

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM Q. TINGLEY, III,

Plaintiff-Appellant,

v

WARD A. KORTZ, 900 MONROE, L.L.C., 940  
MONROE, L.L.C., CITY OF GRAND RAPIDS,  
DICKINSON WRIGHT, P.L.L.C., DYKEMA  
EXCAVATORS, INC., FIFTH THIRD  
BANCORP, PIONEER, INC., and SUPERIOR  
ENVIRONMENTAL CORP.,

Defendants-Appellees.

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FOR PUBLICATION

June 24, 2004

9:05 a.m.

No. 245974

Kent Circuit Court

LC No. 02-009503-CE

Official Reported Version

Before: Meter, P.J., and Wilder and Borrello, JJ.

METER, P.J. (*dissenting*).

I respectfully dissent because plaintiff (1) failed to preserve for appeal the issue on which the majority bases its ruling and (2) acquiesced in having the chief judge of the circuit court review the merits of the instant lawsuit. I would affirm.

The majority reverses the trial court's ruling on the basis of an issue not raised by any party below. As noted in *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993), issues raised for the first time on appeal generally are not subject to review absent "exigent circumstances." No exigent circumstances are present here. Moreover, not only was the issue deemed dispositive by the majority not raised below, it also was not raised on appeal. Therefore, "this case presents a much stronger case than *Booth* for declining to address the . . . issue, because in *Booth*, a party had at least raised the issue on appeal." *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), modified 468 Mich 881 (2003).

Additionally, plaintiff acquiesced in the procedure deemed faulty by the majority. Indeed, plaintiff filed a "Request for Determination" with the chief judge, in which he specifically asked the chief judge to determine whether the instant lawsuit was frivolous. The chief judge simply complied with this request, stating, inter alia, "It's my opinion that this is essentially the same lawsuit that you had in front of Judge Soet and should not have been accepted by our court. So I will dismiss this case as having been improperly filed, and I will

award sanctions to the defendants[.]" To rule for plaintiff on appeal, i.e., to reverse the trial court's judgment in this case, would be allowing plaintiff to "harbor error as an appellate parachute," an action disallowed by this Court. See *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989) ("[a] party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute").

Further, I find no merit to the issues plaintiff actually does raise in his appellate brief.

I would affirm.

/s/ Patrick M. Meter