

STATE OF MICHIGAN
COURT OF APPEALS

TUSCOLA COUNTY BOARD OF
COMMISSIONERS and TUSCOLA COUNTY
REGISTER OF DEEDS,

UNPUBLISHED
December 11, 2001

Plaintiffs-Appellants,

v

TUSCOLA COUNTY ABSTRACT COMPANY,

No. 221018
Midland Circuit Court
LC No. 97-016113

Defendant-Appellee.

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiffs, Tuscola County Board of Commissioners and Tuscola County Register of Deeds, appeal as of right from the circuit court order denying in part their motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). In denying the motion, the trial court held, as a matter of law, that plaintiffs were precluded from recovering statutory copying fees for copies made before June 26, 1992. We reverse and remand for entry of an order granting summary disposition in favor of plaintiffs.

This is the second time this dispute has come before this Court. In the first case, the abstract company sought an order in mandamus, forcing the register of deeds to allow the company to keep its photocopier in the register's office. The circuit court granted the abstract company relief, ruling that it was entitled to keep and operate its photocopier in the register's office. This Court reversed the circuit court's decision, holding that the register of deeds has no clear legal duty to provide space for an abstract company's private photocopier. *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510-512; 522 NW2d 686 (1994).¹

Following our decision, the register of deeds filed a separate action, seeking recovery of copying costs incurred during the pendency of the appeal. The parties filed cross-motions for

¹ In reaching that decision, this Court interpreted the version of MCL 565.511 then in effect. See 1994 PA 51.

summary disposition. The trial court denied defendant's motion and granted in part plaintiffs' motion, allowing recovery of statutory copying fees for copies made after the 1992 amendment to MCL 565.551.² However, the court denied recovery for copies made before the 1992 amendment, holding that the 1992 amendment substantively affected vested rights and therefore could not be applied retroactively.

The sole issue before this Court is whether plaintiff may recover statutory copying fees for copies made before the effective date of the 1992 amendment to MCL 565.551.³ Plaintiffs argue on appeal that the 1992 amendment should be applied retroactively because it was remedial in nature and affected no substantive rights. Plaintiffs further argue that the sole effect of the 1992 amendment was the addition of different acceptable technologies beyond photography for use in creating copies.

This Court reviews a trial court's grant or denial of a motion for summary disposition de novo. *Herald Co v City of Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). Statutory interpretation is a question of law that is also considered de novo on appeal. *Id.* In this case, the parties agree that summary disposition is warranted because there is no genuine issue of fact. Therefore, this Court must determine as a matter of law whether plaintiffs are entitled to statutory copying fees incurred before the 1992 amendment in dispute.

A "fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting a provision." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). "In determining legislative intent, we look first at the words of the statute. If the language is clear and unambiguous, judicial construction is not normally permitted. If reasonable minds can differ regarding its meaning, then judicial construction is appropriate." *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998), citing *Indenbaum v Michigan Bd of Medicine (After Remand)*, 213 Mich App 263; 539 NW2d 574 (1995). We presume that the Legislature intended the meaning that is plainly expressed. *Yaldo, supra* at 346.

In 1991, MCL 565.551 stated, in relevant part:

That the registers of deeds in this state shall furnish proper and reasonable facilities for the inspection and examination of the records and files in their respective offices, and for making memorandums or transcripts therefrom during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose: Provided, That the custodian of said records and files may make such reasonable rules and regulations with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent the interference with the regular discharge of the

² See 1992 PA 112.

³ Specifically, plaintiffs seek recovery of statutory copy fees for copies made between August 19, 1991, the date of the trial court decision allowing defendant to keep its photocopier in the registrar's office, and June 26, 1992, the effective date of 1992 PA 112.

duties of said register: And provided further, *That said register of deeds may prohibit the use of pen and ink in making copies or notes of records and files, but shall permit the use of photography for making copies of records and files.* [See 1875 PA 54 (emphasis added).]

In 1992, MCL 565.551 was amended to state:

(1) A register of deeds shall furnish proper and reasonable facilities for the inspection and examination of the records and files in his or her office, and for making memorandums or transcripts from the records and files during the usual business hours, to a person having occasion to make examination of the records and files for any lawful purpose. However, the custodian of the records and files may make reasonable rules and regulations with reference to the inspection and examination of the records and files as is necessary to protect the records and files and to prevent interference with the regular discharge of the duties of the register of deeds.

(2) *A register of deeds may prohibit the use of pen and ink in making reproductions or notes of records and files, but shall permit the reproduction of records and files pursuant to the records media act.* A register of deeds may prohibit the reproduction of an instrument temporarily left with the register of deeds to be recorded in his or her office. [See 1992 PA 112 (emphasis added).⁴]

Our reading of the plain statutory language convinces us that the only change achieved by the 1992 amendment was the permitted use of technologies other than photography for reproduction of records. Both before and after 1992, MCL 565.551 required the register of deeds to permit some type of reproduction of files and records. Yet, both versions of the statute are silent regarding who may reproduce the records and whether a fee can be charged for the copy. Nevertheless, the issue of fees is governed by MCL 600.2567. At all relevant times, that statute allowed the register of deeds to charge \$1 per page for copies of records or papers. MCL 600.2567(1)(b).

Prior decisions of this Court have made clear that a register of deeds has wide discretion over these matters. In both *Washtenaw Abstract Co v Mayer*, 347 Mich 228, 233; 79 NW2d 480 (1956) and *Tuscola*, *supra* at 511-512,⁵ this Court held that a register of deeds had discretion

⁴ The records media act, MCL 24.401 *et seq.*, allows a governmental official or entity acting in its official capacity to reproduce records using several different technologies, including photographs, photocopy, microcopy, and optical storage disc.

⁵ Although the *Tuscola* Court based its decision in part on the 1994 amendment to the statute, the decision recognized that both before and after the 1994 amendment, the register of deeds was afforded considerable discretion in providing reasonable access and facilities for inspection and examination of records. *Tuscola*, *supra* at 512. Although it is likely that this Court analyzed the case under the 1994 statutory language, it relied for authority on *Washtenaw*, *supra* at 233, which itself relied on pre-1992 statutory language.

over whether to permit a private company to place a photocopy machine in the register's office. Further, in *Burton Abstract & Title Co v Martin*, 38 Mich App 178, 180-181; 196 NW2d 23 (1972), this Court held that the register of deeds had discretion to decide whether to charge abstract companies for copies.⁶ We likewise conclude that the register of deeds has wide discretion in the present case. Both before and after the 1992 amendment, registers of deeds were required to permit reproduction of documents by photography. However, registers had discretion regarding who made the photographs and whether to allow a private photocopier within their office. See 1875 PA 54; 1992 PA 112; 1994 PA 51. At all times, registers were entitled to charge a statutory fee for copies. MCL 600.2567(1)(b). Accordingly, we hold that plaintiffs were entitled to their statutory copying fees for copies made between August 19, 1991 and June 26, 1992, and that the trial court improperly denied plaintiffs' motion for summary disposition with respect to this time period. Because the 1991 version of the statute allowed recovery of these fees, we need not address whether the 1992 version of the statute may be applied retroactively.

Reversed and remanded for entry of summary disposition in favor of plaintiff. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Kathleen Jansen

McDonald, J. did not participate.

⁶ In *Burton*, the register of deeds decided to charge one abstract company a fee for copies, while allowing another abstract company to obtain copies free of charge. *Id.* at 179-180. This Court held that the register of deeds was acting within its statutory discretion. *Id.* at 180-181.