STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS FOR RESPONSIBLE IMPROVEMENT, MARILEE DEILUS, FRED DEILUS, SUSAN BISCORNER, DALE A. SIMONS, LINDA SIMONS, CELESTE ZECH, SUZZETTE J. ALLEN, KATHERINE CARVAO, WILLIAM F. BISCORNER, DONNA NEWMAN, TOM STEPHENS, DUANE MIKULSKI, SANDY MIKULSKI, DENETTE PRESTON, CHRIS PRESTON, MICHAEL DEBRUYN, LORI J. RUSSELBURG, KEVIN RUSSELBURG, DAVID GARDNER, KATHRYN RIVARD, SANDRA M. MITTI-ROBINSON, FRED MARR, SANDRA MARR, JOSEPH P. AMBROSE, PEGGY L. HANSON, HENRY J. RETTELL, SANDRA A. RETTELL, JAMES N. WARD, GAIL M. WARD, RICHARD SHARPE, SUSAN SHARPE, DEBORAH TUCKER, EDWARD TUCKER and STANLEY RATAJ,

Plaintiffs-Appellees,

v

COTTRELLVILLE TOWNSHIP, COTTRELLVILLE TOWNSHIP CLERK, COTTRELLVILLE TOWNSHIP ASSESOR, COTTRELLVILLE TOWNSHIP TREASURER, COTTRELLVILLE TOWNSHIP TRUSTEE and COTTRELLVILLE TOWNSHIP TRUSTEE,

Defendants-Appellants.

UNPUBLISHED
August 19, 2008

No. 276837
St. Clair Circuit Court
LC No. 06-001367-CH

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

In this public improvement action arising from the creation of a special assessment district (SAD) to extend a water main in Cottrellville Township, defendants appeal by right from a judgment for the plaintiffs that ordered defendant township to abandon the SAD as heretofore designed. We reverse and remand.

According to plaintiffs, in 2005 the township, located near Marine City, attempted to establish a special assessment district for a water main. The district was to be known as district no. 1. But in November 2005, a township board of trustees meeting determined that the petitioners in favor of the district owned land constituting less than 50 percent of the land area in the proposed district. Accordingly, the township did not establish district no. 1.

In December 2005 and January 2006, certain property owners in Cottrellville Township again circulated and signed petitions to request the township to create an SAD for the purpose of supplying their properties with public water. This district was called district no. 2. (The location was to be on Broadbridge road from Mayer road to parcel no. 016-2006-010, McKinley road from Broadbridge to Shea road, and Shea road from McKinley to Starville road.) Seven parcels, of various sizes, were originally proposed to be excluded, because they already had water service, or for other reasons. According to plaintiffs, the township "gerrymandered"[1] water district no. 2 in order to include those property owners who favored the creation of a water district. The proposed district was to receive a 12-inch water main.

In February 2006, an engineer's cost estimate pegged the total cost at approximately $1.7 million. Later, six parcels, totaling 193.57 acres, were proposed to be exempt. Several other SADs for water service were proposed, but are not at issue here.

On March 1, 2006, the township assessor, defendant Barb Schutt, executed a certificate indicating that there were 1,191.55 acres in the proposed SAD; and that the land area owned by the signers of the petition was 723.874 acres, or 60.75 percent of the total land area. Also on March 1, 2006, the township board of trustees held a meeting during which it was noted that the record owners of 60.75 percent of the land area in the proposed district had signed the petition. A motion was passed to accept the petitions for district no. 2, and another motion was passed to direct the township engineer to proceed with the plans for the improvement. The township's written resolution tentatively declared its intent to undertake the public improvement; attached a description of the project; attached a list of properties in the proposed district; scheduled a public hearing on objections to the petitions, to the improvement, the cost estimate, and the proposed SAD; and instructed the clerk to give proper statutory notice of the hearing.

On March 16, 2006, plaintiff Marilee Delius submitted a freedom of information act (FOIA) request to the township. On March 27, 2006, the township received a description that the procedure for installation of the proposed water main extension would be a connection to the Ira township water supply, wherein a 12" water main would be installed to connect back to an existing 6" water main.

On April 4, 2006, the township board held a public hearing where township residents within the proposed district spoke both for and against the project. Residents who were not in the proposed district also spoke. From the resident attendees, the township supervisor appointed

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[1] The term "gerrymander" derives from the person of Elbridge Gerry, a signer of the Declaration of Independence, and a Massachusetts politician, known for designing legislative districts in strange shapes resembling a salamander.

four people (two in favor of the project, and two opposed to it), to work as a committee to arrive at various ways of assessing the cost.

On April 24, 2006, Schutt wrote a letter to the township board, explaining that she recalculated the roll for SAD no. 2. Schutt had to remove, from the list of petition signers, one parcel of 57.62 acres, belonging to Kenneth Chartier, because Mary Chartier did not sign the petition. This changed the percentage of land area in favor to approximately 53 percent.

On May 3, 2006, the township board of trustees met and passed a resolution determining that the petitions for SAD no. 2 were properly signed by record owners of land whose area consists of more than 50 percent of the total area in the proposed district. The board of trustees approved the plans for the project under the estimate given; created, determined and defined SAD no. 2, within which, the costs of the improvements would be specially assessed according to benefits; directed the assessor to make a special assessment roll, indicating the owners and the amounts to be specially assessed "which amount shall be the relative portion of the whole sum to be levied against the parcels of land in the special assessment district as the benefit to the parcel of land bears to the total benefit to all the parcels of land in the . . . district"; and directed the engineer to complete engineering plans.

On May 24, 2006, the township clerk sent an FOIA response to Fred Delius, forwarding the water district map. At the end of May 2006, plaintiffs commenced this action, asserting violations by the board of trustees of the township public improvements act, MCL 41.721 et seq.; FOIA; and the open meetings act (OMA). Plaintiffs also alleged a deprivation of property without due process of law and the taking of property without just compensation. Plaintiffs alleged that defendants violated MCL 41.721 on the basis that they failed to obtain petition signatures by the record owners of land constituting 50 percent or more of the total land area, because defendants excluded properties that already had municipal water, and excluded an underground natural gas storage facility property owned by SEMCO that did not need water service.

Plaintiffs agreed to dismiss the OMA claim prior to the bench trial. At the time of trial, the trial court concluded that the petition signatures pursuant to a power of attorney, and faxed signatures, were valid, and that the notices, project descriptions and plans were done pursuant to the statute. The trial court rejected the FOIA claim and the constitutional claims.

At trial, Schutt, a level-three certified assessor with 20 years of experience, testified that based on her training and experience, five parcels were excluded from SAD no. 2 because they already had municipal water service. Schutt also testified that the SEMCO property was excluded because it would not receive a benefit from the water district. James Larson, a SEMCO representative, testified that his natural gas storage property did not need water service.

After this and other testimony, the trial court concluded that defendants violated MCL 41.723:

> Defendant[s] did not include 50 percent or more signatures in favor of creating Water District Number 2 which should have included the five properties and SEMCO properties because this Court finds that these properties . . . especially benefits [sic] by the proposed improvement. This Court finds that in

> accordance with MCL 41.723 all of the properties received a direct benefit not limited to access to a 12-inch water line capable of providing fire flow and hydrant protection as defined by the Michigan Court of Appeals in . . . *Graham versus Kochville [Twp*[2]] and *Blaser versus East Bay Township*[3] cases.
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> Because this Court finds that Cottrellville Township proceeded prior to having more than 50 percent of the petitions signed by the record owners of the land in the Special Water District Number 2, they are required to abandon the project as it presently stands in that the Township proceeded without complying with the requirements of MCL 41.723 . . . .

Defendant argues that the trial court erred when it determined that there was sufficient evidence of a benefit conferred on the parcels already receiving municipal water, and on the SEMCO property, to overcome the township's exclusion of those parcels from the SAD. We agree with defendants.

We review the trial court's findings of fact in a bench trial for clear error, and conduct a review de novo of the court's conclusions of law. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). "A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been made." *American Federation of State, Co & Muni Employees v Bank One, NA*, 267 Mich App 281, 283; 705 NW2d 355 (2005).

Public improvements within Michigan townships are regulated by the township public improvements act, MCL 41.721 *et seq*. Section 1 of the act provides:

> The township board has the power to make an improvement named in this act, to provide for the payment of an improvement by the issuance of bonds as provided in section 15, and to determine that the whole or any part of the cost of an improvement shall be defrayed by *special assessments against the property especially benefited by the improvement*. . . . [MCL 41.721 (emphasis added).]

The construction, improvement, and maintenance of a water system are improvements covered by the act. MCL 41.722(1)(b).

While parcels subject to special assessment must be "especially benefited by the [proposed] improvement," MCL 42.721, MCL 41.723 provides, in relevant part: "*In determining the sufficiency of the petition, lands not subject to special assessment . . . shall not be included in computing . . . an assessment district area*." (Emphasis added.) Defendant concluded that the five parcels already receiving water service, and the SEMCO parcels, would not be especially benefited by the proposed new water main, excluded these parcels from the

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[2] 236 Mich App 141, 151-152, 154; 599 NW2d 793 (1999).

[3] 242 Mich App 249, 253; 617 NW2d 742 (2000).

assessment district, and concluded that the petition contained the requisite number of signatures to move forward with the assessment. Thus, we consider in this appeal whether the trial court erred by rejecting defendant's conclusion that the excluded parcels did not derive a direct benefit which would render those parcels subject to special assessment, and whether the trial court erred by rejecting defendant's conclusion that the petition contained the number of signatures required by MCL 41.721.

The creation of special assessment districts is a complex process that is notorious among township officials and township attorneys for being fraught with potential difficulty. At the risk of oversimplification, a township must make the following decisions during the process of establishing a special assessment district for a township public improvement (though the steps are not always done in this exact order, and are often mixed together and repeated). First, the township must receive any petition circulated by property owners (usually residents), or receive other information (such as bank erosion) indicating a need for a public improvement (storm drain, water main, etc.). Next, the township must decide what parcels should be included in the proposed SAD roll, by judging which parcels will receive a direct benefit from the proposed improvement. MCL 41.723(4). Third, the township reviews the petitions and determines whether the owners of the more than 50 percent of the land area in the proposed district approved the petition. MCL 41.723. Finally, the township must establish the cost of the improvement, and create a special assessment roll to indicate the amount to be assessed against each parcel of land. MCL 41.725(d). The amount of the assessment for a parcel is "the relative portion of the whole sum to be levied against all parcels of land in the special assessment district[,] as the benefit to the parcel of land bears to the total benefit to all parcels of land" in the SAD. MCL 41.725(d). In other words, the township must determine what proportion of the whole benefit is received by the individual parcel, and then take that percentage, and multiply it by the total cost of the improvement to arrive at the assessment for the individual parcel.

As we have already noted, the principal area of inquiry in this appeal is what constitutes "property especially benefited by the improvement" under MCL 41.721. To the extent that our analysis involves statutory interpretation, we rely upon well-established principles. We begin our analysis by consulting the specific statutory language at issue. *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 95; 738 NW2d 770 (2007), citing *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). "This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning." *McManamon v Redford Charter Twp*, 273 Mich App 131, 134; 730 NW2d 757 (2006), citing *Willett v Waterford Charter Twp*, 271 Mich App 38, 48; 718 NW2d 386 (2006). "When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written." *McManamon, supra* at 136. "This Court does not interpret a statute in a way that renders any statutory language surplusage . . . ." *Id.*, citing *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

A special assessment must have a direct benefit on the property to be assessed, as demonstrated by an increase in the property's market value, though the benefit need not be related to the actual use of the service provided. *Dixon Rd Group v Novi*, 426 Mich. 390, 398; 395 NW2d 211 (1986); *Graham v Kochville Twp*, 236 Mich App 141; 599 NW2d 793 (1999). Municipal decisions regarding special assessments are presumed to be valid and should generally

be upheld unless the party challenging the assessment demonstrates that there is a substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements. *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993).

Defendants presented persuasive evidence that the excluded properties in Cottrellville would not receive a direct benefit from the installation of the proposed water line, because five of the six properties already have municipal water, albeit via a smaller line, and the SEMCO property would not benefit from fire protection. A SEMCO representative testified at trial that municipal water service would only make a hydrocarbon fire on its property worse (rather, chemical fire suppression is required). Schutt testified that, as an assessor who would testify before the Michigan Tax Tribunal (in a challenge by the excluded properties' owners to their annual property value assessments), she would have no basis on which to support an increase in the market value of the properties, based on the potential of a larger water main line, or increased fire suppression protection.

On the other hand, plaintiffs offered no expert testimony contrary to that presented by defendant, in order to show that the excluded properties derived a direct benefit from the improvement. In the face of plaintiff's failure to rebut with persuasive evidence the presumption of validity accorded to the assessment, *Kadzban, supra* at 502, we are left with the firm and definite conviction that the trial court's finding, that the excluded parcels were directly benefited by the proposed improvement, was clearly erroneous. *American Federation of State, Co & Muni Employees*, *supra* at 283. Because there is no direct benefit to the excluded parcels, as a matter of law, the assessment must be upheld as valid. *Kadzban, supra* at 502.

Reversed and remanded for entry of judgment for defendants. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Kurtis T. Wilder