STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF CASCADE, Plaintiff-Appellee,	UNPUBLISHED March 9, 2004
v	No. 240625 Kent Circuit Court
ADAMS OUTDOOR ADVERTISING, Defendant-Appellant.	LC No. 01-004520-CH

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Defendant Adams Outdoor Advertising appeals as of right from the trial court's order granting plaintiff Cascade Charter Township partial summary disposition. The court found that plaintiff had exclusive ownership of the property on which defendant long maintained a billboard without an agreement with the township. Plaintiff successfully asserted a municipality exception to the fifteen-year statute of limitations for recovery of real property, defeating defendant's claim by adverse possession. On March 21, 2002, the court dismissed plaintiff's claim for damages by stipulation of the parties, thereby requiring only that defendant remove the billboard. We affirm.

Defendants own a billboard first erected in 1962 on property later purchased by plaintiff. The earliest documentary evidence in the lower court record is a billboard permit approved in November 1972 and set to expire in 1983. On September 28, 1973, plaintiff entered a land contract to purchase the real property from then owners William and Barbara Hitchcock for $55,000, subject to no existing tenants' rights. The Hitchcocks conveyed part of the property to plaintiff by warranty deed in 1975 and the remaining portion in 1978. The property was developed as a recreational park. At an unspecified time, plaintiff began asking defendant to remove the billboard from township property; defendant refused. Defendant did not dispute plaintiff's assertion that it has no agreement with plaintiff regarding the billboard.

On May 2, 2001, plaintiff filed a complaint against defendant, seeking removal of the billboard and damages. Defendant answered and claimed it obtained ownership by adverse possession and cited the fifteen-year statute of limitations for recovery of property, MCL 600.5801(4), as well as laches and estoppel. Plaintiff sought partial summary disposition on August 14, 2001, arguing that a municipality's property cannot be taken by adverse possession under MCL 600.5821(2), which states that the statute of limitations does not apply to municipalities attempting to recover "possession of any public highway, street, alley, or any other public ground." At the September 7, 2001 hearing, defendant did not dispute plaintiff's

assertion that the only issue was the scope of the term "public ground" in MCL 600.5821(2). The trial court held that defendant had no interest in the property that would create a right to maintain the billboard, thereby implicitly finding that the property fell within the definition of "public ground." The court granted plaintiff partial summary disposition on that basis and defendant filed this appeal.

The only issue on appeal is whether the disputed property is "public ground" within the meaning of MCL 600.5821(2), thus protecting plaintiff from defendant's adverse possession claim. We review de novo a court's decision on a motion for summary disposition. Statutory interpretation is a question of law that is also considered de novo on appeal. *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature as expressed in the statute. *Id*. The first criterion in determining intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999).

MCL 600.5821 provides:

> (1) Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.
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> (2) Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.

Defendant argues that a park is not "public ground" within the meaning of this statute because, read in context, this phrase should be interpreted to mean only property similar to those specifically listed in the statute—highways, streets, and alleys. Thus, "other public ground" can mean only rights-of-way. Plaintiff asserts that the phrase's ordinary meaning encompasses any property available for common use by the general public, which includes parks. Because we find the scope of the phrase "public ground" to be ambiguous, judicial interpretation is warranted. *In re MCI, supra* at 411.

In support of its interpretation, defendant cites two doctrines used to aid statutory interpretation, *noscitur a sociis* and *ejusdem generis*. *Noscitur a sociis* means that a phrase is given meaning by its context; when interpreting a phrase, this Court should consider the language surrounding it and the general context. *Tyler v Livonia Pub Schools*, 459 Mich 382, 390-391; 590 NW2d 560 (1999). The doctrine of *ejusdem generis* generally applies when a list of specific items is followed by a general term. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 242; 615 NW2d 241 (2000). The general words are presumed to include only items of the same kind, class, character, or nature as those listed. *Id.*

Strict application of these doctrines do suggest that "public ground" should be presumed to include only property on which the public travels, thereby excluding parks, which are used only incidentally for travel. However, rules of statutory interpretation are only tools to assist in

determining legislative intent and cannot prevail over clear intent. *Terzano v Wayne Co*, 216 Mich App 522, 527; 549 NW2d 606 (1996). The question therefore becomes whether the Legislature intended the phrase "public ground" to have a broad or narrow scope. In order to resolve this issue, we begin with a review of the history and evolution of this statute.

Under the common law, a party cannot claim ownership of state property by adverse possession. *Gorte v Dep't of Transportation*, 202 Mich App 161, 166; 507 NW2d 797 (1993). Michigan, however, long ago allowed adverse possession claims by imposing on the state a twenty-year limitations period for recovery of property. See 1897 CL 9724. Municipally owned roads were subject to adverse possession claims under this state's common law and were not exempted by statute. *Rindone v Corey Community Church*, 335 Mich 311, 316; 55 NW2d 844 (1952); *Pastorino v Detroit*, 182 Mich 5, 10; 148 NW 231 (1914); *Hill v Houghton Twp*, 109 Mich App 614, 616-617; 311 NW2d 429 (1981).

In 1907, the Legislature enacted a provision stating that adverse possession did not apply against "the public" regarding "any public highway, street or alley, or of any public grounds, or any part or portion thereof, in any township, village or city in this State." 1907 PA 46. This statute used language very similar to that found in the current MCL 600.5821(2), except it did not limit claims by only municipalities but rather "the public" in general. Eight years later, the Legislature changed the law significantly. The exception still existed in essentially the same form, but was applicable only to municipalities, and a separate provision expressly stated that a fifteen-year limitations period applied to all state property, thus making it clearly susceptible to adverse possession claims. See 1915 PA 314. The same provisions continued to exist for many years, although they were occasionally moved to different statutes as the Legislature reorganized the laws. See 1929 CL 13964(3); 1929 CL 13974; 1948 CL 609.1(3); 1948 CL 609.11. The only modification was that the municipality provision's punctuation was changed to its current form; the "s" was removed from "public grounds." 1961 PA 236.

What is clear from the legislative history is that, from 1915 to 1988, the Legislature gave municipalities and the state different protection from claims of adverse possession. In 1988, the Legislature enacted the current provisions found in MCL 600.5821(1) and (2). See 1988 PA 35; *Gorte*, *supra* at 166-167. The municipality exception was not altered, but "any land" owned by the state was no longer subject to the limitations period, eliminating claims of adverse possession. See *id.* The legislative analysis noted that the state had too much property to monitor and the public cost was too great when property was lost by adverse possession. Senate Legislative Analysis, SB 375, October 29, 1987. The analysis did not address whether the Legislature intended to make state protection comparable to or greater than municipality protection. While the "any land" language in MCL 600.5821(1) could be interpreted as broader in scope than "public ground" as used in MCL 600.5821(2), the language difference could also simply reflect the general changes in language between 1907 and 1988.

The phrase "public ground" or "public grounds" has also been used frequently in statutes. It is often found in lists next to specifically named transportation conduits, such as highways and streets, as in this case. See, e.g., MCL 67.7; MCL 67.13; MCL 67.14; MCL 67.15; MCL 102.1. The term is also repeatedly contained in lists specifically referencing parks and playgrounds. See, e.g., MCL 67.4; MCL 100.1; MCL 100.3; MCL 125.51; MCL 125.52. And the phrase is used in statutes that specifically mention streets and alleys as well as parks. MCL 71.12; MCL 73.1; MCL 87.22; MCL 105.1; MCL 117.4e; MCL 125.51 *et seq.*; MCL 286.221. For instance,

MCL 87.22 provides that it is the street commissioner's duty to oversee repairs and improvements to "highways, streets, sidewalks, alleys, bridges, reservoirs, drains, culverts, sewers, public grounds and parks within the city . . . ." While MCL 73.1 states that a village may condemn private property

> for opening, widening, altering, and extending streets, alleys, and avenues; for the construction of bridges, public buildings, and other public structures; for public grounds, parks, marketplaces, and spaces; for public wharves, docks, slips, basins, and landings on navigable waters; for the improvement of sanitary sewers, drains, ditches, storm water systems, water supply systems, and watercourses; for public hospitals; and for other lawful and necessary public uses.

Notably, MCL 67.36 refers to docks and wharves being on either "public grounds" or "the property of private individuals," suggesting that "public grounds" simply means public property. This broad definition is supported by the phrase's usage in MCL 125.51 *et seq*. MCL 125.52 authorizes a municipality to adopt a plat certified by it so long as notice is given to the land-owners "located within or abutting on the new lines of such proposed streets, ways, places, parks, playgrounds *or other public grounds* or extensions thereof designated on the plat." Emphasis added. And the phrase is also used broadly in MCL 286.221, which states that a "municipality, park board, or other board or person in control of public grounds" may apply to the commissioner of agriculture for an inspection of any portion of the public grounds.

An examination of past applications of the municipality exception fails to clarify the proper scope of "public ground" as used in MCL 600.5821(2), as it appears that no case has directly addressed the issue. But we do find that a review of cases referring to the phrase in other contexts is helpful to gain insight as to its meaning. In *Patrick v Young Men's Christian Ass'n of Kalamazoo*, 120 Mich 185, 191-192; 79 NW2d 208 (1899), our Supreme Court discussed the phrase "public ground" in a statute regarding dedication of public property, explaining that the phrase was ordinarily defined as "ground in which the public has common use."[1]

In *Grand Haven Twp v City of Grand Haven*, 33 Mich App 634, 641; 190 NW2d 714 (1971), this Court noted that one of the ordinary definitions of "park" included "any piece of public ground, generally in or near a large town, laid out and cultivated for the sole purpose of pleasure or recreation." And in *Baldwin Manor, Inc v Birmingham*, 341 Mich 423, 430; 67 NW2d 812 (1954), our Supreme Court noted that a dedication of land as "public grounds" was "an unrestricted dedication permitting any public use," thus suggesting that the term is extremely broad. Additionally, the Court has described a fountain as being "on public grounds and in [the city's] most beautiful park," *Hosmer v Detroit*, 175 Mich 267, 271; 141 NW 657 (1913), and also indirectly labeled as "public grounds" a property it called "Voigt Park" in *Newberry v*

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[1] Defendant cites *Patrick*, *supra*, as support for its claim that property must be "dedicated to a public use" to be public ground, distinguishing "dedicated" from "employed for a public purpose." However, we find defendant's reliance misplaced. The *Patrick* Court merely noted that the dedication statute expressly applied only to "public ground." The Court did not state that property is only "public ground" if it has been dedicated. *Id*. at 191-192.

Detroit, 164 Mich 410, 411, 413; 129 NW 699 (1911). We believe that these decisions most likely reflect the meaning of the phrase "public ground" as the Legislature intended. It is a broadly construed term used to refer to publicly owned property open to the public for common use.

Therefore, we hold that in the context of MCL 600.5821(2), which refers to "any public highway, street, alley, *or any other public ground*," the Legislature intended the phrase to be inclusive. Accordingly, we find that the property at issue in this case is "public ground" and MCL 600.5821(2) operates to protect plaintiff from claims of adverse possession. Because defendant's alleged adverse possession occurred long after the Legislature enacted the 1907 statute, the trial court did not err when it held that defendant was unable to claim adverse possession of the disputed property. *Hill, supra* at 617.

Affirmed.

/s/ Michael R. Smolenski
/s/ David H. Sawyer
/s/ Stephen L. Borrello