

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF ALBEE,

Plaintiff-Appellant/Cross-Appellee,

v

COUNTY OF SHIAWASSEE, TOWNSHIP OF
VENICE, TOWNSHIP OF HAZELTON, and
TOWNSHIP OF NEW HAVEN,

Intervening Plaintiffs-
Appellees/Cross-Appellants,

and

MISTEGUAY CREEK INTERCOUNTY DRAIN
BOARD,

Defendant-Intervening Defendant-
Appellee/Cross-Appellee.

UNPUBLISHED
August 21, 2018

No. 341058
Saginaw Circuit Court
LC No. 16-030824-AW

Before: SAWYER, P.J., and STEPHENS and GADOLA, JJ.

PER CURIAM.

Plaintiff Albee Township appeals from an order granting summary disposition in favor of defendant on plaintiff's complaint seeking an order to force defendant Drain Board to complete a drain improvement project. Intervening plaintiffs cross-appeal and challenge an order granting plaintiff township partial summary disposition on the intervening complaint. Just prior to oral argument, the parties stipulated to the dismissal of the main appeal; but the cross-appeal remains. We reverse and remand for entry of the stipulated voluntary dismissal.

This dispute has its origins in 2010 when Albee Township petitioned the Drain Board for improvements to the Misteguay Creek Intercounty Drain¹ under the Michigan Drain Code, MCL 280.192. The Drain Board determined that the requested improvements were practical. But in

¹ The Misteguay Creek watershed runs through Genesee, Saginaw, and Shiawassee counties.

2011, eight neighboring townships filed a complaint in circuit court challenging the determination. The circuit court ruled in favor of the Drain Board and this Court affirmed in *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd*, 298 Mich App 200; 828 NW2d 459 (2012).

While the Drain Board determined that Albee Township's requested improvements were necessary, there was no agreement on how the cost would be apportioned among the affected municipalities. The matter was submitted to arbitration and apportionment allocations were set as required by MCL 280.122. But as of mid-2017 no construction had commenced, although the Drain Board had expended funds on engineering, legal, and professional fees. Meanwhile, Albee Township filed a complaint seeking to require the Drain Board to proceed with construction of the project. The intervening plaintiffs² intervened to challenge the scope of the project and the apportionment procedure.

The Shiawassee entities filed an intervening complaint with five counts. Count I sought declaratory judgment against Albee Township that the township's complaint against the Drain Board lacked merit and sought dismissal of the township's complaint. The remaining counts were against the Drain Board itself. At issue here are Counts II and III, which relate to the Drain Board's apportionment of costs of the project among the involved counties. Although Counts II and III were not directed at the township, it nonetheless filed a motion for summary disposition as to those counts. At the hearing on the motion, the trial court indicated that it would provide an oral ruling at a subsequent hearing. At that subsequent hearing, the trial court delivered an oral ruling granting the township's motion to dismiss with prejudice Counts II and III of the intervening complaint. But, before an order was entered, intervening plaintiffs and the Drain Board entered into a stipulation to voluntarily dismiss without prejudice Counts II through V and filed a motion to enter the order, pointing out that Albee Township was not named as a defendant in those counts.³ Albee Township objected to the entry of the voluntary dismissal. The trial court rejected the dismissal and granted Albee Township summary disposition with prejudice on Counts II and III.

MCR 2.504(A)(1)(b) provides as follows:

Subject to the provisions of MCR 2.420 and MCR 3.501(E), an action may be dismissed by the plaintiff without an order of the court and on the payment of costs

² These are referred to as the Shiawassee entities, comprised of Shiawassee County and three townships.

³ According to the Drain Board, intervening plaintiffs had also filed an identical complaint against the Drain Board in Shiawassee County circuit court and that litigation had been resolved with a stipulated dismissal. That is why the Drain Board did not move for summary disposition in the instant case and had anticipated a similar resolution as in the Shiawassee case until plaintiff's motion for summary disposition was filed.

* * *

by filing a stipulation of dismissal signed by all the parties.

While Albee Township was a party generally to the action, it was not a party to Counts II and III of the intervening complaint. Accordingly, it was not necessary to obtain Albee Township's agreement to the dismissal. The parties who were subject to those counts signed the dismissal. Accordingly, the trial court erred in failing to accept the stipulated dismissal and, therefore, in granting summary disposition in favor of Albee Township.⁴

For the above reasons, we conclude that the trial court erred in rejecting the stipulated dismissal of Counts II and III of the intervening complaint and instead granting summary disposition in favor of Albee Township on those counts. On remand, the trial court shall enter the stipulated dismissal without prejudice as to those counts.

Reversed and remanded for entry of the stipulated dismissal. We do not retain jurisdiction. The Drain Board and intervening plaintiffs may tax costs against plaintiff township.

/s/ David H. Sawyer
/s/ Cynthia Diane Stephens
/s/ Michael F. Gadola

⁴ Indeed, although not an issue that we need address, we question whether plaintiff even has standing to move for summary disposition on a count that does not seek relief against it.