

STATE OF MICHIGAN
COURT OF APPEALS

G.P. GRAHAM CONSTRUCTION COMPANY,

Plaintiff-Appellant,

v

CHESANING UNION SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

May 7, 2002

No. 226066

Saginaw Circuit Court

LC No. 99-030040-NZ

Before: Gage, P.J., and Hoekstra and Meter, JJ.

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

I concur in all aspects of the majority's well-reasoned opinion except for the conclusion that the grant of summary disposition with regard to the equal protection claim was premature. I would affirm the trial court's grant of summary disposition in its entirety.

Our Supreme Court has recently held that there exists no judicially-created remedy for money damages in cases involving an alleged equal protection violation by a governmental defendant. *Lewis v State of Michigan*, 464 Mich 781, 787; 629 NW2d 868 (2001). Accordingly, plaintiff's only potential remedy with respect to the equal protection claim was equitable in nature. Because plaintiff waited until after the construction project commenced before filing his complaint, he is, in my opinion, precluded from obtaining equitable relief under the doctrine of laches. See generally *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 96-97; 572 NW2d 246 (1997). Although the trial court granted summary disposition of the equal protection claim on alternative grounds, our obligation to engage in a de novo review allows us to affirm the trial court's ultimate decision on the basis of laches, which was raised below and is raised again on appeal by defendant. Accordingly, a remand for further discovery with regard to the equal protection claim is unnecessary.

I would affirm the grant of summary disposition in its entirety.

/s/ Patrick M. Meter