

STATE OF MICHIGAN
COURT OF APPEALS

MUSKEGON COUNTY ROAD COMMISSION,

Plaintiff-Appellant,

v

MARY L. PREMO, LAWRENCE S. VIHTELIC,
and LILLIAN VIHTELIC,

Defendants-Appellees.

UNPUBLISHED

November 13, 2008

No. 280300

Muskegon Circuit Court

LC No. 06-044891-CH

MUSKEGON COUNTY ROAD COMMISSION,

Plaintiff-Appellee,

v

MARY L. PREMO, LAWRENCE S. VIHTELIC,
and LILLIAN VIHTELIC,

Defendants-Appellants.

No. 282104

Muskegon Circuit Court

LC No. 06-044891-CH

Before: Markey, P.J., and Sawyer and Kelly, JJ.

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

I agree that the circuit court properly dismissed plaintiff's action, finding that it lacked standing in Docket No. 280300, but I respectfully dissent in the majority's conclusion that the circuit court erred in not assessing sanctions against plaintiff in Docket No. 282104.

I am not persuaded that the court clearly erred when it denied defendants' motion for sanctions. The plaintiff in this matter set forth an arguably meritorious argument that it had standing based on its statutory authority and its related representation of the public's interests. Further, the trial court initially denied defendants' first motion for summary disposition because plaintiff had proffered evidence raising material questions of fact with respect to its claims for common-law dedication and highway by user, and at that point in the litigation, both parties presumed that plaintiff had requisite standing. I therefore do not believe that the trial court clearly erred when it denied defendants' motion for sanctions.

/s/ David H. Sawyer