STATE OF MICHIGAN

COURT OF APPEALS

CHARTER TOWNSHIP OF LYON, Plaintiff-Appellant,	UNPUBLISHED December 16, 2010
v	No. 293531 Oakland Circuit Court
JAMES C. HUFFMAN and BRENDA D. HUFFMAN, Defendants-Appellees.	LC No. 2007-086639-CC

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Plaintiff, Charter Township of Lyon (the township), appeals as of right the circuit court's final order in this condemnation action. We reverse and remand.

The township argues that the circuit court erred as a matter of law in awarding to defendants, James C. Huffman and Brenda D. Huffman (defendants), attorney fees in the amount of one-third of both (1) the spread between the township's original good-faith written offer for the land to be taken and the ultimate award of just compensation; and (2) the amount of special assessments that the township had planned to impose on defendants' property. We agree.

Findings of fact on which a circuit court bases an award of attorney fees are reviewed for clear error, *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005), and conclusions of law are reviewed de novo, *Heritage Resources, Inc v Caterpillar Fin Servs Corp*, 284 Mich App 617, 631; 774 NW2d 332 (2009). Statutory interpretations are reviewed de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 49; 718 NW2d 386 (2006).

Michigan follows the American rule, in which a party losing on the merits of a court action is not required to pay the winning side's attorney fees, unless the contrary is provided-for by contract, statute, court rule, or a common-law exception. *Nemeth v Abonmarche Dev*, 457 Mich 16, 37-38; 576 NW2d 641 (1998). The uniform condemnation procedures act provides for a prevailing property owner (an owner who receives more than the condemning authority's good-faith written offer) to receive all or part of his attorney fees. MCL 213.66(3).

This Court gives effect to the Legislature's intent, as expressed in the statute's terms, giving unambiguous words of the statute their plain and ordinary meanings. *In re Kostin Estate*, 278 Mich App 47, 57; 748 NW2d 583 (2008). When construing a statute, this Court begins by

consulting the specific statutory language. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). "'When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written.'" *Reicher v SET Enterprises*, 283 Mich App 657, 662; 770 NW2d 902 (2009), quoting *McManamon v Redford Charter Twp*, 273 Mich App 131, 135; 730 NW2d 757 (2006). This Court does not interpret a statute in a way that renders any statutory language surplusage or nugatory. *Snyder v Advantage Health Physicians*, 281 Mich App 493, 501; 760 NW2d 834 (2008).

"'[A statutory] construction [that] best accomplishes the statute's purpose is favored.'" *Netter v Bowman*, 272 Mich App 289, 300; 725 NW2d 353 (2006), quoting *Bio-Magnetic Resonance, Inc v Dep't of Public Health*, 234 MA 225, 229; 593 NW2d 649 (1999). "A statute must be read in its entirety[,] and the meaning given to one section arrived at after due consideration of other sections[,] so as to produce, if possible, an harmonious and consistent enactment as a whole." *State Treasurer v Wilson*, 423 Mich 138, 145; 377 NW2d 703 (1985).

MCL 213.66(3) provides:

> If *the amount finally determined to be just compensation* for the property acquired exceeds the amount of the good faith written offer . . . the court shall order reimbursement in whole or in part to the owner by the agency of the owner's reasonable attorney's fees, but not in excess of 1/3 of the amount by which *the ultimate award* exceeds the agency's written offer . . . . [Emphases added.]

Because of the highlighted language in the first clause of MCL 213.66(3), we conclude that the phrase "the ultimate award" refers to the amount of just compensation determined to be owing for the property rights acquired. Any other reading would place greater weight, indeed determinative weight, on a dependent clause ("but not in excess . . ."), and would fail to interpret the dependent clause in light of the first introductory clause in the sentence (the "if" clause). But the statute must be read as a whole, with meaning given to every clause. *Wilson*, 423 Mich at 145.

Further, the circuit court erred in concluding that the township was "taking" special assessments. The special assessment district is set up in a way that allows the property owners to vote on the establishment of the district. Essentially, if the owners of 50 percent of the land area approve, the district can be established. This is very different from "taking" real property. It is the imposition of a quasi-tax, or a blending of a tax and a user fee, since there is a vote by property owners on whether to impose the special assessments. What is more, a special assessment is not a taking unless there is no reasonable relationship between the benefit from the project and the assessment. *Dixon Rd Group v City of Novi*, 426 Mich 390, 401-403; 395 NW2d 211 (1986). No evidence was presented by defendants on this point and special assessments were not imposed with finality on defendants' property.

Here, the award of just compensation was $215,000. That was the total that was determined to be due and owing as just compensation. All other components of the money determined to be owing by the township were attorney fees, interest, or costs. The just compensation was $215,000 only. The effort to set up a special assessment district was a

separate process from the condemnation, for the township could have condemned the property for the project without setting up a special assessment district. And, in order to challenge the proposed special assessments, the defendants would have had to appeal to the Michigan Tax Tribunal.[1] The tax tribunal act, MCL 205.701 *et seq*., grants the Michigan Tax Tribunal exclusive jurisdiction to decide various property tax matters based on either the subject matter of the proceeding (e.g., a direct review of a final decision of an agency relating to special assessments under property tax laws) or the type of relief requested (i.e., a refund or redetermination of a tax under the property tax laws). *Wikman v City of Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982); *In re Petition of Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 111; 777 NW2d 507 (2009). Therefore, the circuit court lacked subject-matter jurisdiction to entertain a challenge to the special assessments.

Also, the special assessment district was not finally established. The township clerk never confirmed the roll. As plaintiff correctly argues, a property owner cannot challenge a special assessment until the roll is endorsed. *Highland Howell Dev Co, LLC v Marion Twp*, 478 Mich 932, 933; 733 NW2d 761 (2007). Therefore, attorney fees on the imposition of the special assessments could not be awarded, since the special assessments were not finally imposed.

Defendants cite *Dep't of Transp v Dennis*, 133 Mich App 207, 210-212; 349 NW2d 261 (1984), in which this Court held that the term "ultimate award" in MCL 213.66(3) was broader than the phrase "just compensation," and included interest on the amount of just compensation for the property rights taken. The panel held that "ultimate award" included all recovery "immediately generated by the attorney's performance." *Id*. at 212.

Dennis is not binding, MCR 7.215(J)(1), and we decline to follow it. Even if it were binding, it should be limited to its facts, and the phrase "ultimate award" should not include a situation, like here, where a condemning authority voluntarily abandoned a special assessment process during the pendency of separate and independent condemnation proceedings. Furthermore, even if we apply *Dennis* here, we hold that the abandonment of the special assessments was not "immediately generated" by defense counsel's performance, because the resolution terminating the special assessment districting process stated *numerous other substantial and unrefuted* reasons for terminating the process:

> [T]he Board has received further advice, consultation and opinions from its Consulting Engineers and the Township Attorney that *there is a legitimate legal issue as to whether or not the properties which the Township planned to [specially] assess would have benefited [to the degree of] at least 50%* of the cost of their assessment as set against the increase in the value of their properties. As the purpose of a ring road is to divert public traffic around the Five Points intersection, it can easily be argued that 100% of the cost of construction of the ring road is totally a public benefit. Also, the proposed Special Assessment

[1] A protest of the proposed special assessment is required in order for the Michigan Tax Tribunal to acquire jurisdiction of any dispute involving the special assessment. There was no evidence on whether defendants protested the proposed special assessments at the public hearings.

> District assessments have adversely complicated the condemnation process in the Township's attempt to purchase the necessary right-of-way for the road. Further, as the Township has received written and oral objections from a portion of the affected property owners, it is conceivable that *the Township would find itself in a position of defending a multitude of assessment appeals in front of the State Tax Tribunal*. The Bonding Attorney has advised that the Special Assessment Bonds would not be issued while these appeals are pending and therefore the entire project would be delayed . . . . [Emphases added.]

This termination resolution then gave another reason for abandoning the special assessment: "[T]he Board has received advice from its financial consultant that the *Township can construct the unimproved portion of the ring road using Capital Improvement Bonds only*[,] and that the process and timing of selling these Bonds would meet the goal of the Township to have the road completed during the current year." (Emphasis added). Thus, it cannot be said that the end of the special assessment process immediately resulted from the defense attorneys' efforts. At most, the termination was tenuously related to the defense attorneys' efforts, since there was unrefuted evidence of other reasons for the termination. Insofar as the circuit court found, as a fact, that the termination of the non-final special assessments immediately resulted from the defense attorneys' efforts, the circuit court clearly erred.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood