

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WEBER LAND & DEVELOPMENT, LLC, and  
WEBER SAND & GRAVEL, INC.,

UNPUBLISHED  
March 25, 2004

Plaintiffs-Appellees,

v

DEERFIELD TOWNSHIP,

Defendant-Appellee,

and

LARRY LOCKREY, GLADYS LOCKREY,  
WILLIAM TOLEN, JUDITH TOLEN, JAMES  
TOLEN, MARILYN TOLEN, ROBERT TOLEN,  
ROSE TOLEN, LYNDON JOHNSON, and  
SHARON JOHNSON,

Intervening Defendants-Appellants.

No. 245392  
Lapeer Circuit Court  
LC No. 01-030541-CH

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Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Intervening defendants (petitioners) appeal as of right from the trial court's order denying their petition for intervention and granting the parties' motion for entry of consent judgment. We affirm.

Plaintiffs purchased 143 acres of property in defendant Deerfield Township in 1995. The majority of the property was zoned R1, Residential Agricultural, while a small portion was zoned commercial. According to the township ordinances, quarrying and mining were permitted uses in the R1 district after special use approval was granted by the planning commission. Before the purchase, prior permits to allow commercial mining on the property had been granted to plaintiffs' predecessors in interest.

Plaintiffs allegedly took a cooperative approach when seeking special use approval. They retained an entity to perform an environmental impact statement (EIS) regarding the business operation. Additionally, when defendant township consulted with another entity regarding the environmental concerns, plaintiffs attempted to address the concerns raised by

defendant township and its residents. Plaintiffs' business operation became the subject of numerous commission meetings where residents attended and voiced their objections to approval of the mining activity. Plaintiffs were unable to obtain approval to operate through the planning commission and zoning board of appeals. Consequently, plaintiffs filed a complaint, alleging, in essence, that a taking had occurred. Plaintiffs noted that their purchase of the property was with the reasonable expectation that minerals could be extracted, consistent with the use by predecessors. Therefore, plaintiffs sought reversal of the township's position, contending that the decision to deny the special use had no basis in law or in fact and was arbitrary and capricious.

Defendant township filed an answer to the complaint, denying the allegations contained within the complaint and challenging the request for relief. Despite the opposition, petitioners, purportedly neighboring and adjacent property owners to plaintiffs' land, sought to intervene in the litigation as of right. Petitioners alleged that the criteria to allow intervention as of right was satisfied. Specifically, petitioners alleged that their motion was timely filed, the representation of their rights by defendant township may be inadequate, and it was possible that petitioners would be bound by the judgment.

After reviewing the pleadings for and in opposition to the motion to intervene, the trial court denied petitioners' motion. The trial court concluded that petitioners failed to demonstrate that the representation by defendant township would be inadequate. The trial court further held that this was a land use, not a zoning case. Consequently, petitioners would not be bound by the judgment in the action and could pursue their own cause of action. A written order delineating the trial court's denial of the petition for intervention was not filed with the trial court.

Seven months after the hearing regarding intervention, petitioners filed a pleading entitled "motion for restraining order to bar negotiations between plaintiff and defendant leading to consent judgment during pendency of litigation and appeals thereto." Specifically, petitioners alleged that, after the intervention hearing, it was understood that defendant township would submit an order reflecting the trial court's decision. However, an order was never submitted. Petitioners alleged that the failure to submit an order violated their due process rights and pursuit of appellate remedies. Petitioners requested an order barring any settlement negotiations and sanctions for the failure to timely submit an order. Defendant township and plaintiffs opposed the motion, noting that the court rules did not limit the submission of an order by the prevailing party. Consequently, petitioners could have submitted their own order documenting the trial court's ruling to seek relief at the appellate level. It was alleged that the late objection was an obstruction of the judicial process for political purposes. Therefore, the parties to the litigation asked for sanctions against petitioners. On September 17, 2002, an written order denying petitioners' request for intervention was entered.

On September 25, 2002, petitioners filed a motion for relief from judgment or order, a motion for stay of proceedings pending disposition of motion for relief from judgment, and an emergency motion for rehearing or reconsideration of the denial of petitioners' motion for intervention as of right. Petitioners also sought to name additional intervening defendants to the petition. They presented supplemental information to the trial court that had not been presented with the first motion seeking intervention. It was alleged that the information was not available at the time of the original hearing addressing intervention. Petitioners cited to quotations from township officials in newspaper articles indicating that settlement was in the best interests of

defendant township. It was alleged that this information demonstrated that their interests would not be represented by defendant township. Moreover, petitioners alleged that defendant township had committed a fraud upon the court when it was represented that they would adequately protect petitioners' interest.

In response, the parties to the litigation alleged that the documentation submitted by petitioners did not substantiate the allegations raised by petitioners. Additionally, the parties to the litigation questioned petitioners' failure to challenge the trial court's ruling regarding intervention earlier, rather than after the parties had engaged in substantial negotiations toward settlement.

A hearing was held before the trial court.<sup>1</sup> The trial court noted that the township board was to render a decision regarding settlement on October 28, 2002. Therefore, the trial court continued the hearing until after the board decision. After the township board approved the settlement between plaintiffs and defendant township, the parties filed a motion for entry of consent judgment before the trial court. At this hearing, the parties addressed key points of the consent judgment before the trial court. Petitioners' counsel did not seek to respond to the consent judgment, but sought to proceed with the motion for stay, motion for relief from judgment, and the motion to add parties. The trial court noted that the motion for reconsideration had to be decided first, and oral argument would not occur. The trial court denied petitioners' motion for reconsideration. The trial court held that petitioners failed to present evidence of compromised negotiations, failed to present evidence of a lack of authority to negotiate and bind the settlement, and failed to present evidence of standing. The trial court further held that the motion merely presented the same issues previously ruled upon by the trial court. Lastly, the trial court reviewed the consent judgment and granted the motion for entry of judgment. The trial court directed counsel for defendant township to file an order documenting the rulings under the seven-day rule to ensure that there would be no dispute regarding the time frame for pursuit of appellate remedies.

Petitioners then sought to address the motion for relief from judgment. The trial court did not render a decision on the remaining motions. The trial court indicated that a decision was unnecessary because the request for intervention and reconsideration of the denial of intervention had not been granted by the trial court. Petitioners appeal as of right.

Petitioners first allege that the trial court erred in denying their request for intervention as of right. We disagree. A trial court's decision on a motion to intervene is reviewed for an abuse of discretion. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). MCR 2.209 governs intervention and provides:

**(A) Intervention of Right.** On timely application a person has a right to intervene in an action:

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<sup>1</sup> This hearing held on October 14, 2002, did not specify the motions that were considered by the trial court. The parties to the litigation asserted that petitioners' motion for restraining order was withdrawn after their responses to the motion were sent to petitioners' counsel. However, the trial court, during this hearing, questioned whether the motion for restraining order was premature in light of the fact that it was unknown whether the township board would agree to any settlement. It is unclear from the record whether the motion for restraining order was dismissed by petitioners.

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

**(B) Permissive Intervention.** On timely application a person may intervene in an action

(1) when a Michigan statute or court rule confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

**(C) Procedure.** A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107. The motion must

(1) state the grounds for intervention; and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

Intervention is defined in the civil law as "an action by which a third party becomes party in a suit pending between others." *Ferndale School District v Royal Oak Twp*, 293 Mich 1, 12; 291 NW 199 (1940). It requires timeliness of action on the part of the intervener. *Id.* Generally, one entering an action as an intervener must take the case as he finds it and cannot delay the trial of the cause. *Id.* "[A]n intervention in the exercise of an intelligent discretion by the trial court, will not be granted where the intervener has been guilty of laches after knowledge of the pendency of the suit, if any part of the same is thereby retarded, rendered nugatory or changes the position of the original parties to their detriment, although the original action has not resulted in a judgment." *Id.*

The general rule is that the municipality represents the citizen in litigation relating to municipal interests. *Id.* at 8. Where litigation is brought by or against a municipality, the taxpayer is heard through the accredited representative of the municipality, generally the municipality attorney. *Id.* at 9. If the taxpayer is misrepresented, if the attorney is not as able as counsel of his own choosing might be, if the litigation is ill advised or unfortunate, the remedy is the selection of another municipal attorney. *Id.* "Those chosen either directly or indirectly by the people to conduct a litigation for the city rather than the taxpayer himself must have control of such litigation. Petitioner must find something more substantial than his right as a taxpayer

before he can come into a case brought by the city.” *Id.* Where a motion discloses that “the applicant may have been sitting by during the entire period the suit was pending, watching the progress of events, waiting to see what would develop, and only after the end had been reached and he found the result to be unsatisfactory did he conclude to try his own hand. The motion having been addressed to the discretion of the court, its ruling cannot be reversed without a clear showing that it abused its authority.” *Id.* at 13.

“The rule for intervention should be liberally construed to allow intervention where the applicant’s interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996). However, intervention may be improper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action. *Id.* at 493.<sup>2</sup>

In *Oliver v State Police Dep’t*, 160 Mich App 107, 109; 408 NW2d 436 (1987), the minor’s mother attempted to intervene on her son’s behalf in the cause of action for injury to the minor’s father. The minor’s father filed a civil lawsuit against his employer alleging civil rights violations. Two other lawsuits were consolidated with the initial lawsuit. When the mother learned of an impending settlement of the consolidated lawsuit, she filed petitions for appointment as next friend of the minor and a petition for the minor’s intervention. The minor’s claims were based on loss of parental society and companionship. The trial court concluded that the minor did not meet the requirements of MCR 2.209(A)(3) to establish a right of intervention.

On appeal, this Court held that there were three elements for intervention: (1) a timely request; (2) a showing that representation of the applicant’s interest by existing parties is or may be inadequate; and (3) a disposition of the action that may, as a practical matter, impair or impede the applicant’s ability to protect his interests. It was concluded that the minor’s application was timely, and representation may be inadequate because the father never attempted to represent the minor’s interests. However, this Court held that intervention as of right was properly denied because it was not established that disposition would impair the minor’s ability to protect his own interests. *Id.* at 115-116. *Because the minor had the ability to prosecute his own claim*, the trial court properly denied the motion. *Id.* at 116.

Although the court rule itself does not contain a requirement regarding standing, case law provides that the petitioners must also demonstrate standing to intervene in litigation. “Although [petitioners] have a basis to intervene as of right, they must also demonstrate that they have standing to assert their claims.” *Karrip v Cannon Twp*, 115 Mich App 726, 732; 321 NW2d 690 (1982).

As an initial matter, petitioners assert that timeliness is not at issue. However, in the manner in which this case was conducted, timeliness is at issue based on laches. While petitioners *initially* filed the motion to intervene in a timely manner, after the motion was denied an order did not enter. Petitioners waited seven months without any additional activity occurring

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<sup>2</sup> Petitioners cite *D’Agostini v City of Roseville*, 396 Mich 185, 186; 240 NW2d 252 (1976), for the proposition that three elements are required to intervene: “(1) timely application; (2) representation of the applicant’s interest by existing parties is or may be inadequate; (3) applicant may be bound by a judgment in the action.” *Id.* at 188. However, this decision was rendered under the prior version of the court rule. GCR 1963, 209.1(3). The court rule was subsequently amended to eliminate the requirement that the applicant may be bound by the judgment. *Oliver v State Police Dep’t*, 160 Mich App 107, 109; 408 NW2d 436 (1987); MCR 2.209(A)(3).

in the lawsuit. Then, when petitioners knew that the parties to the litigation were close to a settlement, petitioners filed a motion for restraining order, alleging that defendant township did not enter an order evidencing the denial of the motion to intervene. Consequently, it was alleged that petitioners were denied due process and their right to appeal. However, the court rule addressing entry of an order delineates the available procedures and does not limit the submission of the order by the prevailing party. MCR 2.602(B). The court rule addresses the procedure for entry of an order, and the plain language of the court rule, see *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 528-529; 672 NW2d 181 (2003), places no limitation on the party that submits the order. While traditionally the prevailing party may submit the order, there was nothing to prevent petitioners from submitting an order of their own. Moreover, petitioners waited seven months until they knew that settlement was approaching. If petitioners genuinely believed that they were deprived of due process or a right to appeal, there was nothing to preclude petitioners from seeking court assistance to compel defendant to prepare the order or to submit one on their own behalf.

Although petitioners filed the motion timely, the trial court repeatedly questioned petitioners' inactivity for seven months until settlement approached, and the failure to raise defendant township's omission in presentation of an order or petitioners' own entry of an order earlier. As previously stated, an applicant may not fail to act while a lawsuit is pending, watch the progress of events, and, when the end was reached, attempt to object to the conclusion of the lawsuit. *Ferndale School District, supra*. Under the circumstances of this case, we cannot conclude that the denial of the motion for intervention was an abuse of discretion. *Vestevich, supra*.

Moreover, petitioners failed to satisfy the standing requirement. *Karrip, supra*. The standing requirement was addressed in *Unger v Forest Home Twp*, 65 Mich App 614, 616; 237 NW2d 582 (1975). In that case, the appellant Unger filed a claim of appeal from the issuance of a building permit for the construction of an apartment/condominium complex by appellee township. The recipient of the permit, a construction company, was allowed to intervene in the lawsuit based on the parties' stipulation. However, when examining the position of Unger, it was concluded that he did not have standing to challenge the issuance of the permit:

In order to have any status in court to challenge the actions of a zoning board of appeals, a party must be "aggrieved," ... The plaintiff must allege and prove that he has suffered some special damages not common to other property owners similarly situated ...

It has been held that the mere increase in traffic in the area is not enough to cause special damages ... Nor is proof of general economic and aesthetic losses sufficient to show special damages. ... Consequently, when the plaintiff alleges facts showing only those type of damages, summary judgment against him is proper ...

John Unger in his claim of appeal to the circuit court and in one affidavit alleged that he owned real property in the township bordering on the same lake as the land in question. Those allegations showed no special damages. The only inferences one might draw from those stated facts are that the traffic on the lake might increase, and that property values in general for lake property might go down. As discussed above, those allegations are insufficient to prevent summary

judgment against the appellant [Unger] for lack of standing.” [*Id.* at 617-618 (citations omitted.)]

Furthermore, petitioners failed to establish the third requirement to permit intervention as of right. Specifically, petitioners failed to demonstrate that disposition of the action may as a practical matter “impair or impede the applicant’s ability to protect that interest.” MCR 2.209(A)(3). There is no indication that petitioners are precluded from filing their own cause of action to address their concerns. *Oliver, supra*. Accordingly, we cannot conclude that the trial court’s decision to deny was an abuse of discretion. *Vestevich, supra*.

We note that in support of their motion for intervention, petitioners raised serious allegations regarding violations of a voter’s right of referendum, violations of the Open Meetings Act, health concerns, and conflicts of interest. However, a statement of position by a party without citation to authority is insufficient to raise an issue. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002). A party may not leave it to this Court to search for authority to sustain a position. *Id.* It does not appear that petitioners could find support for their position. For example, petitioners asserted that their submission of petitions should have caused defendant township to place the issue of the mining of the property on the ballot for referendum. Case law is to the contrary. Actions by a zoning board are divided into “legislative” and “administrative” actions. *Palmer v Superior Twp*, 60 Mich App 664, 672-675; 233 NW2d 14 (1975). When a decision is based on general grounds, it is generally deemed to be legislative action. However, when a decision is based on individual grounds, it is generally characterized as administrative. A right of referendum extends only to *legislative* acts. *Beach v Saline*, 412 Mich 729, 730-731; 316 NW2d 724 (1982). A decision to acquire real estate was not subject to referendum because there was nothing inherently legislative about such a decision. *Id.* at 731. See also *Sun Communities v Leroy Twp*, 241 Mich App 665, 669; 617 NW2d 42 (2000) (approval of special use permit requests are essentially administrative in nature.) The decision at issue did not involve a township or area wide classification, but rather involved the issuance of a special use permit for a specific property. Therefore, it was an administrative decision that was not subject to referendum. *Beach, supra*. Accordingly, these blanket allegations regarding impropriety are insufficient to warrant reversal of the trial court’s decision regarding intervention.

Petitioners also allege that the trial court abused its discretion by denying their motion for reconsideration. We disagree. A trial court’s decision on a motion for reconsideration is reviewed for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). An abuse of discretion occurs when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Id.* It is not an abuse of discretion to deny a motion for reconsideration based on legal theory and facts that could have been pleaded or argued prior to the trial court’s original order. *Charbeneau v Wayne Co General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

In the motion for reconsideration, petitioners continued to raise the allegations that a conflict of interest was presented where the attorney for defendant township was provided by the township’s insurance provider, revealing that it only had an interest in settling the litigation. This blanket assertion was not supported with citation to authority. *Sherman, supra*. Nonetheless, the trial court held that a conflict of interest was not presented. The conclusion that

a conflict of interest exists is a question of fact and is reviewed under the clearly erroneous standard. *Camden v Kaufman*, 240 Mich App 389, 399; 613 NW2d 389 (2000). We cannot conclude that the trial court's conclusion in this regard was clearly erroneous. *Id.*

Petitioners also alleged that defendant township committed a fraud upon the court because the township supervisor gave statements to the newspapers indicating that the lawsuit should settle if possible. Petitioners alleged that these statements demonstrated that defendant township would not adequately address their interests. However, the adequacy of representation is only one element of the three required for intervention, and petitioners did not address the requirement regarding impairment of their ability to file their own lawsuit. *Oliver, supra*. Moreover, public policy is in favor of simplifying litigation and encouraging settlement. *Domako v Rowe*, 438 Mich 347, 361; 475 NW2d 30 (1991). "[I]n the practical realities of civil litigation, the vast majority of cases must be and are in fact settled. Wise judicial policy favors settlement between the parties." *Putney v Haskins*, 414 Mich 181, 189; 324 NW2d 729 (1982). "Deciding whether to try a case to judgment or to settle it involves elements of legal evaluation, of financial capacity to take risk, and of appetite for court room conflict which vary widely among litigants." *Farmer v Christensen*, 229 Mich App 417, 429; 581 NW2d 807 (1998) (citations omitted.) In light of the public policy of this state favoring settlements, the recommendation by the township supervisor and township counsel to settle does not establish a palpable error warranting reconsideration. Accordingly, the trial court did not abuse its discretion by denying the motion for reconsideration. *Churchman, supra*.

Furthermore, while petitioners criticize the statements and ultimate settlement by defendant township, petitioners acknowledge the high cost of litigation and asserted that they needed to intervene in the litigation because they could not afford to challenge the corporate plaintiff. Defendant township should not be forced to bear the cost of the litigation that petitioners either could not or were unwilling to bear themselves.

Petitioners next allege that the trial court erred in failing to hear oral argument with regard to the motions for relief from judgment or order, to amend to add parties, and for stay pending the motion for rehearing. We disagree. Because petitioners failed to meet their burden of proof regarding standing and the elements of intervention, the filing of additional motions was an exercise in futility that the trial court need and did not address. In any event, the trial court has discretion to eliminate or limit oral argument with regard to motions. MCR 2.119(E)(3); *American Transmissions, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 709; 609 NW2d 607 (2000).

Petitioners also assert that the trial court erred in failing to grant their request for an evidentiary hearing where it was alleged that defendant township committed a fraud upon the court. We disagree. Strict factual proof of a dissatisfied party's claim of fraud must be presented to the trial court. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002). Where a party fails to present specific allegations of fraud, the trial court need not proceed to an evidentiary hearing. *Id.* Defendant township's decision to engage in settlement negotiations and the limitation on scientific information did not present specific



allegations of fraud. Rather, it was a decision that involved elements of legal evaluation, the financial capacity to take risk, and the appetite for conflict. *Farmer, supra*. The trial court did not err by failing to hold an evidentiary hearing under the circumstances.<sup>3</sup>

Affirmed.

/s/ Jessica R. Cooper  
/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood

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<sup>3</sup> We note that petitioners also challenge the merits of the motion for relief from judgment, motion to add parties, and the entry of the consent judgment. Because petitioners were not admitted into the litigation, they are not entitled to challenge any decision on those motions. Indeed, the trial court did not address the merits of petitioners' remaining motions after it refused to permit intervention into the litigation. See *Miller v Inglis*, 223 Mich App 159, 163; 567 NW2d 253 (1997). We note, however, that those motions were merely repetitive of the allegations contained within the motions decided by the trial court. Lastly, since petitioners were not admitted into the litigation, they do not have standing to challenge the entry of the consent judgment. However, we note that the withholding of mineral or gravel rights through zoning is not permissible unless "very serious consequences" will follow therefrom. *Silva v Ada Twp*, 416 Mich 153, 159; 330 NW2d 663 (1982). The documentation submitted by petitioners failed to meet this standard.