resolution or other legislative enactment was prepared may be examined on remand. Furthermore, although this statute provides that the right of a municipality to vacate land dedicated to the use of the public is not limited by any other statute, there is no statutory authority that allows the municipality to vacate a parcel then delegate ownership. Consequently, the exception, MCL 560.226(1)(c), does not, in and of itself, entitle defendants to summary disposition.

resolution to vacate the plat. Under these circumstances, the trial court was entitled to entertain the equitable claims raised by defendants.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio