STATE OF MICHIGAN

COURT OF APPEALS

WANKO INDUSTRIAL CENTER, L.L.C., Plaintiff-Appellee,	UNPUBLISHED November 17, 2011
v	No. 300464 Livingston Circuit Court
STEVEN J. LAMANEN and DIANE M. LAMANEN, Defendants-Appellants.	LC No. 08-023699-CH

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order requiring defendants to either recover their premises by paying plaintiff $233,317 or abandon their premises and receive a judgment of $13,728, plus rent of $11,200.54.[1] We affirm in part, reverse in part, and remand for further proceedings.

I. BACKGROUND

This case is a result of the Michigan Supreme Court's decision in *Red Ribbon Props, LLC v Brighton Twp*, 480 Mich 1107, 1107-1108; 745 NW2d 753 (2008), to award the whole of a vacated drive to the owners of the subdivision located to the south of the vacated drive pursuant to the Land Division Act (LDA), MCL 560.227a(1). At issue in this case is a 33 x 100 foot portion of the vacated drive (hereinafter "the premises"). Defendants' property is located to the south of the premises, while plaintiff's property is located to the north of the premises. Before the litigation leading to the Michigan Supreme Court decision arose, plaintiff made improvements to the premises, including: a parking lot, part of a driveway, part of a dumpster structure, curbs, and an irrigation and sewage system. Once the Michigan Supreme Court issued its *Red Ribbon* decision, defendants received title to the premises and plaintiff sued defendants pursuant to MCR 3.411(F), seeking damages for the improvements he made to the premises.

[1] Defendants do not dispute the trial court's determination of rent under MCR 3.411(E).

After a bench trial, the trial court found that the value of the premises without improvements was $13,755.42. The trial court also found that the value of the premises with improvements to defendants did not increase, but the value of the premises with improvements to plaintiff was $233,317. Citing the phrase "by the party making the claim or those through whom he or she claims" from MCR 3.411(F)(1), the trial court applied the value of the premises *to defendants* under MCR 3.411(G)(1), while utilizing the value of the premises *to plaintiff* under MCR 3.411(G)(2). The trial court's rationale was in part as follows:

> The question then is from whose eyes I look at value based upon my interpretation of the court rule and the statute. The statute provides little direction.
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> And there really – there's not a bulk of case law regarding the interpretation of this court rule. So we're left with – for me to do it. There is a direction, however, that I find in the court rule, specifically under F, regarding value, and they're contained in the terms *and from whose eyes we determine or view value*. Under F my finding is that the party who is making the claim, in essence Mr. Wanko, the language that's used in the court rule is quote, 'by the party making the claim or those through whom he or she claims.' *That's who eyes we look to for value under F. And if we use those glasses*, if we use that interpretation then the value that I find would be the $233,317.00. I make no offset for the $4,200.00 for architectural fees because there was an indication that it had already been paid so it would be part of the whole in any event.
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> *Value is in the eye of [sic] beholder and* you have to – you have to choose, you have to take it for – *in essence for the determinate value of the improvements you have to take it from somebody's eyes. And I believe that the court rule does direct us to Mr. Wanko's eyes to view the value of those improvements*. As to the other portion, the finding that I must make, that one's a little bit more clear. That's the value of the – of the premises they would have had at the time of the trial if they had not been improved. That is under G. *And there we look to the appraisals with the cost*. [(Emphasis added.)]

Therefore, it ordered that defendants could either recover the premises by paying plaintiff $233,317, or abandon the premises and take a judgment of $13,728 plus annual rent totaling $11,200.54. From this judgment, defendants now appeal.

II. ANALYSIS

Defendants argue that the trial court erred in its interpretation of MCR 3.411(F)(1) because "the premises" only refers to the value of the premises unattached to either party's property. We review de novo the proper interpretation of court rules. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 387; 761 NW2d 353 (2008). But, we review the factual findings underlying a trial court's ruling for clear error. *Id*. A trial court's

findings are clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *Id*.

We interpret court rules using the same principles that govern the interpretation of statutes. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). "Our goal when interpreting and applying statutes or court rules is to give effect to the plain meaning of the text." *Id*. If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Yudashkin v Holden*, 247 Mich App 642, 649; 637 NW2d 257 (2001). Words are accorded their plain, commonly understood meanings. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001).

MCR 3.411(F) provides:

> (1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for *the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements* by the party making the claim or those through whom he or she claims.
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> (2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. *The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved*, and the amount the value of the premises *was increased at the time of the claim by the buildings erected and improvements made*.
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> (3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.[2] [(Emphasis and footnote added.)]

As the comments to MCR 3.411 indicate, the current court rule is virtually identical to General Court Rule (GCR) 1963, 754.5, which provided:

> (2) Evidence shall be taken as to the value of the buildings erected and improvements made on the premises and as to the value which the premises would now have had they not been improved or built upon. Thereafter, findings shall be made determining the amount that the premises would be worth at the time of the claim had the premises not been improved and determining the amount that the value of the premises was increased at the time of the claim by reason of the buildings erected and improvements made on the premises.

The comments to GCR 754.5 in turn indicate that the rule is based upon a prior Michigan Supreme Court decision, *Petit v Flint & Pere Marquette R Co*, 119 Mich 492; 78 NW 554 (1899):

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[2] Defendants do not allege that plaintiff acted in bad faith.

> The test of the value of the premises adopted by the proposed rules is taken from Petit v. Flint, etc., R. Co., (1899) 119 Mich. 492, which held the test under the ejectment statute to be the relative value of the land with or without the improvements, not the cost to the defendant of the improvements nor the value of the improvements to the plaintiff or the defendant for the particular use which they are making of the premises.

We hold that the trial court's determination that the court rule required that the value of the premises be viewed through the eyes of the individual who is asserting the claim, i.e., the individual who placed the improvements on the premises, was in error. A plain reading of the phrase "by the party making the claim or those through whom he or she claims" in MCR 3.411(F)(1) does not direct, as the trial court held, that the value of the premises be determined from the perspective of the person making the claim. Rather, in accordance with the ordinary and approved usage of language, it refers to the phrase immediately before it: "the erection of buildings or the making of improvements[.]" In reading the court rule completely, the phrase "the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims" cannot be construed as instructive regarding how the value of the premises is to be determined, as the language instead merely confirms that the party filing a claim under MCR 3.411 must be the same party who built or made the improvements upon another's premises. Hence, the trial court's ruling is contrary to the plain language of the court rule.

Additionally, the case law upon which these rules were premised indicates that value is not looked at from either parties' perspective. Rather, the court must determine the value based on the actual value of the premises with or without the improvements. Such was the conclusion in *Petit*, 119 Mich at 492, where after the plaintiff received title to one-fourth of the property, the defendant made a claim for the improvements that he had made on the premises. The Michigan Supreme Court agreed that the defendant was entitled to the value of the improvements made on the premises and articulated the following test for calculating the value of the improvements:

> We think this must be the test under this statute,- *the actual relative value of the land with or without the improvements*. On the one hand, because structures had been erected or placed upon the land which cost the defendant money, and which are of value to it, *the plaintiff cannot be charged with this cost, or special, peculiar value to defendant, if the actual value of the premises has not been enhanced thereby.* On the other hand, *the defendant cannot be denied all relief under this remedial statute on the ground that the improvements are not adopted to the use to which the plaintiff may assert it to be his intention to devote the property upon recovering it.* [*Id*. at 494. (Emphasis added.)]

See also *Sherman v A P Cook Co*, 98 Mich 61, 67; 57 NW 23 (1893) (holding that the proper value to the claimant is "a sum as compensation for buildings and improvements as shall equal the extent that such buildings and improvements have increased the present value of the premises.").

Again, these cases from the late Nineteenth century address the same situation that the current court rule pertains to, and contain language almost verbatim to the current court rule.

MCR 3.411(F)(2) provides directive language to the trial court: "determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made." Nothing within this rule requires or permits a court to view the value of the premises from the perspective of one or the other party. In other words, the relative value is to be determined independently from the values that either party would place on the premises. *Petit*, 119 Mich at 494.

Accordingly, the correct test for calculating the value of the premises pursuant to MCR 3.411(F)(2) is the relative value of the premises with and without the improvements. The relative value is to be determined by looking to the value of the premises alone and the value of the premises with improvements, which can presumably be determined through appraisals or other expert opinion. Once the trial court determines the relative value of the premises with and without the improvements, MCR 3.411(G) provides an election to the party found to have title to the premises. Under MCR 3.411(G)(1), the party with title to the premises (defendants) may elect to abandon the premises to the party seeking the value of its improvements (plaintiff) and take a judgment against that party for the value of the premises at the time of trial without the improvements. Alternatively, under MCR 3.411(G)(2), the party with title to the premises (defendants) may elect to recover the premises by paying the value of the improvements to the party seeking the value of its improvements, here plaintiff.

Applying these standards to the case before us, the trial court's finding that the relative value of the premises without improvements at the time of trial was $13,755.42, was not clearly erroneous. However, the trial court did clearly err when it found what the value of the premises with improvements would be to both plaintiff and defendants. Specifically, the $233,317 figure was an amount determined by looking at the value of the improvements to plaintiff, who had spent resources making the improvements, while the trial court determined the value to defendants of the premises with the improvements was essentially nothing, since defendants could not utilize the improvements. On remand, the trial court is to determine the relative value of the premises with improvements, without considering the value of the improvements to plaintiff or defendants. One way this may be accomplished could be through an expert opinion or appraisal on the current market value of the property with the improvements. Once the trial court determines the relative value of the premises with improvements, defendants may make their election to either abandon or recover the premises under MCR 3.411(G).

Affirmed in part, reversed in part, and remanded for further proceeding not inconsistent with this opinion. We do not retain jurisdiction.

No costs, neither party having prevailed in full. MCR 7.219(A).

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio