

STATE OF MICHIGAN
COURT OF APPEALS

GERALD MASON and KAREN MASON,

Plaintiffs-Appellees/Cross-
Appellants,

v

CITY OF MENOMINEE,

Defendant-Appellant/Cross-
Appellee.

FOR PUBLICATION
February 26, 2009
9:05 a.m.

No. 282714
Menominee Circuit Court
LC No. 02-010066-CH

Advance Sheets Version

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

In this action to quiet title, defendant appeals as of right from the order of the circuit court, on remand, quieting title to the disputed parcel of real property in favor of plaintiffs. We affirm.

This case is before this Court for the second time. In the prior appeal, we held that defendant was the owner in fee simple of the disputed strip of land, but declined to address additional theories raised but not addressed in the trial court. *Mason v City of Menominee*, unpublished opinion per curiam of the Court of Appeals, issued September 12, 2006 (Docket No. 262743) (*Mason I*). On remand, the trial court determined that plaintiffs acquired the disputed land under the doctrine of acquiescence.

In *Mason I*, this Court stated the pertinent facts as follows:

Plaintiffs are the owners of residential real property in Menominee, Michigan. Defendant is the owner of real property surrounding plaintiffs' property on three sides, commonly known as the Water Tower Park. At issue is a 60 foot strip of property, running north and south through the Water Tower Park, which adjoins the eastern border of plaintiffs' property. This property was originally deeded to defendant for a proposed Twentieth Street. But Twentieth St. has never been improved and, according to the trial court's findings, had never been used as a roadway. Plaintiffs have used a portion of the parcel as their driveway extends onto it. Plaintiffs brought this action to quiet title over those portions of the "right-of-way" that their driveway extends onto. [*Id.* at 1.]

Defendant argues that MCL 600.5821(2) shields municipalities from claims for the possession of property based on the doctrine of acquiescence. We disagree. This Court reviews equitable actions, such as an action to quiet title, de novo. *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). Likewise, this Court reviews de novo a trial court's conclusions of law following a bench trial. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000) (*Walters II*). This issue also presents a question of statutory interpretation, which is a question of law that this Court reviews de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). The best source for determining legislative intent is the specific language of the statute. *Id.* When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute. *Id.* Undefined words should be accorded their plain and ordinary meanings, and dictionary definitions may be consulted in such situations. *Id.* Further, courts should “construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature.” *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001).

To fully interpret MCL 600.5821, both subsections 1 and 2 must be examined, they state:

(1) Actions for the recovery of any land where the state is a party are not subject to the periods of limitations, or laches. However, a person who could have asserted claim to title by adverse possession for more than 15 years is entitled to seek any other equitable relief in an action to determine title to the land.

(2) Actions brought by any municipal corporations for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.

While subsection 1 applies to “[a]ctions for the recovery of any land where the state is a party,” subsection 2 applies to “[a]ctions brought by any municipal corporations” It is evident from the language employed in subsection 1 that the Legislature could have made subsection 2 applicable in all cases brought by or against a municipality. The Legislature, however, chose not to do so. Further, interpreting subsection 2 to apply to any case in which a municipality is a party would render the words “brought by” in subsection 2 nugatory. Finally, an acquiescence claim involves a limitations period. *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993). The term “periods of limitations” in MCL 600.5821(2) renders that provision applicable to claims asserting acquiescence for the statutory period. Thus, because the language of MCL 600.5821(2) prevents a private landowner from acquiring property from a municipality by acquiescence only if the municipality brings an action to recover the property, it does not preclude plaintiffs’ claim.

“[A] claim of acquiescence to a boundary line based upon the statutory period of fifteen years, MCL 600.5801(4); MSA 27A.5801(4), requires merely a showing that the parties

acquiesced in the line and treated the line as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary.” *Walters v Snyder*, 225 Mich App 219, 224; 570 NW2d 301 (1997) (*Walters I*). This theory of acquiescence does not require that the possession be hostile or without permission as would an adverse possession claim. *Id.* Further, “[t]he acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years.” *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). Although Michigan precedent “has not defined an explicit set of elements necessary to satisfy the doctrine of acquiescence,” caselaw has held that acquiescence is established when a preponderance of the evidence “establishes that the parties *treated* a particular boundary line as the property line.” *Walters II*, *supra* at 457-458 (emphasis in original).

In this case, the record shows that both parties treated the fence as the boundary line. Further, the plaintiffs satisfied the requisite 15-year statutory period because the acquiescence of their predecessors in title can be tacked onto plaintiffs’ acquiescence of title. *Killips*, *supra* at 260. Thus, a preponderance of the evidence shows that plaintiffs established acquiescence for the statutory 15-year period.

Because of the resolution of the above issues, we need not address plaintiffs’ issue on cross-appeal, with the exception of plaintiffs’ argument regarding the taxation of costs. Plaintiffs argue that they were the ultimate prevailing party; thus, they should be allowed taxable costs in the amount of \$1,887.65 against defendant. We disagree. This Court reviews for an abuse of discretion a trial court’s decision on a motion for costs under MCR 2.625. *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 518; 556 NW2d 528 (1996), *aff’d* 458 Mich 582 (1998). An abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Generally, MCR 2.625(A)(1) allows a prevailing party to tax costs. “The taxation of costs is neither a reward granted to the prevailing party nor a punishment imposed on the losing party, but rather a component of the burden of litigation presumed to be known by the affected party.” *North Pointe Ins Co v Steward (On Remand)*, 265 Mich App 603, 611; 697 NW2d 173 (2005). Although the decision whether to tax costs is discretionary, the authority to do so is “wholly statutory” and “the prevailing party cannot recover costs where there exists no statutory authority for awarding them.” *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 621; 550 NW2d 580 (1996).

Plaintiffs first rely on MCL 600.2441(2) to establish their statutory authority, which states, in pertinent part:

In all civil actions or special proceedings in the circuit court, whether heard as an original proceeding or on appeal, the following amounts shall be allowed as costs in addition to other costs unless the court otherwise directs:

* * *

(c) For the trial of the action or proceeding, \$150.00.^[1]

Although plaintiffs requested this amount for the “remand proceeding,” subsection c allows a trial court to award \$150 in costs for “the trial of the action or proceeding” Here, the trial occurred before the appeal in *Mason I* and there was no “remand proceeding” as plaintiffs assert. Thus, the trial court did not abuse its discretion by failing to award the \$150 in costs for the “remand proceeding.”

Plaintiffs also argue that they were entitled to costs under MCL 600.2445(4) because they “ultimately prevailed” in this action. That section pertains to appeals and provides, “[c]osts in the court below may be awarded to the party who ultimately prevails in the case.” MCL 600.2445(4). Because the remand proceedings in the trial court did not constitute an appeal, MCL 600.2445(4) does not apply to this case.

Plaintiffs further contend that costs were awardable under subsection 2 of MCL 600.2405, which provides:

The following items may be taxed and awarded as costs unless otherwise directed:

* * *

(2) Matters specially made taxable elsewhere in the statutes or rules.

Plaintiffs claim that because costs for trial of the action were awardable under MCL 600.2441(2), they should have been awarded on remand pursuant to MCL 600.2405(2). The trial of the action occurred before defendant appealed the trial court’s ruling in *Mason I*. Although plaintiffs could have filed a bill of costs following the trial court’s initial order that was appealed in *Mason I*, the record does not indicate that they did so. MCR 2.625(F)(2) required plaintiffs to file a bill of costs within a 28-day period. Thus, plaintiffs did not timely file a bill of costs and plaintiffs cite no authority for the proposition that MCL 600.2405(2) rendered such costs taxable on remand.

Finally, MCL 600.2405(2) did not render costs taxable in this Court in *Mason I* properly taxable on remand. Plaintiffs contend that they should have been awarded the \$1,576.65 taxed against them in *Mason I*. They also argue that MCR 7.219 (F)(1) entitled them to \$61 in costs for their appellate brief in *Mason I* and that MCR 7.219(F)(5) allowed them to tax \$100 for a motion fee in this Court in *Mason I*. MCL 600.2405(2) allows the taxing of costs authorized by court rule. *Giannetti Bros Constr Co, Inc v City of Pontiac*, 152 Mich App 648, 657; 394 NW2d 59 (1986). Although these items are made taxable “elsewhere in the statutes or rules,” they are taxable in this Court and not in the trial court. Plaintiffs cite no authority for the proposition that MCL 600.2405(2) rendered costs taxable pursuant to court rule in this Court also taxable in the

¹ It appears that plaintiffs are relying on subsection c because they requested \$150 for the remand proceeding as one of their taxable costs.

trial court on remand. Thus, the trial court did not abuse its discretion by denying plaintiffs' requested costs.

Affirmed. Plaintiffs may tax costs on appeal, and defendant may tax costs on cross-appeal.

/s/ Henry William Saad

/s/ David H. Sawyer