

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH LASH,

Plaintiff-Appellant,

v

CITY OF TRAVERSE CITY,

Defendant-Appellee.

FOR PUBLICATION

June 1, 2006

9:00 a.m.

No. 263873

Grand Traverse Circuit Court

LC No. 04-024067-CL

Official Reported Version

Before: Zahra, P.J., and Murphy and Neff, JJ.

ZAHRA, P.J. (*dissenting in part*).

I respectfully dissent from the conclusion of the majority that plaintiff has a private right of action for money damages. I conclude that plaintiff has standing to challenge the city's interpretation of MCL 15.602 and can therefore enforce the statute through a declaratory action. Thus, contrary to the majority, I conclude that there is no implied private right of action to recover money damages under MCL 15.602. Second, a majority of this panel disagrees with the lead opinion's conclusion that MCL 15.602 requires plaintiff to reside within 20 road miles of the city's nearest border. Rather, a majority concludes that MCL 15.601 *et seq.*, when read in its entirety, requires the 20-mile distance referred to in MCL 15.602 to be measured in a straight line. I would reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

I. Statutory Construction

In addressing both issues presented in this case, we are called on to interpret MCL 15.601 *et seq.* "[O]ur primary task in construing a statute, is to discern and give effect to the intent of the Legislature." *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004), quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "The words of a statute provide 'the most reliable evidence of its intent . . .'" *Id.* (citation omitted); see also *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). "Statutory language should be construed reasonably, keeping in mind the purpose of the statute." *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001) (citation omitted). The fair and natural import of the terms employed, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). The words used by the Legislature are given their common and ordinary

meaning. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

If the statutory language under review is clear, the Legislature is presumed to have intended the meaning it plainly expressed. Courts may not speculate about the probable intent of the Legislature beyond the language expressed in the statute. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). "If the statutory language is unambiguous, we must presume that the Legislature intended the meaning it clearly expressed and further construction is neither required nor permitted." *Nastal, supra* at 720, citing *Sun Valley Foods Co, supra* at 236. "An ambiguity can be found only where the language of a statute as used in its particular context has more than one common and accepted meaning. Thus, where common words used in their ordinary fashion lead to one reasonable interpretation, a statute cannot be found ambiguous." *Colucci v McMillin*, 256 Mich App 88, 94; 662 NW2d 87 (2003).

II. No Private Right of Action for Money Damages

The residency of public employees act, MCL 15.601 *et seq.* (the Act), consists of three statutory provisions. MCL 15.601 defines the terms "public employer" and "school district." MCL 15.602 addresses the parameters for the residency requirements a public employer can place on its public employees. Finally, MCL 15.603 addresses the employment contracts to which the Act applies. Significantly, the Act is silent regarding any right by an employee to collect money damages for a municipality's failure to follow the Act. Had the Legislature intended an aggrieved employee to have the right to pursue money damages against its public employer, it would have so stated.

I reject plaintiff's claim that without an implied private right of action to pursue money damages, there is no method for plaintiff to enforce the Act. Plaintiff has standing to pursue a declaratory action for a judgment interpreting MCL 15.602. Specifically, MCR 2.605(A)(1) states: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

Here, plaintiff alleges he was wrongly denied employment because he failed to meet the residency requirements of MCL 15.602. This constitutes an actual controversy within the meaning of MCR 2.605(A)(1) sufficient to allow plaintiff to pursue a declaratory action asking the trial court to review whether defendant properly interpreted and applied MCL 15.602.

Because the express language of MCL 15.601 *et seq.* does not provide a right of action for money damages, and because plaintiff, through the use of a declaratory action, has an adequate means of seeking redress for a violation of the statute, no implied private right of action to recover money damages is available to plaintiff. *Office Planning Group, Inc v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 501-504; 697 NW2d 871 (2005); *White v Chrysler Corp*, 421 Mich 192, 199-206; 364 NW2d 619 (1984).

III. The 20-Mile Distance Referred to in MCL 15.602 Should be Measured in a Straight Line

Defendant claims that the word "miles" in MCL 15.602(2) refers to a distance to be measured by following existing roads. In *Burke v Newton Chief of Police*, 374 Mass 450, 452; 373 NE2d 949 (1978), the Massachusetts Supreme Judicial Court, when reviewing a nearly identical statute, concluded that, "[h]ad the Legislature desired the method of measurement to be by following existing roads we assume it would have used the term 'road miles.' The use of the term 'mile' without the qualifying adjective to mean 'road miles' is to insert into the statute a word not found therein." Because inserting the word "road" before "miles" in the statute "subverts the intent of the Legislature as demonstrated by clear and plain statutory language," *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 729; 614 NW2d 607 (2000), defendant's interpretation of MCL 15.602(2) must be rejected.

The lead opinion erroneously concludes that "reasonable minds can differ with regard to the meaning of [MCL 15.602]." *Ante* at _____. However, as observed in *Burke*, construing the word "miles" to mean "road miles" is unreasonable.

To hold that conformity to the statutes depends on the road distance between an officer's home and the nearest boundary of the city or town of employment would be to subject such an officer to unpredictable future events over which he has no control. An officer could find himself suddenly in noncompliance by the closing of a road, the conversion of a road to one-way traffic, or perhaps even the installation of a rotary. [*Burke, supra* at 452.]

In addition, reviewing the text of the Act as a whole, it is very clear the Legislature intended the miles to be measured in a straight line. The lead opinion erroneously relies on the legislative analysis of the Act, rather than the text of the Act, to conclude that the purpose underlying the residency requirement is to ensure that public employees are within a reasonable distance of their municipalities in case of emergencies. However, as shown by the language of MCL 15.602(1), the purpose of this Act is to restrict the power public employers have to impose residency requirements:

Except as provided in subsection (2), a public employer *shall not require . . . that a person reside within a specified geographic area or within a specified distance* or travel time from his or her place of employment as a condition of employment or promotion by the public employer. [Emphasis added.]

While MCL 15.602(2) creates the 20-mile exception to this prohibition, the purpose of the Act is not to ensure that employees are within a reasonable distance of the municipalities in which they work. Rather, it is very clear from the text of the Act that it is intended to restrict residency requirements.

Because the language of MCL 15.602 clearly shows that it was enacted in order to afford public employees greater freedom and flexibility in choosing their places of residence, it is evident that the Legislature did not intend the phrase "20 miles" in MCL 15.602(2) to be construed to mean less than 20 miles depending on existing roads and the conditions of those roads. Measuring the statutorily prescribed 20-mile distance according to "road miles" places a greater restriction on public employee freedom of choice than would measuring the statutorily prescribed distance according to a straight-line measurement. Because the Legislature intended

to severely limit the power of municipal governments to impose restrictive residency requirements, plaintiff's method of measuring distances under MCL 15.602 is correct.

Also without merit is defendant's claim, adopted by the lead opinion, that "road miles" is the proper measure because the purpose of residency requirements is to ensure that public employees may quickly reach the municipality in times of emergency. The proper inquiry is not the purpose a municipality may have for imposing a residency requirement; it is the Legislature's purpose in passing MCL 15.602. The clear language of MCL 15.602(1) itself prohibits a public employer from requiring that a person reside "within a specified distance or travel time" except as provided in subsection 2. That subsection permits some consideration of distance, but not of travel time. Thus, the Legislature has indicated that the ability to arrive quickly is not a valid consideration in devising a municipal residency requirement.

I would reverse the judgment of the trial court and remand for further proceedings.

/s/ Brian K. Zahra