

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In Re Acquisition of Land for the #420 Paull Drain in the  
County of Allegan.

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ALLEGAN COUNTY DRAIN COMMISSIONER,

Plaintiff-Appellee,

v

RAYMOND SHOEMAKER,

Defendant-Appellant.

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UNPUBLISHED

November 2, 1999

No. 212898

Allegan Circuit Court

LC No. 97-021260 CC

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Defendant Raymond Shoemaker appeals by right from an order of right of way entered in this condemnation case. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

Shoemaker and his wife, Margaret Shoemaker, own real property in Allegan County as joint tenants. Their property is located along the route designated for improvements of the #420 Paull Drain. The drain commissioner instituted this condemnation action in September 1997, after offering \$100 for a right of way on the Shoemakers' property. However, it appears that this offer named Shoemaker only, not his wife, and the drain commissioner only served the subsequent complaint in this case on Shoemaker. In his answer to the complaint, Shoemaker included "Non-joinder of necessary parties" among his affirmative defenses.

At a hearing held in November 1997, the trial court preliminarily ruled that Shoemaker had failed to file a motion to challenge the necessity of the right of way within the twenty-one-day deadline under the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.* At that hearing, Shoemaker's counsel objected that Mrs. Shoemaker was a necessary party because she

co-owned the property with Shoemaker. Shoemaker's counsel further objected that Mrs. Shoemaker had not received "statutory notice." However, Shoemaker's counsel also agreed that the matter was not to be decided by the trial court at that time.

In February 1998, the drain commissioner instituted a separate condemnation case relative to Mrs. Shoemaker, Lower Court Docket No. 98 22026-CC. Mrs. Shoemaker timely filed a motion for determination of necessity and a hearing on the issue of necessity was held in that case. Ultimately, in October 1998, the trial court issued an opinion and order upholding the determination of necessity in Mrs. Shoemaker's case. The trial court also rejected Mrs. Shoemaker's argument that the drain commissioner did not properly serve her with notice, ruling that the original offer of just compensation made to Shoemaker in 1997 was sufficient. Apparently, Mrs. Shoemaker has not attempted to appeal that ruling.

In the meantime, in June 1998, the drain commissioner submitted a proposed order of right of way in the instant case. The proposed order declared that title to the right of way "as described in the Complaint" is vested in the Allegan County Drain Commissioner. The order also purported to award "all" rights of possession and access to right of way. At a hearing held in June 1998, Shoemaker's counsel objected to the form of the proposed order, arguing that the order should be limited in scope to Shoemaker's property interest only, and that an award of "all" rights improperly encompasses the co-ownership interest of Mrs. Shoemaker. The trial court rejected this argument as "splitting hairs" and entered the proposed order as drafted. This appeal ensued.

## II. The Trial Court's Order

### A. Shoemaker's Argument

Shoemaker contends that the trial court should have changed the Drain Commissioner's proposed order to reflect that the determination of right of way applied to Shoemaker's interest in the property only, in order to avoid extinguishing Mrs. Shoemaker's interest, which was the subject of a separate condemnation case.

### B. Standard of Review

Our opinion in *Nelson Drainage Dist v Fillipis*, 174 Mich App 400, 403-405; 436 NW2d 682 (1989), explains that we apply two standards of review in condemnation cases involving drains. First, we review a trial court's findings of fact and legal conclusions for clear error. *Id.* at 403, citing *Livingston Co Road Comm'rs v Herbst*, 38 Mich App 150, 154; 195 NW2d 894 (1972). Second, we examine the drain commissioner's conduct for an abuse of discretion in light of his or her statutory authority to act. *Id.* at 404, citing *State Highway Comm v Vanderkloot*, 392 Mich 159, 176-177; 220 NW2d 416 (1974).

### C. Mootness; Oades

We conclude that any problems of overbreadth in the scope of the order entered in this case are rendered moot by the fact that the trial court has since adjudicated Mrs. Shoemaker's rights in the separate condemnation case addressing her property interest. We also find Shoemaker's reliance upon *Oades v Standard Savings & Loan Ass'n*, 257 Mich 469; 241 NW 262 (1932), misplaced in the context of condemnations under the Uniform Condemnation Procedures Act. In *Oades*, the Court declared a foreclosure sale void where the mortgagee failed to name the mortgagor's wife in the notice of foreclosure as required by the mortgage foreclosure statute. In contrast, such procedural defects do not affect the automatic vesting of title that occurs under the Uniform Condemnation Procedures Act, where title vests on the filing of a complaint even if the complaint is defective. See *Goodwill Community Chapel v General Motors Corp*, 200 Mich App 84, 89-91; 503 NW2d 705 (1993).

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White