STATE OF MICHIGAN

COURT OF APPEALS

MUSKEGON COUNTY ROAD COMMISSION, Plaintiff-Appellant, v MARY L. PREMO, LAWRENCE S. VIHTELIC, and LILLIAN VIHTELIC Defendants-Appellees.[1]	UNPUBLISHED November 13, 2008 No. 280300 Muskegon Circuit Court LC No. 06-044891-CH
MUSKEGON COUNTY ROAD COMMISSION, Plaintiff-Appellee, v MARY L. PREMO, LAWRENCE S. VIHTELIC, and LILLIAN VIHTELIC, Defendants-Appellants.	No. 282104 Muskegon Circuit Court LC No. 06-044891-CH

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

In Docket No. 280300, plaintiff Muskegon County Road Commission appeals as of right the trial court's order granting defendants summary disposition under MCR 2.116(C)(10) because plaintiff lacked standing to challenge defendants' title to certain real property. In Docket No. 282104, defendants appeal as of right the trial court's order denying their motion for sanctions. This Court consolidated the two appeals. *Muskegon Co Road Comm'n v Premo*,

[1] This matter originally involved 43 additional defendants, however, for various reasons, they are not involved in this appeal.

unpublished order of the Court of Appeals, entered December 21, 2007 (Docket Nos. 280300, 282104). We affirm in part, reverse in part, and remand for further proceedings.

I. Facts and Procedural History

In 2004, defendants successfully quieted title to the disputed property, a road end abutting a lake in Fruitland Township. Defendants sought to quiet title only after plaintiff disavowed any interest in the property and asserted that the road was not adopted into the county road system under the McNitt Act, MCL 247.669. In December 2004, defendants learned that Fruitland Township had requested plaintiff to abandon the disputed property so that the township could establish the road end as a public highway. Plaintiff commenced the abandonment process and quit claimed any interest it had in the property to the township.

A lawsuit then ensued between defendants and the township, in which defendants again sought to quiet title in the property. The township contended that it held title to the property under the highway by user statute and because plaintiff had given it a quitclaim deed to the property. The township also filed a motion for joinder, requesting that plaintiff be added as a necessary party, which the trial court denied. Defendants moved for summary disposition. The trial court granted the motion finding the township failed to comply with the procedural requirements of the highway by user statute. The trial court then entered a judgment quieting title in defendants. On appeal, this Court affirmed the trial court's decisions because (1) the township did not follow the appropriate procedures to establish title through the highway by user statute, and (2) denial of joinder was appropriate because plaintiff was not a necessary party to the action since it "explicitly disavowed having any interest in the property." *Premo v Fruitland Twp*, unpublished opinion per curiam of the Court of Appeals, issued June 14, 2007 (Docket No. 271079) (hereinafter *Premo I*).

In the meantime, before this Court even issued its opinion in *Premo I*, plaintiff, at the township's request, brought the instant action to quiet title in the disputed property based on theories of common law dedication, acquisition through highway by user, and adverse possession or prescriptive easement. Defendants moved for summary disposition under MCR 2.116(C)(10), alleging the disputed property was never a county road; plaintiff had disclaimed all interest in the property; the facts were insufficient to establish a highway by user claim, and plaintiff never demonstrated a claim of right sufficient to support a claim of adverse possession or prescriptive easement. The trial court granted this motion in part.

Defendants then filed a second motion for summary disposition, alleging that plaintiff lacked standing to bring suit. The trial court granted defendants summary disposition, reasoning that plaintiff had quit claimed any interest it had in the property; and therefore, plaintiff did not have standing to file a quiet title action. Defendants moved for sanctions, alleging that plaintiff's lawsuit was frivolous. The trial court denied defendants' motion, stating that the "issue is close" and that plaintiff had "a good-faith, arguable basis for filing this action, notwithstanding the existence of the previous quit claim deed to Fruitland Township."

II. Standards of Review

This Court reviews de novo the lower court's decision regarding a motion for summary disposition brought under MCR 2.116(C)(10). *Houdek v Centerville Twp*, 276 Mich App 568,

572; 741 NW2d 587 (2007). Whether a party has standing to bring an action is a question of law this Court reviews de novo. *Michigan Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006). Lastly, we review the trial court's decision to award sanctions for a frivolous claim for clear error. *John J Fannon Co v Fannon Prods, LLC*¸ 269 Mich App 162, 168; 712 NW2d 731 (2005).

III. Standing

Plaintiff argues the trial court erred in finding that plaintiff lacked standing to file its quiet title claim. We disagree. In *Lee v Macomb County Board of Commissioners*, 464 Mich 726, 739-740; 629 NW2d 900 (2001), our Supreme Court adopted the federal test for standing as a supplement to Michigan's standing jurisprudence. That test, articulated in *Lujan v Defenders of Wildlife*, 504 US 555; 112 S Ct 2130; 119 L Ed 2d 351 (1992), requires that a plaintiff "must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not "conjectural" or "hypothetical."' " *Lee*, *supra* at 739, citing *Lujan*, *supra* at 560 (citations omitted in original). In addition, plaintiff must demonstrate that his or her "substantial interest will be detrimentally affected in a manner different from the citizenry at large;" the injury must be personal and immediate. *House Speaker v Governor*, 443 Mich 560, 572; 506 NW2d 190 (1993) (citation and quotation marks omitted); see also *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 615; 684 NW2d 800 (2004).

Applying the test in the present matter, it is plain that plaintiff has failed to establish injury in fact. Plaintiff does not have any legally identifiable interest in the disputed property; the property was never incorporated into the county road system as part of the McNitt Act[2], and plaintiff never obtained any interest in the road end. Furthermore, even assuming that plaintiff had had some interest in the property, plaintiff would nonetheless lack standing because plaintiff quitclaimed all of its supposed interest in the property to the township before the instant case was even filed. In other words, plaintiff gave away whatever interest it had (which was none) when it quitclaimed its "interest" in the property. "It is settled law in this state that a quit claim deed transfers any interest the grantor may have in the lands, whatever its nature." *Roddy v Roddy*, 342 Mich 66, 69; 68 NW2d 762 (1955). The trial court properly found that plaintiff has no "legally protected interest" on which it can afford standing. See *Lee*, *supra* at 739.

Plaintiff argues that it has standing because its quitclaim deed, as allegedly determined by this Court in *Premo I*, was deficient; therefore, title reverted to plaintiff. This argument must fail, as plaintiff's contention is factually inaccurate. A review of *Premo I* shows that this Court never declared the quitclaim deed deficient. Rather, in *Premo I*, this Court rejected the township's argument that plaintiff had transferred its right to sue via the quitclaim deed because no such right existed under the highway by user statute. *Premo I*, at 1-2.

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[2] 1931 PA 130, repealed by 1951 PA 51, § 21. The current version of the McNitt Act is codified at MCL 247.669.

Plaintiff also asserts that the deed was deficient because the trial court in *Premo I* allegedly held that the township cannot hold title to the subject property under the McNitt Act, so, title reverted to plaintiff. Again, this argument is factually and legally incorrect. The trial court's opinion in *Premo I* did not conclude that the township was legally incapable of holding title to the subject property. Rather, the trial court agreed with defendants that "a township may not be the public body which accepts by implication a public highway by use." Moreover, plaintiff cites no other convincing authority in support of its contention. Plaintiff relies on *Badeaux v Ryerson*, 213 Mich 642; 182 NW 22 (1921), for its contention that a quitclaim deed conveyed to a grantee that cannot legally hold title, an Indian tribe in the *Badeaux* case, reverts to the grantor. But, the township in this matter is not an Indian tribe, and plaintiff points to no authority, statutory or otherwise, that would prevent the township from holding title.

Plaintiff next asserts, relying on *Detroit Public Schools Board of Education v Romulus Community Schools Board of Education*, 227 Mich App 80; 575 NW2d 90 (1997), that it has standing based on its inherent statutory authority over public roads. In *Detroit Public Schools*, the Detroit board of education faced a cognizable injury-in-fact: The Detroit school board was at risk of losing state aid funding for Detroit pupils located in its district if it used its statutory authority to approve the enrollment of students at the Romulus-Baron Academy. *Id.* at 81-84. In this matter, unlike in *Detroit Public Schools*, plaintiff has not identified, and we have been unable to locate, any specific grant of statutory authority that gives plaintiff any type of particularized interest over the disputed property. Rather, plaintiff merely alleges that its general grant of "authority over public roads located in townships within its jurisdiction" should be sufficient to confer standing. However, the road end was never adopted into the county road system, is not a public road, and, accordingly, plaintiff does not have jurisdiction over the property pursuant to the statutory provisions that plaintiff cites.[3] See MCL 224.1 *et seq.*; McNitt Act, MCR 247.1, *et seq.*

Because plaintiff did not have standing to initiate this action, the trial court did not err in granting defendants summary disposition.

IV. Sanctions

Defendants argue that the court erred in failing to award sanctions against plaintiff for allegedly filing a frivolous lawsuit. We agree. A party is subject to costs under MCR 2.114(F) if it pleads "a frivolous claim or defense . . . ." A party's claim is frivolous if "[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true

[3] Plaintiff also relies on *Wayne County Chief Executive v Governor*, 230 Mich App 258; 583 NW2d 512 (1998), for its proposition that it should have standing because it represents the public's "interest." Plaintiff's reliance on this case is misplaced. *Governor* granted a government entity standing based on the Headlee Amendment, Const 1963, art 9 §29, which specifically gives public entities and individuals standing to bring suit as taxpayers. *Id*. at 269-271. *Governor* is irrelevant to the standing analysis in this matter.

[or t]he party's legal position was devoid of arguable legal merit." MCL 600.2591(3). With respect to this inquiry, this Court has stated the following:

> The frivolous claims provisions impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. *LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995). The reasonableness of the inquiry is determined by an objective standard. *Id*. The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the facts and circumstances of the case. *Id.* The attorney's subjective good faith is irrelevant. *Lloyd v Avadenka*, 158 Mich App 623, 630; 405 NW2d 141 (1987). [*Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003).]

After reviewing the record, it is clear that a reasonable inquiry into the factual and legal basis of plaintiff's complaint would have quickly demonstrated a lack of any legal or factual basis to support its claims. The record shows that plaintiff had abundant reason to believe that its complaint lacked both legal and factual support. Before the first judgment quieting title in defendants in 2004, plaintiff repeatedly disavowed any interest in the disputed property and openly acknowledged that its records reflected that the property was not a county road. In addition, despite having no interest in the property, plaintiff then quitclaimed a deed to the township in January 2005, which divested it of any interest it may arguably have had. After the township lost its litigation against defendants in *Premo I*, the township requested plaintiff file suit against defendants in order to acquire title to the property and offered to defray the costs of the litigation. Thus, with full knowledge that it had disclaimed any interest in the disputed property and had quitclaimed any interest it may have had to the township, facts the trial court in *Premo I* explicitly noted, plaintiff nonetheless filed suit to quiet title in the property based on the township's request and offer to defray the cost of litigation. The trial court clearly erred in denying sanctions because had plaintiff undertaken any reasonable inquiry, it would have discovered that its claims were devoid of any legal or factual merit.

Plaintiff contends that its complaint had legal merit because it was supported by case law and the trial court's opinion and order in *Premo I*. The trial court's decision in *Premo I* does not support plaintiff's position that it was reasonable for plaintiff to believe that its quitclaim deed to the township had no force and effect. Nowhere in that court's opinion and order did it find that plaintiff's quitclaim deed was void. Rather, the court merely stated that the "quit claim deed conveyed no interest of any kind to [Fruitland Township]." As such, plaintiff's argument is disingenuous. The other case law that plaintiff cites in support of its contention that the deed was void and that its interests in the disputed property reverted to it are inapplicable to the facts of this case.

Plaintiff also argues that sanctions were not appropriate because the trial court failed to warn it that its claim was frivolous. We disagree. Nothing in the court rules or MCL 600.2591 necessitates that the court warn a party of the frivolity of its claim in order to justify sanctions.

Lastly, plaintiff argues that defendants' motion for sanctions was untimely but fails to cite any authority in support and only gives this matter cursory treatment on appeal. Thus, we consider this argument abandoned. *Goldstone v Bloomfield Twp Public Library*, 268 Mich App 642, 658; 708 NW2d 740 (2005).

Under the circumstances presented here, we conclude that the court clearly erred when it denied defendants' motion for sanctions and, accordingly, reverse the order denying sanctions. Accordingly, we affirm in part, reverse in part and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kirsten Frank Kelly