STATE OF MICHIGAN

COURT OF APPEALS

SAGINAW LANDLORDS ASSOCIATION, DEAN W. COMPTON, and TIMOTHY M. ANEGON,

Plaintiffs-Appellants,

v

CITY OF SAGINAW,

Defendant-Appellee.

UNPUBLISHED
November 2, 2001

No. 222256
Saginaw Circuit Court
LC No. 96-066427-CZ

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's ruling, following a bench trial, that defendant's liens against plaintiffs' properties for unpaid water bills were valid and enforceable under the applicable state statutes and defendant's own ordinance. We affirm.

At issue in this case are two state statutes and a local ordinance enacted by defendant with regard to the same subject matter—defendant's authority to impose a lien against property for unpaid water bills. MCL 141.121 (1933 PA 94, as amended by 1978 PA 216); MCL 123.162 (1939 PA 178); Saginaw Ordinances, § 4-108. The state statutes and defendant's ordinance either permit or establish a lien against property to which water service has been provided but for which the charges remain unpaid, *except* when the owner of the property provides the municipality with *written notice* that the tenant occupying the property is responsible for payment of the water bills. The type of notice required is different under the 1933 and the 1939 statutes, and defendant's ordinance expressly adopts the notice requirements of the 1933 statute.

Plaintiffs first argue that the trial court erred in judging the validity of the liens, and the question of plaintiffs' compliance with the requirements for notice of non-responsibility, under 1939 PA 178. Plaintiffs contend that defendant's conflicting ordinance, § 4-108, which referenced the 1933 statute, should have controlled.

Statutory interpretation is a question of law considered de novo on appeal. *Oakland Co Bd of Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). A trial court's interpretation of an ordinance is also reviewed de novo. *Warren's Station, Inc v City of Bronson*, 241 Mich App 384, 388; 615 NW2d 769 (2000); *Ballman v Borges*, 226 Mich App 166, 168; 572 NW2d 47 (1997). This Court is mindful that

provisions of the Michigan Constitution and law regarding counties, townships, cities, and villages are to be liberally construed in favor of those municipalities. Const 1963, art 7, § 34; *Detroit v Walker*, 445 Mich 682, 689; 520 NW2d 135 (1994).

This Court's primary task in statutory interpretation is to ascertain and facilitate the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the statute's plain and ordinary meaning of the statute is clear and unambiguous, this Court may not fashion a judicial construction. *Id*. Meaning will not be read into a statute unless the meaning is within the manifest intention of the Legislature as gathered from the act itself. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Furthermore, the Legislature is presumed to have considered the effect of a newly enacted law on laws already enacted concerning the same subject. *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). Statutes that address the same subject are in pari materia and must be read together as one law, even where, as here, the statutes do not reference each other and were enacted at different times. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). Where two statutes may be interpreted without conflict, that construction should control. *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 280; 597 NW2d 235 (1999).

The language of 1933 PA 94, as amended by 1978 PA 216, is clear and unambiguous.[1] That statute *permits* a municipality to impose a lien against property for water service provided to that property. Likewise, the language of defendant's ordinance is clear and unambiguous.[2] The ordinance adopts the permissive lien created by the 1933 statute and, as a result, defendant

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[1] MCL 141.121(3) provides, in pertinent part:

> Charges for services furnished to a premises *may* be a lien on the premises . . . .
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> * * *
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> However, in a case when a tenant is responsible for the payment of the charges *and the governing body is so notified in writing, the notice to include a true copy of the lease of the affected premises, if there be one*, then the charges shall not become a lien against the premises after the date of the notice. [Emphasis added.]

[2] Saginaw's Ordinances, § 4-108 provides, in pertinent part:

> The charges for water and services which are, *under the provisions of Section 21 of Act 94 of the Public Acts of 1933 [MCL 141.121,], as amended,* made a lien on all premises served thereby, *unless notice is given that a tenant is responsible*, are hereby recognized to constitute such lien . . . .
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> * * *
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> Provided, however, *where notice is given that a tenant is responsible for such charges and services as provided by said Section 21 [MCL 141.121,]*, no further service shall be rendered any piece of property until a cash deposit pursuant to Section 4-107 shall have been made as security for the payment of such charges and service. [Emphasis added.]

possesses the authority—subject to the limitations and exceptions outlined in its ordinance and the referenced 1933 statute—to enforce those liens. Both the 1933 statute and the city ordinance allow for landlords to preclude the imposition of liens by providing written notice of non-responsibility for unpaid water bills. See MCL 141.121(3).

In contrast, the language of the 1939 statute clearly and unambiguously *establishes* an immediate lien on property as security for a municipality's cost of providing water to that property.[3] Nevertheless, the 1939 statute also allows for landlords to avoid responsibility for unpaid bills, albeit with more stringent notice requirements.[4] More importantly, the 1939 statute expressly states that the act does not repeal any existing ordinance provisions—here, defendant's ordinance, § 4-108—but is to be construed as an additional grant of power to any power already prescribed by a municipality's ordinance provisions. MCL 123.167. Furthermore, defendant was not required to adopt the provisions of the 1939 statute in order to benefit from the lien it created. Cf. *Detroit v Sledge*, 223 Mich App 43; 565 NW2d 690 (1997) (municipality's exercise of authority under a state statute was invalid because the statute expressly required the municipality to adopt the statute by ordinance).

Though on the basis of the foregoing we conclude that the trial court correctly considered the 1939 statute in addition to defendant's ordinance, given our disposition of plaintiffs' next claim the issue is ultimately immaterial. Plaintiffs argue that their tenants' completed water applications provided defendant with sufficient notice of the tenants' responsibility for payment

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[3] MCL 123.162 provides, in pertinent part:

> A municipality which has operated or operates a water distribution system . . . *shall have as security* for the collection of water or sewage system rates . . . *a lien* upon the house or other building and upon the premises, lot or lots, or parcel or parcels of land upon which the house or other building is situated or to which the sewage system service or water was supplied. *This lien shall become effectively immediately upon the distribution of the water or provision of the sewage system service to the premises or property supplied* . . . . [Emphasis added.]

[4] MCL 123.165 provides:

> The lien created by this act shall, after June 7, 1939, have priority over all other liens except taxes or special assessments whether or not the other liens accrued or were recorded before the accrual of the water or sewage system lien created by this act. *However, this act shall not apply if a lease has been legally executed, containing a provision that the lessor shall not be liable for payment of water or sewage system bills accruing subsequent to the filing of the affidavit provided by this section.* An affidavit with respect to the execution of a lease containing this provision shall be filed with the board, commission, or other official in charge of the water works system or sewage system, or both, and 20 days' notice shall be given by the lessor of any cancellation, change in, or termination of the lease. The affidavit shall contain a notation of the expiration date of the lease. [Emphasis added.]

to preclude defendant from enforcing liens under the 1933 statute and the city ordinance. We disagree.

The rules of statutory construction also apply to ordinances. *Fink v City of Detroit*, 124 Mich App 44, 49; 333 NW2d 376 (1983). Here, defendant's ordinance clearly and unambiguously specifies the means by which landlords may protect their properties against liens such as those at issue in the instant case. Plaintiffs need only have provided defendant with written notice that a tenant, under the provisions of a lease executed between the tenant and the landlord, had agreed to be responsible for the water service provided by defendant. We agree with the trial court that the water application, by itself, did not satisfy the notice requirements of the 1933 statute referenced in defendant's ordinance. Defendant was not provided any additional written notice specifically indicating that the tenant agreed to be responsible for payment of the water bills under leases executed with plaintiffs, a requirement even if the leases themselves were oral.

In construing a statute or ordinance, this Court must presume that every word has some meaning or import and should avoid statutory constructions that render any part of a statute or ordinance surplusage. *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). As much as possible, this Court should give effect to every phrase, clause, and word included in statutes and ordinances. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). If the notice required by defendant's ordinance was satisfied simply by a tenant's completion of the water application, it would render meaningless the statutory language requiring written documentation of the lease agreement fixing responsibility for water payment on a tenant.

Lastly, plaintiffs challenge the trial court's refusal to rule on their claim that any attempt to comply with the notice requirements would have been futile and impossible.

A trial court may not enter a declaratory judgment when it lacks subject matter jurisdiction over an action because no case of actual controversy exists. *McGill v Automobile Ass'n of Michigan*, 207 Mich App 402, 407; 526 NW2d 12 (1994); see also MCR 2.605(A). Until plaintiffs "test" the impossibility of complying with the statutes and the ordinance that offer them immunity from liability for their tenants' unpaid water bills, no decision on the propriety of the notice requirements is warranted.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald