STATE OF MICHIGAN

COURT OF APPEALS

KEWEENAW COUNTY ROAD COMMISSION, Plaintiff-Appellant,	UNPUBLISHED August 2, 2002
v	No. 230832 Keweenaw Circuit Court
PHILLUP BRINKMAN, Defendant-Appellee.	LC No. 98-000356-CH

Before: Griffin, P.J., and Hood and Sawyer, JJ.

SAWYER, J. (*dissenting*).

I respectfully dissent.

The majority bases its decision upon an argument not raised or briefed by the parties: whether a county road commission is a "municipal corporation" for purposes of MCL 600.5821(2). The decision relied upon by the majority, *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590; 575 NW2d 751 (1998), does not even involve road law, much less whether MCL 600.5821(2) applies to county road commissions. Rather, it considered whether a county road commission could raise an equal protection argument against a state statute and the Supreme Court made the observation that a road commission is a "body corporate," but not a "municipal corporation." However, this is a minor part of the opinion and the statement is made without any citation to authority beyond a reference to an Attorney General opinion. In short, I am not willing to make a major pronouncement on road law sua sponte based upon a minor comment by the Supreme Court in a case wholly unrelated to the issue at bar. Accordingly, I would proceed on the basis that MCL 600.5821(2) does apply to county road commissions and leave that issue for another case in which it is properly raised and briefed. And on that basis, I would reverse the trial court.

The highway-by-user statute, MCL 221.20, provides:

> All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for ten years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be four rods in

> width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two roads in width on each side of the line.

A landowner may assert a right to the property within ten years after the creation of the road as a public road by use. *Kentwood v Sommerdyke Estate,* 458 Mich 642, 662; 581 NW2d 670 (1998). If the ten years pass without continuous assertion of right by the property owners, the law presumes that the owner intended to dedicate the entire four-rod width of the road. *Id.* If the owners fail to act, the property is deemed dedicated to the state. *Id.,* 663. After the dedication, the property owner retains no interest in the property. *Id.* Thus, the property in question was never owned by defendant. *Id.,* 665.

In the absence of legislation to the contrary, the statute of limitations for recovery of real property does not run against the state, and therefore land held by the state cannot be acquired by adverse possession. *Caywood v DNR,* 71 Mich App 322, 327; 248 NW2d 253 (1976). MCL 600.5821(2) provides, "Actions brought by any municipal corporation for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the period of limitations." The circuit court erred in using adverse possession principles to find that defendant could regain rights to the roadway established by implied dedication.

I would reverse and remand for further proceedings, with defendant being allowed to offer evidence to rebut the presumption that the dedication was for the full statutory four-rod width. *Kent Co Rd Comm v Hunting,* 170 Mich App 222, 231; 428 NW2d 353 (1988).

/s/ David H. Sawyer