

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GARFIELD TOWNSHIP,

Plaintiff-Appellant,

v

OMAN CONSTRUCTION COMPANY, JACK  
OMAN, FRANCIS OMAN BROWN, Inter Vivos  
Trust, BETTY OMAN, Inter Vivos Trust, and ANN  
OMAN DORSETT, Inter Vivos Trust,

Defendants-Appellees.

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UNPUBLISHED

July 2, 1999

No. 203152

Clare Circuit Court

LC No. 95-900378 CZ

Before: Griffin, P.J., and McDonald and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and denying plaintiff's motion for summary disposition, pursuant to MCR 2.116(C)(10), in this action to quiet title to a sixty-foot stretch of Beaverton Road that was statutorily abandoned by the Clare County Road Commission ("CCRC") upon petition by defendants. The stretch of road is located in plaintiff township and leads to Big Cranberry Lake. Defendants own the land that abuts the road and surrounds the lake. Both defendants and plaintiff claim fee simple title to the portion of the road at issue. We affirm.

In 1902, the property was the subject of condemnation proceedings. The township highway commissioner determined that the roadway was necessary to provide public access to Big Cranberry Lake. The commissioner filed his determination with the county clerk stating that he had laid out the roadway and had paid damages to two landowners in the amount of \$5 each.<sup>1</sup> In 1929, the CCRC acquired jurisdiction of the road from plaintiff and, by resolution dated April 17, 1929, adopted the road into the county road system.

The property at issue has been the subject of several lawsuits. In 1929, defendants' predecessor in interest, the Wild Life Reservation Association (WLRA), which owned and/or leased all the land adjacent to and surrounding the lake, sued the CCRC to have the road declared abandoned for nonuse and sought to permanently enjoin the CCRC from entering the land. The CCRC filed a cross-

complaint, seeking a decree that the strip of land constituted a public highway. The circuit court ruled that the road was a public highway then under the jurisdiction and control of the CCRC and that the public had an easement for highway purposes.

In 1991, defendants sued various citizens and the CCRC for trespassing on the road and also sought to have the road declared abandoned. The trial court made extensive findings of nonuse by the public and determined that the CCRC had forfeited the public's rights in the road through common-law abandonment. This Court reversed the decision, finding that the CCRC had "sole and exclusive" jurisdiction over county road abandonment pursuant to MCL 224.18; MSA 9.118 and that the circuit court lacked jurisdiction to declare the road abandoned under the common law.<sup>2</sup>

In 1995, defendants petitioned the CCRC to abandon the disputed portion of the road. Following a hearing on August 2 1995, the CCRC voted unanimously to abandon the road pursuant to MCL 224.18; MSA 9.118, on the basis that abandonment was in the best interests of the public.

Defendants subsequently erected a fence and other barricades across the strip of land, preventing access to the lake. This lawsuit followed, with plaintiff alleging that the CCRC's abandonment proceeding amounted to a relinquishment of jurisdiction in favor of plaintiff and that even if the abandonment proceeding did not result in a relinquishment of jurisdiction, plaintiff held fee simple title to the property. Both sides sought summary disposition and the parties stipulated that the case should be decided on the "mutual motions for summary disposition." The trial court granted summary disposition in favor of defendants.

On appeal, plaintiff contends that the trial court erred in declaring defendants owners of the property in fee simple because, notwithstanding the CCRC's abandonment proceedings, plaintiff obtained fee simple title to the property in 1902 when the property was condemned and taken by eminent domain. We disagree.

The records regarding the 1902 condemnation proceedings do not indicate whether the property taken for the highway was taken in fee simple or as an easement. Further, in the 1929 litigation between defendants' predecessor in interest, the WLRA, and the CCRC, which had taken over jurisdiction of the road from plaintiff and had make it part of the county highway system, the court heard testimony from the former highway commissioner and received the records prepared by him in 1902 and 1903, and determined that the road was a public highway, declaring that the public has an *easement* in the strip of land for highway purposes.

Additionally, MCL 224.18; MSA 9.118 provides the procedure by which a county road commission may either absolutely abandon a road or relinquish jurisdiction to a township. At the time the instant strip of land was absolutely abandoned, the statute provided in relevant part:

The board of county road commissioners of any county which has adopted the county road system is hereby authorized and empowered to, at any time, *either relinquish jurisdiction of or absolutely abandon and discontinue* any county road, or any part thereof, by resolution adopted by a majority vote . . . . After proceedings to relinquish

jurisdiction have been had, the jurisdiction and control of such road, or part thereof, shall revert to the township or municipality within which the same is situated, and the county shall be relieved of the responsibility therefor. *After proceedings to absolutely abandon and discontinue have been had, such road or part thereof shall cease to exist as a public highway.* Said board shall, at the time of the passage of any resolution to absolutely abandon and discontinue any portion of any highway under its jurisdiction determine in said resolution that it is to the best interests of the public that said highway or portion thereof shall be absolutely abandoned and discontinued.

The statute provided for two alternative procedures, relinquishment of jurisdiction to the township or municipality, or absolute abandonment. Here, the CCRC absolutely abandoned and discontinued that portion of the road, and the road ceased to exist as a public highway. Title then reverted to defendants as the abutting landowner. *Dalton Twp v Muskegon Rd Comm'rs*, 223 Mich App 53, 57; 565 NW2d 692 (1997).

Plaintiff also argues that the trial court erred in refusing to retroactively apply the 1996 amendments to MCL 224.18; MSA 9.118, which, *inter alia*, enacted special provisions pertaining to roads bordering or ending at lakes and streams. Plaintiff would have had additional rights under the amended act. We disagree.

As a general rule, statutory amendments are presumed to operate prospectively. *Detroit v Walker*, 445 Mich 682, 704; 520 NW2d 135 (1994); *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 37; 539 NW2d 526 (1995). However, a statutory amendment may be given retroactive effect where the Legislature has expressly or impliedly indicated its intent to give retroactive effect, *id.* at 37, or where the amendment is remedial or procedural in nature and does not abrogate or impair a vested right. *In re Certified Questions Karl v Bryant Air Conditioning Co*, 416 Mich 558, 571, 578; 331 NW2d 456 (1982); *Joe Dwyer, Inc v Jaguar Cars, Inc*, 167 Mich App 672, 681; 423 NW2d 331 (1988).

The amendment, which was given immediate effect May 28, 1996, contains no language indicating that the Legislature intended the amendment to apply retroactively to abandonment proceedings occurring before its effective date. Even assuming that the amendment was procedural or remedial in nature, retroactive application of the statute to completed abandonment proceedings would impair defendants' vested right in the road, which accrued when the road was abandoned under the statute as it existed in August, 1995. Accordingly, the trial court did not err in refusing to give the amended statute retroactive effect.

Affirmed.

/s/ Richard A. Griffin  
/s/ Gary R. McDonald  
/s/ Helene N. White

<sup>1</sup> The order of determination filed by Alfred Tryon, the Garfield Township Highway Commissioner on May 10, 1902 reads as follows:

I, the undersigned, Commissioner of Highways of the Township of Garfield, County of Clare, do hereby certify and retain that on the 8<sup>th</sup> day of May, 1902, that I by request of Bert Scott laid out a road on section line between Sections 10-15 to run as follows Commencing at eight line running  $\frac{3}{4}$  of mile West to Section corner of 9-16, thence West on Section line to Cranberry Lake and that I did consider and determine that a highway was necessary and should be, and the same was laid out and established by me, damages claimed on said road by G.W. Babcock Five (\$5.00) Dollars and Jack Scott Five (\$5.00) Dollars damages.

The Commissioner's highway record book, dated April 20, 1903, reads in pertinent part: "said Commissioner having, pursuant to statute, ascertained and determined the necessity of taking the property required for such highway, and appraised the damages therefore . . . ."

<sup>2</sup> *Oman Construction Co v McLane*, unpublished opinion per curiam of the Court of Appeals, issued 6/2/94 (Docket No. 146006).