

STATE OF MICHIGAN
COURT OF APPEALS

GATCHBY PROPERTIES, L.P.,

Plaintiff-Appellant,

v

ANTRIM COUNTY ROAD COMMISSION,
TOWNSHIP OF HELENA, ASSOCIATION FOR
THE PRESERVATION OF PUBLIC ACCESS, and
MICHAEL CRAWFORD,

Defendant-Appellees,

and

ISABEL AMERSON,

Defendant.

Before: White, P.J., and Talbot and R.J. Danhof*, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I concur in the majority opinion except with respect to the condemnation issue. While I agree that the court erred in granting summary disposition to defendants on the affirmative defense of condemnation based on a “presumption of regularity,” I do not agree that plaintiff was entitled to judgment on this affirmative defense. Here, even without the presumption of regularity, there was evidence that a condemnation had taken place. Although supporting documentation was missing from the records, the two-page handwritten document of the commissioner recited compliance with the statute. While not conclusive, this was evidence of a condemnation.¹ Later plats were consistent with

¹ The significance of this evidence might depend on other evidence regarding the records. For example, if none of the other records of condemnations include the supporting documentation, this might indicate
(continued...)

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

the earlier successful condemnation of the property. Further, there was evidence from which a trier of fact could conclude that the “opened and worked” requirement was satisfied. Thus, I conclude that there were genuine issues of material fact regarding whether there was a valid condemnation, and that neither party was entitled to summary disposition on the issue. In all other respects, I join in the majority opinion.

/s/ Helene N. White

(...continued)

that as a matter of practice, and in the ordinary course of business, the supporting documentation was discarded at some point. However, if the supporting documentation regarding condemnations around the same time period is present, this might indicate that there was some irregularity in this particular condemnation.