STATE OF MICHIGAN

COURT OF APPEALS

IN RE PETITION OF CALHOUN COUNTY TREASURER.

CALHOUN COUNTY TREASURER,

Petitioner-Appellee,

v

WAYNE SWAFFORD and JOAN SWAFFORD,

Respondents-Appellants.

UNPUBLISHED
November 16, 2010

No. 293272
Calhoun Circuit Court
LC No. 08-001834-CZ

Before: CAVANAGH, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

In this foreclosure action for failure to pay real property tax, respondents appeal as of right the trial court's order that denied their objections to the foreclosure judgment and amended that judgment. Respondents also challenge the trial court's denial of their motion for reconsideration. We affirm.

This case stems from respondents' refusal to pay the expenses of mowing an unpaved strip of real property that lies between their two vacant parcels and the blacktopped portion of 12th Street in the West Side Park subdivision in the City of Springfield (the City). According to the subdivision's plat, 12th Street is 50 feet wide and is dedicated to the public. However, the blacktopped portion of 12th Street is not 50 feet wide. An unpaved strip lies on the area designated on the plat as 12th Street. The unpaved strip abutting respondents' parcels is approximately 11 feet wide. After the City mowed the unpaved strip in May 2006, it sent respondents a bill. Respondents refused to pay, and the City assessed the mowing costs as part of respondents' 2006 summer property tax bill.

Springfield Ordinance, § 18-62 imposes a duty on the owners of lots and parcels to destroy noxious weeds and female box elder trees that lie on their lots and parcels. Respondents argued below that they do not own the unpaved strip; thus, they were under no obligation to destroy noxious weeds and female box elder trees growing thereon. Following an evidentiary hearing, the trial court held that "the owner of land which is bounded on a public street owns in fee simple to the center of that street, subject to the easement of public way," and because

respondents "own the property which was mowed (subject to a public easement) the City had the authority to assess these costs to them."

On appeal, respondents claim that the trial court erred by applying law regarding common-law dedication where the plat of the West Side Park subdivision involved a statutory dedication. In particular, respondents maintain that if properly considered under statutory dedication principles, the City is the owner of the at issue strip of land and consequently, they cannot be held responsible for mowing it.

"A trial court's factual findings are reviewed for clear error and its conclusions of law are reviewed de novo." *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

Springfield Ordinance, § 18-62 provides:

> It shall be the duty of the owner of every lot of parcel of land in the city on which noxious weeds and female box elders trees are found growing to destroy such weeds and trees before they reach a seed-bearing stage and to prevent such weeds from perpetuating themselves. . . . [Emphasis deleted.]

Springfield Ordinance, § 18-64 provides the consequences of an owner's failure to destroy noxious weeds. It provides:

> If an owner, agent or occupant of property upon which noxious weeds or female box elder trees are growing shall refuse or neglect to destroy noxious weeds or female box elder trees within five days after receiving notice to do so, the code official may cause the destruction of such noxious weeds or female box elder trees to be done. All costs pertaining to the destruction of such noxious weeds or female box elder trees by the city shall be the personal obligation of the owner, agent or occupant and subject to civil collection. Alternatively, the city may assess against the property on the next general assessment roll of the city. [Emphasis deleted.]

The rules of contract interpretation apply to the interpretation of ordinances. *Gora v City of Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998). Thus, if the language of the City's ordinances is clear and unambiguous, the ordinances must be enforced as written. *Diamond v Witherspoon*, 265 Mich App 673, 684; 696 NW2d 770 (2005).

Respondents' assertion that the streets in the subdivision plat were dedicated to the public pursuant to statute, rather than by common law, is not contested by petitioner. What is at issue is whether, because the streets in the plat were dedicated pursuant to statute, the City, rather than respondents, owns the unpaved strip of 12th Street, such that respondents had no duty to destroy the noxious weeds and female box elder trees growing on the unpaved strip.

The distinction between statutory dedication and common-law dedication is that dedication under the relevant plat statute "'vest[s] the fee in the county, in trust for the municipality intended to be benefited, whereas, at common law, the act of dedication created only an easement in the public.'" *Kalkaska v Shell Oil Co (After Remand)*, 433 Mich 348, 354 n

11; 446 NW2d 91 (1989), quoting *Grandville v Jenison*, 84 Mich 54, 65; 47 NW 600 (1890), aff'd 86 Mich 567 (1891). When the public has an easement in a street, the "owners of land abutting [the] street are presumed to own the fee in the street to the center." *Thies v Howland*, 424 Mich 282, 291; 380 NW2d 463 (1985). However, even if the streets have been dedicated for public use pursuant to statute, the governing authority only obtains "nominal title" to the streets; it "acquires no beneficial ownership of the land." *Kalkaska*, 433 Mich at 357-358 (quotations omitted) (holding that the county did not have any propriety interest in, and could not sell, the gas and oil lying beneath the streets that were dedicated for public use pursuant to the relevant plat acts). The ownership rights not held by the governing authority are held in fee by the owners of land abutting the street. See *Kalkaska v Shell Oil Co (On Remand)*, 163 Mich App 534, 536; 415 NW2d 267 (1987), aff'd 433 Mich 348 (1989) (holding that the rights to the oil and gas underlying the platted streets were held in fee by the owners of abutting lots or those persons who reserved the rights in prior conveyances).

Respondents' two vacant parcels abutted 12th Street. Accordingly, respondents owned in fee the rights to the street that were not held by the City. Under these circumstances, we conclude that, for purposes of Springfield Ordinance, § 18-62, respondents were the owner of the unpaved strip of 12th Street that abutted their two lots. Therefore, we affirm the trial court's holding that, pursuant to the ordinance, respondents had a duty to destroy the noxious weeds and female box elder trees growing on the unpaved strip. See *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003) ("A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.").

Respondents also raise a number of arguments related to the trial court's findings of fact and legal conclusions. None of these arguments have any merit.

First, respondents complain that the City owns the unpaved strip. Respondents rely on the quit claim deed they received for the parcels, which states that they were receiving title to lots 84 and 85 in the West Side Park subdivision, and a letter from the City manager, in which the manager wrote that the City owned 12th Street. Respondents' reliance on either document to prove that the City owned the unpaved strip is misplaced. The rights to property are not established by letters of correspondence, but by deeds to the property and other recorded documents. In addition, when respondents obtained title to their parcels through the quit claim deed, they received all rights incident to the ownership of their two lots.

Second, respondents contend that the trial court's ruling, if left unchallenged, would result in a clear violation of constitutional prohibitions against involuntary servitude. See US Const, Am XIII and Const 1963, art 1, § 9. "Involuntary servitude is defined in federal case law as the coerced service of one person for another through the use, or threatened use, of law, physical force, or some other method that causes the laborer to believe that the laborer has no alternative to performing the service." *Blair v Checker Cab Co*, 219 Mich App 667, 673; 558 NW2d 439 (1996). Because respondents had some alternatives to mowing the unpaved strip, such as paying the City to mow it, even if distasteful, there is no involuntary servitude. *Id.*

Third, respondents insist that they complied with the local weed abatement ordinance, because they mowed their parcels. As discussed previously, however, respondents are the owners of the unpaved strip for purposes of Springfield Ordinance, § 18-62. At the evidentiary hearing, Wayne Swafford admitted that he never mowed the unpaved strip, notwithstanding

several notices from the City demanding him to do so. Accordingly, respondents failed to comply with the ordinance.

Fourth, respondents believe that their timely tendered payment for all taxes on their parcels (but not the mowing costs) to the City and the City's subsequent rejection constituted a discharge. Respondents rely on a provision in Article 3 of the Uniform Commercial Code (UCC) regarding tender of payment. See MCL 440.3603(2). We are not convinced that the issuance of a summer property tax bill constitutes a commercial transaction such that the UCC provision applies. See MCL 440.1102(2). Even if the UCC applied, the summer property tax bill is not an "instrument," see MCL 440.3104(1), (2); thus, MCL 440.3603(2) is inapplicable.

Fifth, respondents argue that there was no authority for the City to assess mowing costs as a tax. Pursuant to MCL 247.64(2), the Legislature granted the City the authority to enact and enforce its weed abatement ordinance, including authority to place liens for costs incurred by the City for failure of property owners to destroy weeds. The Legislature further authorized the City to enforce such liens "by ordinance passed by the governing body." *Id.* In its relevant ordinance, the City opted to "assess against the property [the costs incurred by the City to destroy the weeds] on the next general assessment roll of the city." The Legislature clearly authorized the City to impose a duty on property owners to destroy noxious weeds or female box elder trees, to destroy such weeds when the property owners failed to do so, to assess any expenses incurred by the City to the property owners, and create a lien against the property in the amount of the expenses, and to then enforce the lien, including "by ordinance passed by the governing body of the . . . city." Respondents' argument is without merit.

Sixth, respondents present an unpreserved claim that the mowing fee constituted an improper tax contrary to the Headlee Amendment. See Const 1963, art 9, § 31. We find it unnecessary to address the alleged Headlee violation or even address whether the Amendment applies, because respondents failed to comply with the one-year statute of limitation applicable to Headlee Amendment claims. See MCL 600.308a(3).

Finally, respondents complain that the trial court abused its discretion in denying their motion for reconsideration. See *Shawl v Spence Bros, Inc*, 280 Mich App 213, 218; 760 NW2d 674 (2008). Respondents' allegations of error regarding the trial court's ruling merely presented the same issues ruled on by the trial court and other issues that did not constitute palpable errors. MCR 2.119(F)(3). The trial court did not abuse its discretion in denying respondents' motion for reconsideration, where the ruling was within a range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Affirmed. Petitioner, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher