STATE OF MICHIGAN

COURT OF APPEALS

PATRICK R. COONEY, the Roman Catholic Bishop of the Diocese of Gaylord,

Plaintiff-Appellee,

v

ANDREW C. RICHNER, CEDRIC RICHNER, III, GEORGIANA RICHNER, MARTIN B. BREIGHNER, NANCY BREIGHNER, ALLAN A. ALLERDING, PATRICIA J. ALLERDING, WILLIAM SHEPLER and SUZANNE SHEPLER,

Defendants-Appellants.

UNPUBLISHED
April 6, 1999

No. 205221
Emmet Circuit Court
LC No. 96-003623 CH

Before: Cavanagh, P.J., and McDonald and Whitbeck, JJ.

PER CURIAM.

Defendants appeal as of right the trial court order entering judgment in favor of plaintiff in this action under the subdivision control act, MCL 560.101 *et seq.*; MSA 26.430(101) *et seq*. We affirm.

I

Defendants first argue that the trial court erred in denying their motion to adjourn the date of the hearing required under MCL 560.226(1); MSA 26.430(226)(1). A trial court's decision whether to grant or deny a motion for a continuance is reviewed for an abuse of discretion. *City of Lansing v Hartsuff*, 213 Mich App 338, 350; 539 NW2d 781 (1995). A motion for adjournment must be based on good cause, and a court, in its discretion, may grant an adjournment to promote the cause of justice. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996).

After reviewing the record, we cannot conclude that the trial court abused its discretion in denying defendants' request for a continuance.[1] The parties had eight months' notice that their presence was required on April 15, 1997.[2] Defendants have not challenged the trial court's finding that "[t]hey have shown no reasonable excuse and in some instances, no reason whatsoever, for their non-appearance."

Moreover, defendants have failed to articulate how they were prejudiced by the court's refusal to adjourn the hearing. Although defendants reiterate that the purpose of the hearing was to allow interested property owners the opportunity to raise reasonable objections to the vacation, defendants have not identified what objections they would have made. Furthermore, no defendant ever claimed more than an easement in the subject property, and the final judgment granted an easement to all the property owners in the plat.

II

Defendant Andrew Richner argues that the trial court erred in refusing his request for a continuance because he was a member of the Michigan Legislature, and the Legislature was in session on the hearing date. On appeal, defendant Richner relies on MCL 600.1419(1); MSA 27A.1419(1), which provides that a court must adjourn a civil action when it knows that a party is a member of the Michigan Legislature and the Legislature is in session. However, defendant Richner failed to inform the trial court at any stage of the proceedings below that he was statutorily entitled to an adjournment. A request that must be honored if timely made need not, in every instance, be honored if made at a later stage of the proceedings. *In re Osborne*, ___ Mich ___, ___; ___ NW2d ___ (Docket No. 112824, issued 3/9/99), slip op p 11. In the absence of any showing of prejudice to defendant Richner, we conclude that reversal is not required.

III

Defendants next argue that the trial court erred in holding that the joinder of all property owners within 300 feet of the alley was an issue of personal jurisdiction, rather than an element of plaintiff's claim. Defendants rely on MCL 560.224a; MSA 26.430(224a). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Port Huron v Amoco Oil Co, Inc*, 229 Mich App 616, 624; 583 NW2d 215 (1998).

MCL 560.224a(1); MSA 26.430(224a)(1) provides in pertinent part:

> The plaintiff shall join as parties defendant each of the following:
>
> (a) The owners of record title of each lot or parcel of land included in or located within 300 feet of the lands described in the petition and persons of record claiming under those owners.

Defendants contend that, pursuant to the above provision, plaintiff was required to prove, as an element of his substantive case, that he had joined all such parties in the action.

We disagree. There is nothing in the statutory language to indicate that the Legislature meant "join" to mean anything different under the subdivision control act than it does in law generally. Even if the Legislature had so intended, the Supreme Court's rule-making power in matters of practice and procedure is superior to that of the Legislature. Const 1963, art 6, § 5; *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 722; 575 NW2d 68 (1997). Rules of practice set forth in any statute, if not in conflict with any of the court rules, are effective until superseded by rules adopted by the Supreme

Court. MCR 1.104; *Neal*, *supra*. Thus, plaintiff's duty to join necessary parties was controlled by MCR 2.205, regardless of any conflicting provision in the subdivision control act.

IV

Finally, defendants argue that the trial court erred in finding that plaintiff had joined as party defendants all those who owned property within 300 feet of the alley, as required by MCL 560.224a; MSA 26.430(224a). We review a trial court's findings of fact for clear error. A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Bracco v Michigan Technological Univ*, 231 Mich App 578, 585; 588 NW2d 467 (1998).

Defendants first argue that the trial court erred in finding that plaintiff had joined Randel Richner, owner of lot 9. In support of defendants' motion for a new trial, Randel Richner submitted an affidavit denying that she had been served. However, plaintiff submitted an affidavit from a process server who averred that he had personally served her. Furthermore, Cedric Richner signed for receipt of service that had been mailed to Randel Richner's address, and three of her family members were also involved in this lawsuit. On this record, we cannot conclude that the trial court's implicit finding that Randel Richner was aware of the pending action was clearly erroneous. See MCR 2.105(J)(3); *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669, 673-674; 413 NW2d 474 (1987).

Defendants also note that conflicting testimony was presented below regarding whether Gail Martin, who was not joined as a defendant, owned property within 300 feet of the alley. Defendants maintain that the trial court should have held a hearing to resolve the question. We disagree. Plaintiff submitted an affidavit from James Schwandt, a licensed surveyor, who averred that the distance between Martin's property and the alley is approximately 403 feet. While Dewey Goff testified that Martin's property may have been within 300 feet of the alley, he later stated in an affidavit that this conclusion had been based on the incorrect assumption that the property constituted the entirety of lots 37 and 38. In the absence of any affirmative evidence that Martin's property was located within 300 feet of the alley, the trial court was not required to hold a separate hearing to address the issue.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Gary R. McDonald
/s/ William C. Whitbeck

[1] Indeed, the trial court would have been within its rights to issue default judgments against the parties who defied a court order to appear on April 15, 1997. See *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991).

[2] In March 1997, the trial court decided to hold the hearing on April 15, 1997, which originally had been scheduled for a mandatory pretrial settlement conference.