

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

---

MARSHALL SALYERS,

Plaintiff-Appellant,

and

RONALD ARMOUR, DORIS SALYERS, JOHN  
MANBY, BROOK STANDISH, GARY INABNIT,  
and RICHARD MCKENDRICK,

Plaintiffs,

v

CITY OF BATTLE CREEK,

Defendant-Appellant.

---

UNPUBLISHED

December 14, 2004

No. 250364

Calhoun Circuit Court

LC No. 02-004079-CH

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition in favor of defendant under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, an owner of property adjacent to Helmer Road in Battle Creek, filed this action to enjoin defendant, the city of Battle Creek, from constructing a linear pathway for pedestrian and bicycle use along Helmer Road. The circuit court agreed with defendant that it had a right to construct the pathway within the sixty-six-foot-wide right of way for Helmer Road, a highway by user dedicated for public use under MCL 221.20.

Plaintiff's sole claim on appeal is that defendant has no legal right to construct a nonvehicular pathway in the right of way that is adjacent to, but detached from, the surface used for vehicular travel. We disagree.

The highway by user statute states:

All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for ten [10] years or more, whether any record

or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight [8] years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be four [4] rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two [2] rods in width on each side of such lines. [MCL 221.20.]

We review the circuit court's decision construing a statute de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Our first task in construing legislative intent is to examine the statutory language. *Dressel, supra* at 562. If the Legislature's intent is clearly expressed by the statutory language, no further construction is warranted. *Id.* An undefined word in a statute is generally construed according to its common and approved usage, unless it has acquired a technical or peculiar meaning in the law. MCL 8.3a; *Chandler v Muskegon Co*, 467 Mich 315, 319-320; 652 NW2d 224 (2002). Courts often consult dictionaries to give meaning to words used in statutes. *Id.* at 320. Applying these principles, we reject plaintiff's narrow reading of the statute as purporting to limit the use of the surface of the right of way to vehicular traffic.

Here, the condition that led to the establishment of a "public highway" was a "road" used as such for ten years. The word "road" has a commonly understood meaning of "a long, narrow stretch with a leveled or paved surface, made for traveling by motor vehicle, carriage, etc.; street or highway." *Random House Webster's College Dictionary* (1997), p 1122. "Street" means "a usu. paved public thoroughfare, as in a town or city, including sidewalks." *Id.* at 1275. "Highway" means "1. a main road, esp. one between towns or cities. 2. any public road or waterway. 3. any main or ordinary route, track, or course." *Id.* at 615. "Highway" is a generic term for all kinds of public ways, including footpaths. *In re Petition of Carson*, 362 Mich 409, 412; 107 NW2d 902 (1961).

Because a road can be a street, which includes sidewalks, and the word "highway" is broadly defined, we conclude that the commonly understood meaning of the words used in MCL 221.20 does not support plaintiff's position that a "public highway" excludes pathways for pedestrians and bicycles, at least where the pathway is within the right of way of a surface designed for vehicular traffic.

Plaintiff's narrow interpretation of the highway by user statute is also contrary to the general rule that words used in a statute are given meaning by context or setting. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002). The highway by user statute treats property subject to it as impliedly dedicated to public use. *Kalkaska Co Rd Comm'n v Nolan*, 249 Mich App 399, 401; 643 NW2d 276 (2001). But the highway by user statute does not purport to delineate any improvements that might be constructed in the sixty-six-foot (four rods) right of way.

In *Eyde Bros Development Co v Eaton Co Drain Comm'r*, 427 Mich 271; 398 NW2d 297 (1986), our Supreme Court determined that subsurface sewers could be constructed within the public right of way. It stated that "a public easement in a highway dedicated by user is not limited to surface travel, but includes those uses, such as the installation of sewers, contemplated

to be in the public interest and for the public benefit.” *Id.* at 286. The public use must be implemented through authorized agents. *Id.* at 299.

Although the instant case involves a pathway for surface travel, rather than underground installations, the rationale in *Eyde Bros Development Co* is applicable to defendant’s proposed pathway for bicycle and pedestrian use. Because plaintiff proffered no evidence to support an inference that the installation of defendant’s proposed pathway was neither in the public interest nor for public benefit, or lacking appropriate authorization, the circuit court properly granted summary disposition to defendant under MCR 2.116(C)(10).

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly