

STATE OF MICHIGAN
COURT OF APPEALS

RUSH CREEK IMPOUNDMENT CHAPTER
XX INTER-COUNTY DRAINAGE BOARD,

UNPUBLISHED
August 6, 1996

Plaintiff-Appellee,

v

No. 181118
LC No. 92-016583-CC

GEORGIANNA ALBRECHT, HARLEY
ALBRECHT, and DONNA ALBRECHT,

Defendant-Appellants.

Before: Sawyer, P.J., and Neff and R.D. Gotham,* JJ.

PER CURIAM.

Defendants appeal from an amended judgment in favor of defendants on plaintiff's condemnation complaint. We reverse.

Plaintiff sought to obtain by eminent domain an easement for drainage purposes over several tracts of property, including a tract owned by defendants. Plaintiff offered \$5,827.50 for the easement, which was rejected by defendants. A complaint was filed and a jury trial held, resulting in a verdict of \$83,500. A judgment was prepared which provided for payment of the award of \$83,500 plus prejudgment interest from the date of the filing of the complaint in the amount of \$7,975.82. Counsel for both parties signed the judgment waiving notice of entry. The judgment was entered. Thereafter, plaintiff sought relief from the judgment, arguing that defendants were not entitled to prejudgment interest from the date of the filing of the complaint. The trial court agreed and amended the judgment accordingly.

On appeal, defendants argue that the trial court erred in granting relief from the judgment. We agree. We begin by noting that plaintiff and the trial court are correct that interest on the judgment should not have been included because defendants remained in possession of the land. Accordingly,

* Circuit judge, sitting on the Court of Appeals by assignment.

under MCL 213.65; MSA 8.265(15), prejudgment interest was not awardable. The question remains, however, whether plaintiff was entitled to relief from judgment. We conclude that it was not.

Plaintiff sought relief from judgment under the provisions of MCR 2.612(C)(1)(f), alleging mistake. Specifically, plaintiff alleged that counsel did not realize that plaintiff had not yet taken possession of the easement at the time judgment was entered, thus precluding an interest award under MCL 213.65; MSA 8.265(15). However, mere mistake is insufficient to justify relief from judgment under MCR 2.612(C)(1)(f). As explained in 3 Martin, Dean & Webster, Michigan Court Rules Practice, (2d ed, 1986), Authors' Comment, p 537, avoidable mistake is not a basis for relief from judgment:

[R]elief will be granted only if the party seeking relief demonstrates that the mistake, misunderstanding, or neglect was excusable and was not due to the party's own carelessness. The party seeking relief bears the burden of justifying the failure to avoid the mistake or inadvertence. The reasons shown must be substantial, as relief is normally limited to extraordinary circumstances which indicate that the failure to set aside the judgment will result in substantial injustice. *If a party had access to the information on which allegations of error are now based*, or simply made a faulty decision on some procedural aspects of the case, *the motion for relief will normally be denied*. [Emphasis added.]

In the case at bar, plaintiff simply has failed to show any substantial reason for the mistake. Indeed, plaintiff most certainly had access to the information upon which the allegation of error was based. Plaintiff knew whether it had taken possession of the easement or not. Indeed, according to the record, the parties, the court and the jury all visited the property and viewed it during the course of trial. Certainly plaintiff "had access to the information" upon which it now alleges error. Yet, despite possession of that information, plaintiff agreed to entry of the judgment. Only after entry of the judgment did plaintiff realize that it had made an error. That realization came too late.

There is no indication that the judgment was procured by the improper conduct of the defendants. See *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992). Rather, plaintiff possessed all the information necessary to determine if prejudgment interest was appropriate, the interest provision was clearly included in the judgment, and plaintiff agreed to the entry of judgment. Under these circumstances, plaintiff is not entitled to relief from judgment. There must be some finality in judgments, lest all issues remain relitigable ad infinitum. Plaintiff had a full and fair opportunity to ensure that the judgment entered was correct. It must now live with the result.

Finally, defendants argue that the trial court erred in failing to award sanctions to defendants. We disagree. We are satisfied that plaintiff sought relief from judgment in good faith. Accordingly, sanctions are not appropriate.

Reversed and remanded to the trial court with instructions to reinstate the original judgment entered upon the jury verdict. We do not retain jurisdiction. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Roy D. Gotham