STATE OF MICHIGAN

COURT OF APPEALS

VERNON J. ANDREWS, GRACE M. ANDREWS, ANGELA A. RYAN, ANDREA A. LARKIN, DOUGLAS BRIGHAM, and CATHY J. SCHULTZ,

Plaintiffs-Appellants,

and

CLAUDE SHIELDS, ROBERT DYKSTRA, and KENNETH B. YOST,

Plaintiffs,

v

MICHAEL BUCK, NANCY BUCK, BARBARA BURKE, ROSANNA GRAF, G. WILLIM, VIRGINIA E. WALTHER, DUNA VISTA RESORTS, INC., and GIL HEBBLEWHITE,

Defendants,

and

PENTWATER TOWNSHIP and BARNETT SURVEYING,

Defendants-Appellees.

UNPUBLISHED
September 22, 2000

No. 216760
Oceana Circuit Court
LC No. 91-004103-CH

Before: Smolenski, P.J., and Zahra and Collins, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order imposing sanctions for bringing a claim without legal basis. We reverse.

This case has its origins in the construction of a subdivision that substantially deviated from the plat, both in the layout and construction of roads and in the siting and construction of homes, and a resolution by defendant Pentwater Township (Pentwater) to create an assessor's plat for purposes of assessment and taxation. Pentwater hired defendant Barnett Surveying (Barnett) to prepare the plat. Plaintiffs filed a complaint seeking, to enjoin activity related to the creation of the assessor's plat on a number of grounds. Plaintiffs alleged that at a public meeting, Barnett stated that he intended to extend or vacate a portion of a road in a manner inconsistent with the original plat and not evidenced by current usage. Plaintiffs further alleged that such action would effect a taking of their property, that it would cloud title to their property, and that Barnett had a duty to prepare the assessor's plat as closely as possible to the 1905 plat.

The circuit court entered a temporary restraining order on October 4, 1991, but dissolved the order approximately three weeks later. The court explained in a letter to the parties that the Subdivision Control Act of 1967 (the Act), MCL 560.101 *et seq.;* MSA 26.430(101) *et seq.*, governs procedures relevant to assessor's plats and provides for a period to object to the accuracy of the plat once it is completed and filed, so that plaintiff's suit was premature. The court further explained that an assessor's plat is primarily intended for purposes of assessment and taxation and does not affect legal title to the various parcels of land proposed to be included in the assessor's plat.

Following a scheduling conference in June 1993, the circuit court entered an order stating that plaintiffs had thirty days to file written objections regarding the procedures used by the township in establishing the assessor's plat assessment district, and that during the pendency of the matter, the parties could request further discovery. Plaintiffs filed objections and argued, among other things, that the assessor's plat was being undertaken for an improper purpose and that it was a waste of time and money for it to proceed further. In September 1993, the court denied plaintiffs' objections and ordered that the procedures used and the propriety of the assessor's plat "shall not be raised again as an issue." The court also ordered that the plat be completed in two years.

Almost one year later, and nearly three years after the suit was filed, in August 1994, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(10). The court granted defendants' motion and, sua sponte, imposed sanctions against plaintiffs for filing a suit without legal basis. Plaintiffs appealed the imposition of sanctions on the ground that the sanctions were imposed in violation of their due process rights, as they had no notice or opportunity to be heard on the issue. This Court agreed and remanded for a hearing. *Andrews v Buck*, unpublished opinion per curiam of the Court of Appeals, issued May 16, 1997 (Docket No. 188669).

In the meantime, plaintiffs filed another complaint against defendants Pentwater and Barnett, *after* the assessor's plat was filed in 1994. The complaint challenged many of the same aspects of the plat that plaintiffs had attempted to challenge in the earlier lawsuit. The circuit court approved the plat without modification or correction. Plaintiffs appealed as of right to this Court, which affirmed in part and reversed in part. *Andrews v Pentwater Twp,* 222 Mich App 491, 496; 563 NW2d 713 (1997).

In June 1998, after the hearing on remand of the issue of sanctions, the circuit court reaffirmed the award of sanctions.

Plaintiffs argue on appeal that the circuit court clearly erred in imposing sanctions because the Act does not explicitly prohibit the filing of lawsuits before a plat is filed, and no case law existed, at the time plaintiffs filed suit, interpreting the subject provisions of the Act. This Court reviews a trial court's decision regarding imposition of sanctions under MCR 2.114 for clear error. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). A trial court's decision is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

Our review of the record indicates that the court imposed sanctions pursuant to MCR 2.114(D)(2) and MCR 2.114(E). MCR 2.114(D) provides, in pertinent part, as follows:

> **Effect of Signature.** The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> * * *
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law . . .

MCR 2.114(E) provides that where a court finds that a party has violated MCR 2.114, the court must impose a sanction on that party.

Although MCL 560.209(3); MSA 26.430(209)(3) clearly provides that anytime within the thirty-day period after a plat in filed in the appropriate office, "any person or public body having an interest in any lands affected by the plat may bring a suit to have such plat corrected," it does not *preclude* the bringing of a suit prior to filing of the plat. While defendants point to the letter sent by the court to the parties in October 1991 as evidence that plaintiffs were on notice that their suit was premature and that an assessor's plat would not affect legal title to the property included in the plat, we note that such notice was informal; the court issued no order with regard to when plaintiffs must file. It is well-settled that a court speaks only through its written orders. *Tiedman v Tiedman*, 400 Mich 571, 576-577; 255 NW2d 632 (1977). Further, at the time plaintiffs brought suit, the only authority addressing the legal effect of an assessor's plat on title to land was an Attorney General Opinion, OAG, 1981-1982, No 5840, p 17 (January 15, 1981), and that opinion did not address whether an assessor's plat can work a taking, whether failure to reconcile boundaries with an assessor's plat clouds title, or whether the making of an assessor's plat in and of itself clouds title.

As plaintiffs point out, this Court in *Andrews, supra*, ultimately agreed with plaintiffs that, to the extent the assessor's plat extended or vacated a portion of a road, it was improper. *Id.* at 496. Further, although this Court ultimately found in favor of defendants on the issues whether Pentwater had

the authority to create a new assessor's plat in the first place and whether an assessor's plat acts to alter legal marketable title to the properties affected, *id.* at 494, 496, that this Court chose to address these issues in a published opinion supports plaintiffs' contention that the law with regard to the effect of an assessor's plat on property rights was unsettled and plaintiffs could, in good faith, file their complaint. See MCR 7.215(B).

Finally, defendants stress that plaintiffs improperly pursued their suit in violation of the court's order not to raise the issue of the propriety of the assessor's plat again. However, the court's order imposing sanctions does not indicate that it imposed sanctions because it believed plaintiffs violated its earlier order. Rather, the court simply stated that it was imposing sanctions for bringing a suit without legal basis. Furthermore, the circuit court did not issue its earlier order until two years after the suit was filed, and defendants did not move to dismiss until three years after the suit was filed.

Given that § 209 does not expressly preclude the bringing of a suit prior to the thirty-day period following the filing of a plat, and in light of the unsettled nature of the law, at the time the suit was filed, regarding the effect of an assessor's plat on legal title to the property involved, we are left with a definite and firm conviction that the trial court erred in imposing sanctions against plaintiffs for bringing a lawsuit without legal basis. *Schadewald*, *supra* at 41.

Reversed.

/s/ Michael R. Smolenski
/s/ Brian K. Zahra
/s/ Jeffrey G. Collins