

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF YPSILANTI,

UNPUBLISHED

Plaintiff-Counterdefendant-Appellee,

v

No. 191379

Washtenaw Circuit Court

FIRST PRESBYTERIAN CHURCH,

LC No. 94-002253-CZ

Defendant-Counterplaintiff-Appellant,

and

JANE SCHMIEDEKE, formerly known as JANE
BIRD, YPSILANTI HERITAGE FOUNDATION,
YPSILANTI HISTORICAL COMMISSION, and
FRIENDS OF THE TOWNER HOUSE
CHILDREN'S MUSEUM,

Counterdefendants-Appellees.

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

SAWYER, J. (concurring).

I write separately to express my opinion that this case should be treated as a taking and defendant should prevail. However, I feel constrained by existing precedent to agree with the resolution reached by the majority. Specifically, although the United States Supreme Court has moved towards upholding property rights since its decision in *Penn Central Transportation Co v New York City*, 438 US 104, 138; 98 S Ct 2646; 57 L Ed 2d 631 (1978), because *Penn Central* directly dealt with historical landmarks, I reluctantly agree with the majority that *Penn Central* controls the outcome of this case in favor of plaintiff. I would, however, encourage defendant to further pursue its appellate remedies and hopefully it will ultimately obtain a favorable result from the Supreme Court.

/s/ David H. Sawyer