

STATE OF MICHIGAN
COURT OF APPEALS

JOHN C. SCHOCH and RAYMOND R.
RADOSA,

UNPUBLISHED
November 20, 2003

Plaintiffs-Appellants,

v

No. 242498
Saginaw Circuit Court
LC No. 01-041371-CH

BRADY TOWNSHIP BOARD OF TRUSTEES,
RUSSELL FUOSS, JANET M. FUOSS, ARNOLD
VRABLE, MICHAEL E. BRADY, and PATRICIA
A. GOODRICH,

Defendants-Appellees.

Before: Cooper, P.J. and Markey and Meter, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Brady Township is a general law township. The township board is composed of Russell Fuoss, the township supervisor, Janet Fuoss,¹ the township clerk, Arnold Vrable, a township trustee, Michael Brady, a township trustee, and Patricia Goodrich, the township treasurer. On May 2, 2001, during a regularly scheduled board meeting, Russell Fuoss submitted a letter of resignation. The letter stated that the resignation would be effective at 5:00 p.m. on May 31, 2001. The board took no action in response to the letter. The official minutes of the meeting stated that Russell Fuoss "turned in" his resignation. At the regularly scheduled board meeting on June 6, 2001 Russell Fuoss withdrew his resignation.

In an amended complaint² plaintiffs sought an order of mandamus requiring Janet Fuoss

¹ Russell Fuoss and Janet Fuoss are husband and wife.

² The trial court denied defendants' motion for summary disposition of plaintiffs' original complaint, but granted plaintiffs permission to amend the complaint.

and/or the board to report Russell Fuoss's resignation to the township clerk as required by MCL 168.370, an injunction precluding Russell Fuoss from acting as the township supervisor and the Board from acting with the participation of Russell Fuoss, and a judgment declaring that the recording of Russell Fuoss's letter of resignation in the minutes of the May 2, 2001 meeting constituted the board's acceptance of the resignation.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the resignation of a township officer was governed by MCL 41.56, which provided that a resignation was effective when accepted by the township board. They cited *Edwards v United States*, 103 US 471; 26 L Ed 314 (1881), for the proposition that for the resignation of a public official to be effective, it must be accepted by either a formal declaration or the appointment of a successor. Defendants emphasized that the board neither voted to accept Russell Fuoss's resignation nor appointed a successor for him.

The trial court granted defendants' motion for summary disposition, noting that pursuant to the rule as announced in *Edwards, supra*, for a resignation of a public official to be effective it must be accepted by a formal declaration of the appropriate body or acted on by the appointment of a successor. The trial court found that no evidence showed that the board voted to accept Russell Fuoss's resignation, as it did with two other resignations submitted at the same meeting, or appointed someone to fill Russell Fuoss's position.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

MCL 41.56 provides that the resignation of a township officer must be in writing, signed by the officer who is resigning, and addressed to the township board. The letter of resignation is to be delivered to and filed by the township clerk. The resignation is effective "when accepted by the township board."

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm the trial court's decision. The *Edwards* Court held that under the common law prevailing in Michigan, the resignation of a township supervisor has no force or effect unless accepted either by a formal declaration or the appointment of a successor. *Edwards, supra*, 103 US at 474-475, 477. In *Clark v Bd of Ed*, 112 Mich 656; 71 NW 177 (1897), our Supreme Court applied *Edwards, supra*, and held that the resignation of a public officer is not complete until it has been accepted by the proper authority. See also OAG, 1942, No 25055, p 186 (December 14, 1942) (applying *Clark, supra*, and holding that the resignation of a township supervisor is not effective until it is accepted either by a formal declaration or the appointment of a successor).

MCL 41.56 has codified the common law rule and clearly provides that a township official's resignation is effective "when accepted by the township board." Russell Fuoss submitted a signed letter of resignation to the board but subsequently withdrew it. Plaintiffs failed to present any evidence to show that before he withdrew his resignation the board accepted Russell Fuoss's resignation either by a formal declaration, i.e., a vote to do so, or by appointing a successor. The recording of the receipt of Russell Fuoss's letter in the official minutes did not constitute a formal declaration of acceptance of the resignation. The trial court correctly granted summary disposition on the basis that no genuine issue of fact existed as to whether the board accepted Russell Fuoss's resignation as required by MCL 41.56.

We affirm.

/s/ Jessica R. Cooper
/s/ Jane E. Markey
/s/ Patrick M. Meter