STATE OF MICHIGAN

COURT OF APPEALS

GLADWIN COUNTY DRAIN COMMISSIONER,

Petitioner-Appellee,

v

WIGGINS LAKE PROPERTY OWNERS ASSOCIATION,

Respondent-Appellant.

UNPUBLISHED
November 17, 2005

No. 258055
Gladwin Circuit Court
LC No. 64-003080-CK

Before: Donofrio, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order revising the water level of Wiggins Lake and revising the boundaries of Chappel Dam Assessment District. We affirm.

I. Special Assessment District

Respondent first argues that there was no special assessment district in existence at the time of the hearing and, therefore, the trial court was required to create a new special assessment district.[1] We disagree. We review conclusions of law de novo and findings of fact for clear error. *Ambs v Kalamazoo Co Rd Comm'n*, 255 Mich App 637, 651; 662 NW2d 424 (2003).

The 1965 Order creating the Chappel Dam Special Assessment District provided in relevant part:

[1] Respondent does not properly present any issue on appeal regarding how the trial court might otherwise have erred in modifying the boundaries of the special assessment district. As such, we limit our analysis simply to those issues set forth in respondent's statement of questions presented on appeal, i.e., whether a special assessment district existed or if the trial court was required to create a new one. MCR 7.212(C)(5); *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003).

> It is Ordered and Adjudged, on Motion of said Prosecuting Attorney, that there is hereby established per said Act 146 of the Public Acts of 1961, a Special Assessment District of said Chappel Dam, and that the properties within said Special Assessment District are those as set forth in the Petition,
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> It is further Ordered and Adjudged, on Motion of said Prosecuting Attorney, that said Special Assessment District is under the jurisdiction of the Gladwin County Drain Commissioner and that he shall spread a tax in accordance with the tax laws upon the properties in said district for the period of 20 years for the purpose of raising the sum of $4,000.00 per year, or in the event said Drain Commissioner shall determine that it is not necessary to raise that amount in any given year, then that amount that would be a fraction of said $4,000.00 for the maintenance of said dam . . . and that said tax shall be spread in accordance with the apportionment of benefits as filed by said Drain Commissioner, or until the further order of this Court.

The 1965 Order does not create a sunset provision for a special assessment district, but rather, creates a sunset provision for the assessment of the yearly tax. This conclusion is supported by the structure and language of the order itself and by provisions of the Inland Lake Level Act, (ILLA) of 1961 MCL 281.61 *et seq*. A plain reading of the 1965 Order indicates that the court contemplated two distinct actions: first, the creation of a district and, second, the levying of a $4,000 per year tax on property in that district. The twenty-year limitation is contained in the provision for the tax and clearly limits the yearly tax. This interpretation of the order is consistent with the ILLA of 1961. The version of the ILLA in force in 1964 required court approval for any yearly project expenditures or maintenance in excess of $500. 1961 PA 146, §§ 24-25, MCL 281.84 - MCL 281.85; 1962 PA 25, § 5, MCL 281.65. Accordingly, to avoid a yearly petition for expenditures in excess of $500, the circuit court, in 1964, was required make a multi-year determination as to expenditures. Therefore, the 1964 Order read together with the ILLA of 1961 indicates that while the tax was set to expire in twenty years, the assessment district itself remained viable and could be taxed for maintenance and repair expenditures that were not in excess of a statutory amount.

Similarly, the 1974 Order did not create a sunset provision for the special assessment district. The 1974 Order provided in pertinent part:

> It is Ordered and Adjudged that part of the original judgment of the court is hereby amended as follows:
>
> It is Ordered that the Drain Commissioner shall forthwith make repairs upon said Chappel Dam and dikes up to said sum of $55,000.00, using any funds on hand and temporarily financing said unpaid expenditures as provided by the General Drain Law, that the remainder of said $55,000.00 expenditure for all repairs and maintenance of said Chapppel Dam for 1974 shall be paid by assessing the special assessment district present assessment rates including 25% to be paid by Gladwin County at Large,
>
> It is further Ordered that said special assessment district shall be enlarged as of 1975 at which time the properties owned by Gladwin County and the

> Department of Natural Resources that benefit from said dam shall be included in the special assessment district and reassessment shall be made by said Drain Commissioner as set forth by the General Drain Law at which time the assessment roll ordered by the court shall no longer be taxed in 1975 and future years.
>
> Said district shall be taxed for a term of 20 years starting with 1975 at the rate of $6,000.00 per year for the necessary maintenance of said Chappel Dam and water level per statute.
>
> It is further Ordered that the Department of Natural Resources shall contribute in 1974 to the 25% that is assessed at large to Gladwin County a pro rata share of the total cost in 1974 at the rate of assessment that will be assessed in 1975 upon the property of said district in 1975, subject to the approval of said department that said contribution is reasonable.
>
> It is further Ordered that the remainder of said Judgment shall remain in full force and effect.

Again, the language of this order indicates that the court intended to set a limit on the number of years for which the district could be taxed in excess of the statutory amount. By 1974 the relevant provision of the ILLA had been modified to allow the "department" to expend amounts exceeding $1,500 "without petition." 1969 PA 175 § 24, MCL 281.84. In 1978, Michigan's attorney general examined this provision and determined that although MCL 281.85 was repealed, under MCL 281.84 the county was required to file a petition in the circuit court if it wished to spend more than $1,500. OAG, 1978, No 5388 (November 16, 1978). The enlarged assessment district created by the 1974 Order remained viable beyond the twenty year limit on expenditures and could be taxed for maintenance and repair expenditures that were not in excess of a statutory amount because neither the 1965 Order nor the 1974 Order extinguished the assessment district.

Accordingly, because there was a special assessment district in existence, the trial court was not required to create a new one.

II. Recusal

Respondent next argues that the trial court should have recused itself from this case. However, respondent waived appellate review of this issue by declining the trial court's offer to recuse itself. On the morning of the hearing on this matter, the trial court disclosed to the parties that it owned property on the Cedar River approximately three miles downriver from the dam. The trial court asked the parties whether it should recuse itself. Respondent did not demand recusal at that time. Rather, he proceeded to take part in the hearing without objection. "Because error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence," respondent waived appellate review of this issue. *Farm Credit Services of Michigan's Heartland, PCA,* 232 Mich App 662, 683-684; 591 NW2d 438 (1998).

Affirmed.

/s/ Pat M. Donofrio
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly