

STATE OF MICHIGAN
COURT OF APPEALS

CHEBOYGAN COUNTY ROAD COMMISSION
and ELLIS TOWNSHIP,

UNPUBLISHED
September 30, 1997

Plaintiffs/Counter-Defendants-Appellants

v

No. 185583D
Cheboygan Circuit Court
LC No. 94-003935 CH

ELDEN R. CRAWFORD and DONALD
LANNING,

Defendants/Counter-Plaintiffs-Appellees.

Before: Reilly, P.J. and MacKenzie, and B.K. Zahra*, JJ.

REILLY, J. (dissenting)

I respectfully dissent.

The majority's decision is based upon the fact that "In 1951, the county road commission elected, for whatever reason, to remove the extension from the certified roster of county roads." The majority refers to the "decertification" as a proclamation by the county that it "no longer assumed the duty to maintain the road in reasonable repair." According to the majority, this action suffices as an act showing a clear intent to abandon.

The "certified roster of county roads" to which the majority refers is not an all-inclusive list of county roads. MCL 224.20; MSA 9.120 requires the board of county road commissioners to specify the roads and parts of roads upon which money will be expended. The board of supervisors then reviews the proposal, and approves or modifies it. The county road commissioners are prohibited from spending money on any roads other than those as specified in the plan approved by the board of supervisors. The certification process takes place every year. Robert McPherson, the engineer manager for the Cheboygan County Road Commission, testified that the last year the extension was certified was 1951. When asked if the road was "part of the County road system," McPherson responded, "Not the certified part." He further explained that certification is "of the maps or roads within the County that we are allowed to receive maintenance or construction funds on." Gerald

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

Brown, a former chair of the county road commission testified, “being the County is half publicly owned, there’s many roads out there that are – we believe to be public roads. We don’t necessarily certify all of them.”

In my view, the county road commissioner’s decision not to seek funds for the extension did not “decertify” the road or “remove the road from the certified roster of county roads” as stated by the majority. If the majority’s holding is correct, that failure to seek funds for the extension in 1952 was a decertification of the extension and an act showing a clear intent to abandon. Thus, a county road commission must seek funds for every road in the county each year or risk a judicial declaration that the road is abandoned.

The majority’s opinion also states that the county “publicly stat[ed] the understanding that the extension was not under the county’s jurisdiction.” The factual basis for this statement appears to be the minutes of two road commission meetings that are discussed in the majority opinion. The minutes of the first meeting on January 6, 1994 state in pertinent part:

Shooks Road resident questions length of the road.

MOTION by R. Greenwood supported by F. Riley that after reviewing case re: Shooks Rd., Cheboygan County Road Commission will not do anything more than recognize the ¾mile as recorded on the Cheboygan County Road Commission map. CARRIED.

The minutes of the second meeting, on March 31, 1994, state in pertinent part:

R. Doan, Ellis Twp. Supervisor attended meeting with petitions calling for re-opening of the closed portion of Shooks Road, and also discussed proposed project on Munger Road.

Brown explained that the reasoning of the board with respect to the motion in January, 1994 was that the board was already confronted by litigation concerning another public road, which Brown referred to as the “Pigeon River case.”

The reasoning of the board was that we already had [the] Pigeon River case involved on public roads. We felt this was a road that fit that category. It was a public road. And until that one is totally done, we didn’t want to get involved more with public roads.

Considering this explanation of the minutes of the January 1994 meeting, I believe it is inaccurate to say, as the majority does, that the county “publicly stat[ed] the understanding that the extension was not under the county’s jurisdiction.”

Furthermore, the majority opinion allows the county road commission to circumvent a specific and detailed procedure that the Legislature requires before a county road commission may abandon a portion of a road.

MCL 224.18; MSA 9.118, both before and after the 1996 amendments¹, authorizes a board of county road commissioners to either relinquish jurisdiction of the road or “absolutely abandon and discontinue” the road by a resolution adopted by a majority vote. *Id.* The board must determine in the resolution that “it is to the best interests of the public that said highway or portion thereof shall be absolutely abandoned and discontinued.” *Id.* Specific requirements are set forth with respect to the notice that must be given before a road may be abandoned.² The board must file a copy of every resolution or other proceeding abandoning a road in the office of the registrar of deeds and “a full record and return of their doings” with the state highway commissioner within thirty days after the final determination upon the petition. *Id.*

In this case, defendants do not contend that there was a resolution to abandon the road nor that there was a petition filed to initiate abandonment proceedings. The Supreme Court has specifically disapproved of property owners attempting to circumvent the statutory procedure for abandonment by seeking injunctive relief. *Baker v Roscommon County Rd Commission*, 329 Mich 671, 681; 46 NW2d 579 (1951). Because the Court in that case did not explicitly hold that the statutory procedure was the exclusive method by which a county road could become abandoned, property owners such as defendants continue to attempt to circumvent the statutory procedure.

Under the statutory plan, a board of county road commissioners remains responsible for the maintenance of a road until such time the procedure for abandonment is complete. The duty to maintain the road in reasonable repair is imposed by statute, MCL 224.21; MSA 9.121. The board is not authorized to proclaim that it no longer assumes the duty except by following the procedure set forth in MCL 224.18; MSA 9.118. Thus, even if a board wants to abandon a road, MCL 224.18; MSA 9.118 does not allow the board to do so by simply not maintaining the road. If a board of road commissioners could abandon a road and absolve itself from the responsibility to maintain it by simply no longer certifying the road, the detailed procedure for abandonment required by MCL 224.18; MSA 9.118 would be unnecessary.

I would hold that the statutory procedure was the exclusive method by which a county road could be abandoned and therefore would reverse the judgment entered in favor of defendants.

/s/ Maureen Pulte Reilly

¹ This section was amended by 1996 PA 218, § 1, effective May 28, 1996, more than a year after judgment was entered in favor of defendants.

² Before the 1996 amendments, the board was prohibited from abandoning any highway or part of highway along which there was any building except upon the petition of seven or more freeholders of the township in which the road was located. If the petition was not signed by all the owners and occupiers

of land abutting the portion of the road sought to be vacated, notice and a hearing were required. The statute as amended by 1996 PA 218 § 1 requires basically the same procedure without regard to whether a building was along the highway. Additional requirements are imposed in the amended statute when the road sought to be abandoned “borders on, crosses, is adjacent to, or ends at a lake or the general course of a stream”