

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH HUTCHINSON,

Plaintiff-Appellant,

v

CHEBOYGAN COUNTY ROAD
COMMISSION,

Defendant-Appellee.

UNPUBLISHED

December 20, 2002

No. 232851

Cheboygan Circuit Court

LC No. 99-006630-CH

Before: Hood, P.J., and Whitbeck, C.J. and O'Connell, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with parts one, two, and three of the majority opinion. However, since the trial court did not make any findings of fact or conclusions of law in regards to the easement of flowage, I would remand this issue back to the trial court for further proceedings. While I concur with the majority's conclusion that we review factual findings for clear error and examine de novo questions of law, I believe as a condition precedent, the trial court is first required to make factual findings and conclusions of law. This record is devoid of any factual findings or conclusions of law concerning the easement of flowage.

I would affirm the trial court's highway-by-user decision and remand the balance of the case to the trial court to determine if the City of Cheboygan has abandon the easement of flowage.

/s/ Peter D. O'Connell