STATE OF MICHIGAN

COURT OF APPEALS

MACOMB TOWNSHIP,

Plaintiff-Counter Defendant-Appellant,

v

FORTY ONE A DISTRICT COURT,

Defendant-Appellee,

and

SHELBY TOWNSHIP,

Defendant-Counter Plaintiff-Appellee.

UNPUBLISHED
June 25, 1996

No. 182092
LC No. 91-005085-AS

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Plaintiff, Macomb Township, appeals as of right the circuit court's order granting defendant Shelby Township's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part, but remand for proceedings consistent with this opinion.

I

Macomb Township is a municipal corporation in the county of Macomb. The 41-A District Court is a district court of record, serving the cities of Utica and Sterling Heights and the townships of Shelby and Macomb, and is a district of the third class. A division of the court is located in Shelby Township. All fines and costs are assessed by the court and are paid to the court clerk. Pursuant to MCL 600.8379(1); MSA 27A.8379(1), the clerk is required to appropriate the fines and costs to the municipalities located within the judicial district. However, Macomb Township claims that it has not received its proper share of receipts fom fines and costs collected by the clerk. In its complaint,

* Circuit judge, sitting on the Court of Appeals by assignment.

Macomb Township argued that pursuant to MCL 600.8379(1); MSA 27A.8379(1), Shelby Township is required to pay it one-third of all fines and costs assessed and collected for violation of Macomb Township's ordinances since 1989, when Macomb adopted the uniform traffic code.

In its motion for summary disposition, Macomb Township acknowledged that the two entities entered into an agreement in1980 whereby Macomb agreed to waive receipt of its share of the fines and costs. Macomb, however, argued that because Shelby Township failed to pass a resolution affirming the 1980 agreement, the agreement was voidable. Macomb also argued that the agreement only related to a specific ordinance, rather than all of Macomb's ordinances.

After filing its counter-complaint, Shelby Township argued in its motion for summary disposition that the 1980 agreement was in full force, and that if it was not, then Macomb must be ordered to pay its fair share of the costs of the district court pursuant to MCR 8.201.

The trial court granted summary disposition to Shelby Township, concluding that the 1980 agreement was in full force, and that neither Macomb nor Shelby was entitled to funds from the other entity.

II

The parties in essence stipulate that an agreement existed until 1992. The trial court concurred in that assessment, as do we. Accordingly, we affirm that aspect of the trial court's opinion and order finding that an agreement existed until 1992.

We disagree with Macomb Township's argument that it may unilaterally withdraw from the agreement because Shelby Township failed to pass a formal resolution.[1] We find inapposite those cases cited by Macomb Township suggesting that failure to follow the technical requirements of the statute renders the agreement voidable. See *Taunt v Moegle*, 344 Mich 683; 75 NW2d 48 (1956), and *Gill v SHB Corp*, 322 Mich 700; 34 NW2d 526 (1948). Those cases, and the statutes with which they dealt, deal with situations in which the Legislature was concerned with potential fraud or overreaching by one of the parties to a contract. See, e.g., *Roose v Parklane Homes Corp*, 59 Mich App 542, 546; 299 NW2d 838 (1975). Those concerns are simply not at issue here.

The real question in this case, which neither the lower court nor the parties have properly addressed, is the manner in which a party may escape from an agreement under MCL 600.8379(1)(c); MSA 27A.8379(1)(c). In other words, there is no question that at least until Macomb Township passed its resolution late in 1991, an agreement under the statue existed. The question is, may Macomb Township unilaterally withdraw from this agreement and, if so, what is the proper procedure to do so? Because this question was not properly addressed, we cannot resolve the dispute. Accordingly, we remand this matter in order to allow the parties to create the proper record to determine the manner in which a party may escape from an agreement under MCL 600.8379(1)(c); MSA 27A.8379(1)(c). If it

is determined that a party may escape from such an agreement, the proper sharing of the costs of the district court must also be determined.

We affirm that aspect of the trial court's ruling finding that an agreement existed until 1992.. We remand, however, for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien

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[1] If a dispute existed around whether the parties reached agreement, this argument might have some validity. However, it is clear from the record, and the parties agree, an agreement existed and the parties acted within it from 1980 to 1992.