

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

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S. D. WARREN COMPANY,

Plaintiff-Appellee,

v

HYDAKER-WHEATLAKE COMPANY,

Defendant/Third-Party Plaintiff-  
Appellee,

and

CONSUMERS POWER COMPANY,

Defendant/Third-Party Plaintiff-  
Appellant,

and

KELLY SERVICES, INC.,

Third-Party Defendant-Appellee,

and

STATE OF MICHIGAN, DEPARTMENT OF  
NATURAL RESOURCES, and CITY OF  
MUSKEGON,

Third-Party Defendants.

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S. D. WARREN COMPANY,

Plaintiff-Appellee,

UNPUBLISHED

February 6, 2001

No. 216208

Muskegon Circuit Court

LC No. 96-334247-NZ

v

HYDAKER-WHEATLAKE COMPANY,

Defendant/Third-Party Plaintiff-  
Appellant,

and

CONSUMERS POWER COMPANY,

Defendant/Third-Party Plaintiff-  
Appellee,

and

KELLY SERVICES, INC.,

Third-Party Defendant-Appellee,

and

STATE OF MICHIGAN, DEPARTMENT OF  
NATURAL RESOURCES, and CITY OF  
MUSKEGON,

Third-Party Defendants.

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Before: Saad, P.J., and Jansen and Talbot, JJ.

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

I agree in large part with the majority's opinion, but respectfully disagree with part III, D. I accept that the issue of whether there was actual or constructive knowledge of the underground sewer on the part of Consumers Power Company and Hydaker-Wheatlake Company is a question of fact that must be resolved by a fact finder. That being said, I would not hold *as a matter of law* that contractors employed to do work on land not in a public street or right of way are not required to search for easements where they have no interest in the title to the land and where there is nothing in the nature of the land to cause the contractor to make the inquiry. Rather, I believe that, the issue of actual or constructive knowledge being a question of fact, the question of whether the recorded easement gave notice to Consumers Power and Hydaker-Wheatlake of the underground sewer is simply one piece of evidence that should be considered by the jury in making its ultimate determination whether Consumers Power and Hydaker-Wheatlake had actual

or constructive knowledge in this case. Thus, I would not foreclose consideration of this important evidence as a matter of law.

In all other respects, I agree with the majority's opinion.

/s/ Kathleen Jansen